

Before M.M. Kumar & T. P. S. Mann, JJ.

UNION OF INDIA,—Petitioner

versus

**CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH
BENCH, CHANDIGARH AND OTHERS,—Respondents**

CWP No. 17187/CAT of 2004

18th May, 2011

Constitution of India, 1950—Art. 226—Condition of Service of Union Territory of Chandigarh Employees Rules, 1992—Respondent No. 2 joining service in erstwhile State of Punjab—Appointment of respondent as Legal Assistant in U.T., Chandigarh—Promotion as Codification and Publication Officer—Chandigarh Administration ordering change of designation of Codification and Publication Officer to that of Assistant Legal Remembrancer—Revision of pay scales—Respondent claiming grant of scale of post of A.L.R.—UOI rejecting claim of respondent and also withdrawing re-designation of respondent as A.L.R.—Change of designation given as a measure personal to respondent without any change of duties and responsibilities—Conferring a different designation would not entitle him to a pay scale of a post on basis of designation—Petition allowed order of Tribunal allowing application of respondent of respondent set aside.

Held, that the Courts cannot issue direction which may result into creation of a new post, as has been done by the State of Punjab while issuing order dated 6th January, 1992. It is patent from the perusal of the aforesaid order that the Government on his own has created a post of Assistant Legal Remembrancer after abolishing the post of Codification and Publication Officer. Likewise, there was a ban on creation of non-plan posts keeping in view the overall austerity measures required to be undertaken in accordance with the instructions issued by the Government. Ordinarily, the posts are upgraded if there is any change in the duties involving higher responsibility. By conferring the designation of the post of Assistant Legal Remembrancer on the post which was earlier known as Codification and Publication Officer,

the duties and responsibilities had continued to be the same. In any case, *vide* order dated 19th January, 2004, even the order conferring designation has been withdrawn. Therefore, the Tribunal has committed grave error in law by allowing the original application filed by the applicant-respondent No. 2 and has wrongly concluded that the petitioner as well as Chandigarh Administration has not come in grip with the reasoning of the order passed by the Tribunal in O.A. No. 1003/CH/01.

(Paras 14 & 15)

Aman Chaudhary, Senior Panel Counsel for the Union of India.

J. R. Syal-respondent No. 2 in person.

M. M. KUMAR, J.

(1) The Union of India has filed the instant petition under Article 226 of the Constitution challenging order dated 30th June, 2004 (P-3) passed by the Chandigarh Bench of the Central Administrative Tribunal (for brevity, 'the Tribunal') allowing the original application of the applicant-respondent No. 2 and directing the petitioner to reconsider the matter afresh.

(2) Brief facts of the case are that in the year 1964 the applicant-respondent No. 2 joined the service in the erstwhile State of Punjab. Subsequently, on 5th June, 1980, he was appointed as Legal Assistant in the Law Department, Union Territory, Chandigarh. On 20th November, 1991, he was given current duty charge of the post of Codification and Publication Officer. On 10th January, 1992, he was promoted and posted as Codification and Publication Officer on regular basis in the scale of Rs. 2400—60—2700—75—3000—100—400 *plus* special pay of Rs. 300 per month (A-2).

(3) On 13th January, 1992, the Government of India, Ministry of Home Affairs, New Delhi, framed the rules known as 'Condition of Service of Union Territory of Chandigarh Employees Rules, 1992' (for brevity, 'the 1992 Rules') by issuing a notification under the proviso to Article 309 of the Constitution (A-3). As per the 1992 Rules the conditions of service of persons appointed to corresponding posts in the Punjab Civil Services were made applicable to the conditions of service of persons appointed to the Central Civil Services and posts in Groups A, B, C and D under the administrative control of the Administrator of Union Territory of Chandigarh.

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(4) On 9th May, 1991, the State of Punjab issued a notification revising the pay scales of its employees from 1st January, 1986. The existing scale of the post of Codification and Publication Officer, which was Rs. 828—1580 plus Rs. 150 per month special pay as on 31st December, 1985, was revised to 2400—4000 *plus* Rs. 300 per month special pay. It was further stated in the said notification that the case for up-gradation of the said post to the level of Assistant Legal Remembrancer in the scale of Rs. 3000—4500 *plus* Rs. 400 per month special pay would be considered by the Administrative Department in consultation with the Finance Department (A-4). Thereafter on 3rd December, 1991, sanction was accorded by the Finance Department, Punjab, for creation of the post of Assistant Legal Remembrancer in place of the post of Codification and Publication Officer in the Law and Legislative Department, Punjab (A-5). On 5th January, 1992, the Department of Home Affairs and Justice, Government of Punjab passed an order promoting the existing incumbent of the post of Codification and Publication Officer in the Department of Legal and Legislative Affairs, Punjab as Assistant Legal Remembrancer and granting him the scale of Rs. 3000—4500 with special pay of Rs. 400 per month (A-6).

