

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

110

CWP No. 24332 of 2021

Decided on : 01.12.2021

Union of India and others

... Petitioners

Versus

Central Administrative Tribunal and another

... Respondents

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

Present: Mr. Lalit Sharma, Advocate for
Mr. Sunil Kumar Sharma, Senior Central Government Counsel
for the petitioners.

(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition filed under Article 226/227 of the Constitution of India is to the order dated 09.02.2021 (Annexure P-1) passed in OA No.060/1018/2017, whereby the respondent No.2/applicant who was working as Motor Lorry Driver (MLD) has been granted the benefit of retrospective regularization w.e.f. 11.12.2006, the date when his juniors were regularized and granted all consequential benefit at par with his juniors. The order dated 23.06.2017 (Annexure A-1) passed by the Chief Engineer, which was subject matter of challenge, was accordingly set aside.

A perusal of the order, which was under challenge before the Tribunal would go on to show that the case of the respondent No.2/applicant was that his juniors had been regularized w.e.f. 11.12.2006

and, therefore, he was entitled for grant of all consequential benefits including seniority, arrears of pay and to place his name in GPF establishment instead of CPF establishment with effect from the date of his initial appointment and, thus, he claimed that he had not been granted the benefit of regularization from 11.12.2006, but has been only granted w.e.f. 03.10.2016. The officer concerned passed the said order on account of directions issued by this Court in CWP No.24963 of 2014 on 21.01.2016 (Annexure A-7), whereby the competent authority was directed to consider the claim of the applicant sympathetically with retrospective effect.

The reasoning given by the Chief Engineer as such was that the applicant was working since 01.07.1997 and the MLDs were regularized on 11.12.2006 on the basis of one time measure policy having criteria of minimum 10 years service on duly sanctioned post and not on the strength of an order of Court/Tribunal. The applicant had been regularized on the directions of this Court and, therefore, while placing reliance upon the judgment of the Apex Court in '**Engineering Officers Association Vs. State of Maharashtra & others'** 1990 (2) SCC 715 that if the initial appointment was not according to rules and made as a stop gap arrangement, then officiating on such post could not be taken into consideration for seniority. Resultantly, it was held that the benefit of retrospective date of regularization and to grant consequential benefits and GPF could not be given to the employee, as he had been regularized

w.e.f. 03.10.2016.

The Tribunal has rightly analyzed the material which was placed before it and came to the conclusion that juniors to the applicant as such had been regularized on 11.12.2006. It was noticed that the applicant had been working w.e.f. 01.04.1993 on work order basis and in the list of Work Charge Workers out of 58 persons shown as MLDs, his name was at Serial No.43. Juniors to the applicant who were appointed later namely Tarsem Singh on 11.05.1993, Balwinder Singh on 19.09.1994, Deshraj Sharma on 29.07.1995 and Pardeep Kumar on 24.10.1995 were at Serial No.44, 54, 56 & 57, respectively. It was, accordingly, held that since the said persons had been regularized w.e.f. 11.12.2006, the applicant is also entitled for the same relief.

The order passed by the Chief Engineer dated 23.06.2017 (Annexure A-1) was rightly held to be not justified by noticing that a wrong date of working with CPWD as 01.07.1997 had been noticed which was in fact 01.04.1993. If the same was taken into consideration, the applicant would have more than 10 years of service and, thus, was entitled for regularization w.e.f. the date when his juniors had been regularized. The claim as such had been allowed on the principle of Article 14 and the fact that the applicant is similarly situated and rather better placed than his juniors, for grant of the benefit of regularization w.e.f. 11.12.2006, as granted to other similarly situated persons.

In such circumstances, in the absence of any illegality in the

order of the Tribunal, this Court does not feel that it is a fit case to call upon the respondent to defend this litigation. Accordingly, the present writ petition is dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

December 01, 2021
Naveen

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No