

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

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CWP-6400-2017

Date of Decision: March 22, 2022

Vijay Kumar

....Petitioner

VERSUS

Union of India & others

....Respondents

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

Present:- Mr.Jagdeep Jaswal, Advocate, for the petitioner.

Mr.Namit Kumar, Advocate, for respondent Nos.1 to 3.

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

G.S. SANDHAWALIA, J. (Oral):

The present writ petition, filed under Articles 226/227 of the Constitution of India is directed against the order dated 16.12.2016 (Annexure P-4) whereby claim of the petitioner for notional seniority above Neeraj Kumar, respondent No.4 herein, in the cadre of LDC has been declined by the Tribunal.

The reasoning which has been given by the Tribunal is that the petitioner was appointed in the year 2011 and therefore, could be granted seniority from the date of entry in service and the legal notice for grant of the said benefit was filed on 12.09.2014 and as such notional seniority could not be granted in view of the facts of the case. It was also noticed that there was considerable delay as the cause of action had arisen when the petitioner was appointed i.e. in the year 2011 and the benefit of

notional seniority came to be agitated only by serving legal notice on 12.09.2014 and therefore, the filing of the Original Application was held to be delayed and time-barred.

Counsel for the petitioner has vehemently argued that the petitioner was appointed on compassionate ground on account of death of his father which had taken place on 12.08.1994 and the father of Neeraj Kumar had died in the year 2002 and both of them had been placed in the seniority list for appointment. Petitioner was at Sr.No.3 of the seniority list in the year 2001, whereas Neeraj Kumar was placed at Sr.No.22. It was accordingly contended that Neeraj Kumar had been wrongly given compassionate appointment in 2003 in preference to the petitioner who was forced to litigate on that account. On an earlier occasion, he had approached the Tribunal which had, vide order dated 28.11.2008 (Annexure A-2) directed consideration of the case of the petitioner for compassionate appointment. The said order had been unsuccessfully challenged by the respondents before the High Court of Jammu & Kashmir, which was dismissed on 11.03.2011 (Annexure A-3) and thereafter, SLP was also dismissed on 10.04.2013 (Annexure A-4).

It is submitted that the provisional letter of appointment was offered on 31.05.2011 (Annexure A-5) subject to the decision of the SLP. After dismissal of the said SLP, he had agitated his grouse by serving a legal notice dated 12.09.2014 and thereafter, filed OA in July, 2015. It is submitted that for no fault of his he cannot be denied the benefit of

notional seniority and the respondents cannot take advantage on their own fault.

Mr.Namit Kumar on the other hand has submitted that there is considerable delay to the extent that after his appointment in the year 2011 which had been offered to him, he never raised the issue of notional seniority though the SLP was dismissed on 10.04.2013 and only after a year later in July, 2014 a legal notice was served. It is submitted that the Tribunal was justified in dismissing the OA on this account also. Apart from that, it is argued that on an earlier occasion when he approached the Tribunal, the relief of notional seniority had never been agitated and the only prayer made was for consideration of the case. It is submitted that once the relief is not claimed at the first instance, it could not be claimed in the second round of litigation.

After hearing counsels for the parties we are of the opinion that there is substance in the argument which has been raised by counsel for respondent Nos.1 to 3. The factual background has already been detailed above. On an earlier occasion, when the petitioner approached the Tribunal it was always open to him to seek the relief for appointment on compassionate ground and also the fact that he was entitled for seniority over and above Neeraj Kumar, who had wrongly been appointed before him though the petitioner was senior to him in the list which was prepared for compassionate appointment. The said claim was not agitated in those proceedings and only a simple prayer was made for

issuance of directions to consider his case for compassionate appointment. In the considered opinion of this Court, the principles of Order 2, Rule 2, CPC shall come into play, to the extent that the said relief was never claimed for in the earlier OA.

It would not be proper to allow the petitioner to agitate for the same relief, in the second leg of litigation which he had preferred not to claim at the first instance, after having secured the appointment in the year 2011. Reliance can be placed upon **Union of India & others Vs. Major S.P.Sharma & others, 2014 (2) SCT 335**, wherein it has been held that sanctity is to be given to finality of judgments and it is not permissible to reopen the concluded judgments of the Court, as it would tantamount to an abuse of the process of the Court and would have adverse affect on the administration of justice.

Reliance can also be placed upon the judgment in **State of Uttranchal & another Vs. Sri Shiv Charan Singh Bhandari & others, (2013) 12 SCC 179**, wherein it has been held that dead issues which have become time-barred could not be allowed to be opened up merely on the basis of compliance of directions, which cannot extend the limitation and would not give a fresh cause of action.

As noticed above, the cause of action has arisen way-back in 2003 on appointment of Neeraj Kumar and the earlier OA had been filed in the year 2007, which was disposed of on 20.11.2008. At that point of time, the writ petitioner had chosen not to agitate for his grievance of

benefit of notional seniority and in such circumstances, allowing the said benefit now would amount to opening up “Pandora's Box”, as not only interests of one Neeraj Kumar would be involved but also a large number of persons appointed between Neeraj Kumar and the petitioner. Admittedly, those persons re not party to the present litigation and any order passed in their absence would also seriously jeopardize their rights and interests.

Accordingly, in view of the above discussion, finding no merit in the present writ petition, same is hereby dismissed.

(G. S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

March 22, 2022
sailesh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No