(5) The Chandigarh Administration also decided to revise the pay scales of its employees with effect from 1st January, 1986 notionally and from 1st April, 1991 effectively at par with the pay scales of the employees of the State of Punjab. For that purpose the rules known as 'the Chandigarh Administration Civil Services (Revised Pay) Rules, 1991 (for brevity, 'the 1991 Rules') were framed. On 3rd January, 1992, in pursuance of the provisions of Rule 3(j) of the 1991 Rules, the Chandigarh Administration notified the Second Schedule to the said Rules. According to Part XVIII of the Second Schedule under the heading 'Legal Remembrancer-cum-Director of Prosecution', the post of Codification and Publication Officer was under consideration for up-gradation to the level of Assistant Legal Remembrancer in the scale of Rs. 3000—4500 with a special pay of Rs. 400 per month. The pay scale of the post of Codification and Publication Officer has been shown as Rs. 2400—4000 *plus* Rs. 300 per month as special pay.

(6) On 2nd December, 1999, the applicant-respondent No. 2 made a representation for up-gradation of the post of Codification and Publication Officer to that of Assistant Legal Remembrancer in the unrevised scale of Rs. 3000—4500 *plus* Rs. 400 special pay with effect from 13th January, 1992 (A-7).

(7) On 24th June, 1994, the Home Secretary, Chandigarh Administration passed an order changing the designation of the applicant-respondent No. 2 from the post of Codification and Publication Officer to that of Assistant Legal Remembrancer in the Law Department of Chandigarh Administration. However, the same was done as a measure personal to him in the existing scale i.e. Rs. 2400—4000 plus Rs. 300 per month special pay (A-8).

(8) On 10th January, 1998, the State of Punjab further revised the pay scales of its employees with effect from 1st January, 1996 (A-9). Keeping in view the earlier notification dated 13th January, 1992 (A-3), the Chandigarh Administration also adopted the rules notified *vide* the said notification dated 10th January, 1998, with certain amendments (A-10). By this revision, the pay scale of the post of Assistant Legal Remembrancer has been revised to Rs. 10025—15100 with effect from 1st January, 1996.

(9) The applicant-respondent No. 2 again made various representations for grant of the scale of the post of Assistant Legal Remembrancer. Eventually he filed O.A. No. 1003-CH of 2001 before the Tribunal, which has disposed of *vide* order dated 29th May, 2003 (A-11) by observing as under :

“13.....We dispose of the O.A. with the direction that the Government of India, Ministry of Home Affairs, New Delhi, Respondent No. 1 shall give a fresh look to the matter and reconsider the reference made by the Chandigarh Administration to create/upgrade the post of Codification and Publication Officer to the level of Assistant Legal Remembrancer in the pay scale of Rs. 3000—4500 with special pay of Rs. 400 per month which was subsequently revised to Rs. 10025—15100 which special pay of Rs. 800 per month with effect from 1st January, 1996 on the Punjab pattern in the light of the observation made above and pass appropriate orders, within a period of four months from the date a certified copy of this order is produced before the Secretary, Government of India, Ministry of Home Affairs, New Delhi.”

(10) On 26th December, 2003, the petitioner Union of India rejected the claim of the applicant-respondent No. 2, which was communicated to him *vide* letter dated 26th December, 2003 by the

Chandigarh Administration (A-1). Thereafter, on 19th January, 2004 another order was passed by the Chandigarh Administration withdrawing the re-designation of the applicant-respondent No. 2 as Assistant Legal Remembrancer and again designated him as Codification and Publication Officer (A/X). Feeling aggrieved, the applicant-respondent No. 2 filed OA No. 58-CH of 204 before the Tribunal. The Tribunal *vide* the impugned order dated 30th June, 2004 allowed the aforementioned original application (P-3).

