

**HIGH COURT OF JAMMU AND KASHMIR**  
**AT JAMMU**

SWP No.2655/2013  
CMA No.3909/2013

Date of order: 18.11.2014

Union of India and ors.

v.

Dharam Chand Sharma

**Coram:**

**Hon'ble Mr. Justice M. M. Kumar, Chief Justice**  
**Hon'ble Mr. Justice Tashi Rabstan, Judge**

**Appearing counsel:**

For the petitioner (s) : Mr. Ramesh Arora, Advocate.

For the respondent (s) : Mr. Anil Mahajan, Advocate.

- |     |                                             |   |        |
|-----|---------------------------------------------|---|--------|
| i)  | Whether to be reported<br>Press/Media       | : | Yes/No |
| ii) | Whether to be reported in<br>Digest/Journal | : | Yes/No |

**M.M.Kumar, CJ**

1. The Union of India and its officers have challenged the judgment and order passed by the Central Administrative Tribunal Chandigarh (Circuit Bench at Jammu) in O.A. No.941-JK-2009 dated 16.09.2010 and the later clarification issued on 20.04.2012 in M.A. No.34 of 2012. It has remained undisputed that a number of persons working as Instrument Repairers filed OA No.410-JK-1989 (Dhian Singh and others v. Union of India and others) challenging order dated 22.12.1988 issued by the Army Headquarters, Engineer-in-Chief's Branch, New Delhi on the ground that the Instrument Repairers were illegally excluded from amongst the categories, which were made

eligible for promotion to HS Grade II and HS Grade I under the 'In-situ Promotion Scheme', which amounted to taking away their promotional avenues available to them earlier. The trade of Instrument Repairer was re-designated as Electrician (SK) vide letter dated 21.02.1994. The appellant issued instructions to work out revise 20% vacancies of Electrician HS II grade and to grant them promotion by reviewing DPC with notional seniority vide letter dated 10.02.1995 issued by the Engineer-in-Chief's Branch. The aforesaid O.A. No.410-JK-1989 was allowed on 22.03.1996 holding those applicants entitled to their inclusion in the three grade structure from the initial date i.e. 15.10.1984. The letter dated 22.12.1988 to the contrary issued by the Army Headquarters Engineer-in-Chief's branch was quashed to that extent.

2. The original applicant along with others thereafter filed SWP No.836 of 1994 titled as Adip Singh and others v. Union of India and others with a prayer to issue same directions, which were passed in Dhian Singh's case (supra) while deciding O.A. No.410-JK-1989. The petition was decided on 31.08.1996 by observing as under:-

"CMP dt. 21.8.96 filed by the petitioner is allowed. Petitioner No.3 is deleted from array of petitioners. This petition shall now proceed for disposal on behalf of other petitioners except petitioner No.3.

Both sides agree that the subject matter of the controversy in the petition stands already decided by the Central Administrative Tribunal (Chandigarh Bench) vide judgment dt. 22.3.96 copy whereof has been submitted

and placed on record. The matter is, therefore, disposed of in the light of that judgment.

Mr. Salathia, I/c for respondents has filed objection to the two ancillary CMPs which are also taken on record. These shall also be treated to have been disposed of.”

3. After the aforesaid directions issued by the learned Single Judge of this Court, the appellants passed order on 05.04.1999 for implementation of the directions issued by this Court. Accordingly, it was held that the original applicant along with his colleagues would be entitled for inclusion in the three grade structure w.e.f. 15.10.1984. Their further promotion was also to be carried out on the basis of seniority cum fitness and available vacancies as per rules. The expenditure on that account were to be treated as charged expenditure. These directions were issued with the concurrence of Defence (Finance) and subsequently when the original applicant filed OA No.762/JK/04, similar view was taken by the Tribunal in its order dated 21.05.2009 and the same reads as under:-

“The applicant was the 8<sup>th</sup> petitioner in SWP 836/94 filed before High Court of J&K. The applicant there had prayed for a direction that as Instrument Repairers (re-designated as MPI) they were entitled to be included amongst the trades governed by what is known as three grade structure from the very inception of the scheme. When the matter was heard on 31.8.96, the High Court had observed that issue as agitated before the high Court had already been decided in favour of persons like the petitioners by the Chandigarh Bench of the Tribunal in OA No.110/JK/89. In fact High Court observed that both the sides agreed that subject matter of the controversy stands decided by the CAT on 22.3.96. The specific observation of the High Court was the matter is, therefore, disposed of in the light of that judgment.”

