

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-24333-2021

Date of decision : 21.12.2021

R.C. Sharma

....Petitioner

V/s

Union of India and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Vivek Sharma, Advocate for the petitioner.
Ms. Puneeta Sethi, Advocate for the respondent-UOI.

(The proceedings are being conducting through Video
Conferencing, as per instructions)

G.S. SANDHAWALIA, J. (ORAL)

The challenge in the present writ petition is to the order dated 29.07.2020 (Annexure P-2), passed by Central Administrative Tribunal whereby the original application was dismissed. The Tribunal was left with no option on account of the repeated litigation the petitioner had foisted upon it, which we also cannot approve of.

It is not disputed that the petitioner retired on 31.07.1997 as Upper Division Clerk. He sought the benefit of time bound promotion on completion of 16 years and 26 years of service and had filed the Original Application in the year 1996 which was disposed of on 31.08.2001. The direction was issued at that point of time to consider and dispose of the representations at an early date, preferably within a period of six months.

The claim of the petitioner was denied on 09.04.2002 (Annexure A-2). He challenged the same in the year 2005 by filing an Original Application, which was withdrawn. Thereafter, another Original Application was filed before the Tribunal in the year 2008 which was disposed of on 16.02.2010 (Annexure A-3), granting the benefit of pay-scale of ₹5,000-8000/- w.e.f 01.01.1996. In the said Original Application, consideration was also sought for time bound scale and grant of higher pay-scale after completion of 16 years and 26 years of service as had been granted by the Postal and Telegraph Department. At no point of time, any grievance was raised regarding the grant of financial up-gradation on the completion of 12 years and 24 years of service, which is now sought to be claimed in the present petition. Vide order dated 16.02.2010, the Tribunal had, at that point of time, directed that respondent would give the benefit of up-gradation to the post of Assistant in the scale of ₹5,000-8000/- w.e.f. 01.01.1996 and also directed that pension of the applicant-petitioner be fixed accordingly and difference of arrears be also paid to him. The alternative prayer made in sub-clause (ii) of Clause 8 of the OA had been rejected.

The said order was unsuccessfully challenged before this Court in CWP-20059-2012 (Annexure A-4), wherein the writ petition was withdrawn with liberty to approach the Anomaly Committee, seeking parity. Same reads as under:-

“The petitioner has filed this petition under Articles 226 and 227 of the Constitution of India for quashing the order dated 16.2.2010 (Annexure P-3), passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, whereby while disposing of OA No. 56-HR of 2008, filed by the petitioner, the alternative prayer made by him in sub-clause (ii) of Clause 8 of the OAs has been rejected.

After arguing for some time, learned counsel states that the petitioner may be permitted to withdraw this petition with liberty to approach the Anomaly Committee, seeking parity.

Dismissed as withdrawn with the aforesaid liberty.”

A direction was taken from this Court in CWP-24987-2014 (Annexure A-6), on 08.12.2014 by the petitioner for redressal of his representation dated 14.12.2012. Vide order dated 18.11.2015 (Annexure A-7), the said case was disposed of by noticing that petitioner had been granted promotion as per the relevant policies and principle of analogy of Postal and Telegraph Department had been rejected by the Tribunal on the ground that functions and responsibilities of these posts were not similar. Liberty had only been granted to approach the Anomaly Committee but no comparison could be made between the Recruitment Rules of MES and Postal and Telegraph Department and therefore, the parity sought would not be tenable.

Another Original Application was then filed in the year 2016 challenging the said order dated 18.11.2015, which was quashed vide order dated 02.05.2018 (Annexure A-8), and the matter was remitted to the competent authority to pass a fresh order. On 06.08.2018 (Annexure A-10), the claim of the petitioner was rejected on the ground that scale of Assistant had already been granted to the petitioner with monetary benefits including pension and difference of arrears. The responsibility/functions and the Recruitment Rules of the Upper Division Clerks of MES and Postal and Telegraph Department were different and there was no comparison *inter se*.

Another challenge was raised to the said order by filing Original Application in the year 2018 which was also remanded on the ground that the

order had been passed by an incompetent authority on 25.09.2019 (Annexure A-11). Eventuality, vide order dated 13.05.2020 (Annexure A-16), an order was passed on behalf of the Chief Engineer taking the same stand that the petitioner nowhere had raised the issue regarding the grant of financial up-gradation on completion of 12 years and 24 years of service under the ACP scheme, which is now claimed on the strength of communication dated 09.04.2002 (Annexure A-2).

Same reads as under:-

“5. In addition to the up-gradation of clerical cadre as mentioned above, two financial up-gradation to each individual on completion of 12 years service and 24 years service in the grade have also been granted under ACP scheme vide Govt. of India Min of personnel, Public Grievances and Pensions (Department of personnel and Training) letter No. 35034/1/97-Estt dated 09.08.1999.”

On a query being put to counsel for the petitioner as to the letter dated 09.08.1999, it is submitted that it is not in his possession and neither it was before the Tribunal. The Tribunal had accordingly noticed that the reason given by the authority that the comparison with employees of Postal and Telegraph Department cannot be justified and dismissed the Original Application. Thus, one fact which cannot be denied is that at no point of time from the date of the retirement of petitioner i.e. 31.07.1997, he had ever asked for relief that he is now claiming.

The principles of Order II Rule 2 CPC are applicable to the present litigation which has spread over for a period of more than two decades especially in view of Section 21 of the Administrative Tribunals Act, 1985 which provides for limitation of one year. The relief sought now by the petitioner was not asked at

the initial stage, as such the petitioner now cannot start agitating the claim and is deemed to have been given up the said relief. Even otherwise, we are doubtful that the said letter dated 09.08.1999 would be applicable to the case of the petitioner, since the same has been after the retirement of the petitioner. It is also to be noticed that the Tribunal had decided the case on 29.07.2020 (Annexure P-2) and the present petition had been filed on 29.11.2021. Thus, on the issue of delay and laches also, the petition is also liable to be dismissed as a writ petition has to be filed within a reasonable time. In such circumstances, we do not deem it appropriate to exercise the extra ordinary writ jurisdiction to further grant any indulgence to the gentleman who is keeping himself busy post retirement, by filing one set of litigation after the other. However, since we have not issued formal notice, we do not impose any costs upon the petitioner which would be an extra hardship in the evening of his life after retirement.

With the said observations, we rest the case.

Dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

December 21, 2021

Ajay

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No