3. The applicant submits that consequent to the order passed by the Govt., in implementation of CAT judgment by Annexure P-3 on 12.6.97, it had been conveyed to the

Army Hqrs. That there is sanction of the President of India for implementation of the directions contained in the judgment of CAT. Instruments repairers were entitled to be included amongst the trades covered by three grade structure from the initial date of notification of the same. The order further indicated that applicants who had filed OA will be entitled to inclusion in the three grade structure implemented from 15.10.84. The order also unambiguously stated that they will be entitled to all consequential benefits. The expenditure would be accounted under the charged expenditure.

4. We also note that the order referred to the concurrence that had been given by the Defence (Finance) vide their diary No.476/W-1/97m dated 12.5.97. However, when the applicant approached the respondents with copy of the judgment of the High Court, he was not given welcome. Protracted correspondence ultimately resulted in a decision which communicated the decision taken by the Commander Works Engineer, vide Annexure P-4, dated 12.5.04. It is shown that Army Hqrs. on 2.4.04 had indicated that the Govt. had not issued any general order regarding grant of notional seniority and consequential benefits to Instrument Repairers. The benefit could be given only to those petitioners who were covered by CAT orders. This order is under challenge. The impugned order also indicates that as the applicant was not party to CAT case, the department adopted the above position.

5. We are surprised that after a final settlement of the issue, claims of the applicant has been rejected on a flimsy reason. A reading of the High Court judgment would have indicated that the applicant had been equated with the applicants in the OA filed before the CAT. Therefore, what benefits the department extended in implementation of CAT judgment squarely were to come in favour of the applicant as well. The Supreme Court had deprecated the stand of the administrative authorities in restricting the claims of personnel, only for the reason that unlike their counterparts they had not adopted a path of litigation. In appropriate cases, of course a distinction could be drawn, but we feel not definitely in the case at hand.

6. The respondents should not have made a classification among the same group of Instruments Repairers, that some would be given the benefit of three grade structure and others would be denied the same. Such discrimination could not have been practiced especially in this case when the applicant had obtained judgment of High Court. He should have never been subjected to such inconvenience.

7. It is clear that applicant would be entitled to all the benefits as would be arising from Annexure P-3 order. The respondents are to work out the monetary reliefs that the applicant has been denied, and all the consequential benefits he would have had if his name had been brought

in the ambit of three grade structure. We direct that the applicant be brought within the purview of three grade structures and the department should ensure that such benefits should be extended to everyone of the trade of Instrument Repairer irrespective of whether they have come up with claims, since it was a duty of the department to ensure uniformity. We direct the respondents concerned to pass follow up orders in implementation of this declaration and to give monetary benefits and other benefits that may be admissible to the applicants within 3 months from today. In respect of others, we are similar, (only to those who are now in service) the benefits are to be given in six months' time. We make no order as to costs."

4. The appellants again compelled the original applicant to file O.A. No.941-JK-2009, which was allowed vide order dated 16.09.2010 by observing as under:-

"8. The question remains to be answered is as to whether the applicant is entitled to be placed in the HS Grade II w.e.f. 24.2.1997 or w.e.f. 15.10.1984. Even though the respondents have now taken a plea that the applicant in the category of instrument repairer could be given higher grades according to the percentage of vacancies and seniority but this plea was not taken by the respondents in the earlier O.A. filed by the applicant. Once the applicant was equated with the applicants in the O.A. in the case of Dhian Singh vs. Union of India & others (supra), obviously he became entitled to the benefits flowing from the said order to the extent that applicant has to be granted benefit of HS Grade II w.e.f. 15.10.1984. The issue stands settled in favour of the applicant and cannot now be re-opened.

9. In view of the above discussion this Original Application is allowed and disposed of with direction to the respondents No.2 to 4 to consider the case of the applicant and pass necessary orders promoting him as HS Grade II w.e.f. 16.10.1984 and then subsequent promotions to HS Grade I etc. from due dates with all the consequential benefits including fixation of seniority and fixation of pay on notional basis w.e.f. 16.10.1984, within a period of three months from the date of receipt of copy of this order. Copy of the order be given **Dasti** to the learned counsel for the parties."

5. A perusal of para 9 of the directions shows that the Tribunal had granted the benefit on notional basis w.e.f.

16.10.1984, which again led to filing of M.A. No.341/12 where the word notional was deleted vide order dated 20.04.2012 and the original applicant was held entitled to all consequential benefits by making following observations:-

“We have heard the learned counsel for the parties and carefully gone through the record. After perusal of the order earlier passed in identical matter in Dhian Singh’s case and the order passed in applicants case in aforesaid O.A., we are of the view that the applicant is entitled to monetary benefits from the date when he was brought in the ambit of three grade structure w.e.f. 16.10.1984, therefore, para 9 of our order dated 16.9.2010 needs modification to the following effect”

“In view of the above discussion this Original application is allowed and disposed of with direction to the respondents No.2 to 4 to consider the case of the applicant and pass necessary orders promoting him as HS Grade II w.e.f. 16.10.1984 and then subsequent promotion to HS Grade I etc. from due dates with all consequential benefits including fixation of seniority and fixation of pay w.e.f. 16.10.1984, within a period of three months from the date of receipt of copy of this order. Copy of this order be given Dasti to the learned counsel for the parties.”

Let this order be made part and parcel of the order passed in aforesaid O.A. and the respondents are directed to work out the balance of the arrears to be paid to the applicant w.e.f. 16.10.1984 within a period of three months from the date of receipt of a copy of this order.”

6. We have heard Mr. Ramesh Arora, learned counsel for the Union of India and Mr. Anil Mahajan, learned counsel for the original applicant at some length. The matter has been settled long ago and re-opening of the issue is wholly unwarranted at the instance of writ petitioners-Union of India. In fact the filing of instant petition is patently against the litigation policy adopted by Union of India in the year 2010 which reported as (2010) 6 SCC J-17. In para VI (D) of the National

Litigation Policy there is a prohibition for filing of such petition, which is set out below *in extenso*:-

**“VI. Filing of Appeals**

(A) .....

(B).....

(C) .....

(D) In service matters, no appeal will be filed in cases where:  
(a) the matter pertains to an individual grievance without any major repercussion;

(E) .....

(F) Proceedings will be filed challenging orders of Administrative Tribunals only if:

(a) There is a clear error of record and the finding has been entered against the Government.

(b) The judgment of the Tribunal is contrary to a service rule or its interpretation by a High Court or the Supreme Court.

(c) The judgment would impact the working of the administration in terms of morale of the service, the Government is compelled to file a petition; or

(d) If the judgment will have recurring implications upon other cadres or if the judgment involves huge financial claims being made.

.....”

7. The present petition is wholly ill advised because it is an individual matter. There is no error of record nor it is against any service rule or its interpretation given by the High Court. In fact High Court had opined in its order dated 31.08.1996 passed in SWP No.836/94 that the original applicant was covered by the earlier judgment of the Tribunal dated 22.03.1996. Therefore, the petition has been filed by ignoring National Litigation Policy.

8. For the reasons aforementioned, this petition fails and same is dismissed. However, the original applicant-respondent shall be entitled to his costs, which is determined at Rs.10,000/- (Ten thousand).

**(Tashi Rabstan)**  
**Judge**

**(M.M.Kumar)**  
**Chief Justice**

**Jammu**  
18.11.2014  
Vinod.