(11) We have heard learned counsel for the petitioner and Shri J. R. Syal-respondent No. 2 in person at a consideration length and are of the view that by conferring a different designation the applicant-respondent No. 2 Shri J. R. Syal would not become entitled to the pay scale of a post on the basis of designation. It is appropriate to extract the order dated 24th June, 1994 (A-8) :

“The Administrator, Union Territory, Chandigarh, is pleased to change the designation of the post of Codification and Publication Officer to that of Assistant Legal Remembrancer in the Law Department of Chandigarh Administration in the existing scale of pay of the post of Codification and Publication Officer i.e. Rs. 2400—60—2700—75—8000—400—4000 *plus* Rs. 300 p.m. Special pay with immediate effect subject to the condition that the designation of the Assistant Legal Remembrancer will be as a measure personal to the present incumbent Shri Jagdish Ram Syal, Codification and Publication Officer, Law Department of Chandigarh Administration.

2. This issues with the prior concurrence of local Finance Department, Chandigarh Administration conveyed *vide* their U.O. No. 2924-UTF (8)-94/13132, dated 24th June, 1994.”

(12) The aforesaid order would show that respondent No. 2 was working on the post of Codification and Publication Officer and the Home Secretary, Chandigarh Administration changed his designation to that of Assistant Legal Remembrancer in the Law Department of Chandigarh Administration. The change of designation has been given as a measure personal to the applicant-respondent No. 2. The aforesaid designation in any case was withdrawn on 19th January, 2004 (A/X) and, therefore, no dispute would survive for grant of pay scale of the post of Assistant Legal Remembrancer equivalent to that of the pay scale of the post prevalent in the State of Punjab. The aforesaid argument has been advanced on the basis

of notification dated 3rd January, 1992, which has been issued in pursuance of the provisions of Rule 3(j) of the Chandigarh Administration Civil Services (Revised Pay) Rules, 1991. According to Part XVIII of the Schedule under the heading 'Legal Remembrancer-cum-Director of Prosecution', the post of Codification and Publication Officer was under consideration for up-gradation to the level of Assistant Legal Remembrancer in the scale of Rs. 3000—4500 with special pay of Rs. 400 per month. The pay scale of the post of Codification and Publication Officer was Rs. 2400—4000 *plus* 300 per month as special pay. The State of Punjab *vide* order dated 6th January, 1992 (A-6) has passed an order creating the post of Assistant Legal Remembrancer and abolished the post of Codification and Publication Officer in the Department of Law and Legislative Affairs in the pay scale of Rs. 3000—4500 with special pay of Rs. 400 per month. Therefore, after abolition of the post of Codification and Publication Officer no comparison could be made between the post held by the applicant-respondent No. 2. In any case, the post of Codification and Publication Officer, which is the designation now conferred on the applicant-respondent No. 2 carries the pay scale of Rs. 2400—400 *plus* Rs. 300 per month special pay.

(13) Even otherwise we find that in the facts and circumstances of the case reasons sustainable in law have been given in the order dated 26th December, 2003 (A/1) which has been passed in pursuance to the direction issued by the Tribunal in O.A. No. 1003/CH/01 at the instance of the applicant-respondent No. 2. The three valid grounds given in the order dated 26th December, 2003, in support of rejecting the claim of the applicant-respondent No. 2, are as under :—

- (i) The higher pay scale of Rs. 3000—4500 *plus* Rs. 400 p.m. as Special pay with effect from 24th June, 1994 and of Rs. 10025—15100 *plus* Rs. 800 as special pay with effect from 1st January, 1996 can be given only by first creating a post in the said higher scale of pay by simultaneously abolishing the post in the lower pay scale for which there is no justification. Moreover, there is ban on creation of non-plan posts in view of the overall economy instructions issued by the government.
- (ii) The service conditions and pay scales of the employees of Chandigarh Administration were prescribed to be the same as applicable to the corresponding categories of employees of the

Government of Punjab with effect from 1st April, 1992. The pay scale sanctioned to the post of Codification and Publication Officer in the Government of Punjab with effect from 1st January, 1986 was sanctioned to Shri J. R. Syal under the Chandigarh Administration Creation of higher post by abolishing a lower post on the line it has been done by the Government of Punjab cannot be treated a service condition.

- (iii) The post are upgraded if there has been any change in the duties involving higher responsibility. However, in the instant case of Codification and Publication Officer there has been no change in the duties and responsibilities and his charter of duties remains the same.”

(14) It is well settled that the Courts cannot issue direction which may result into creation of a new post, as has been done by the State of Punjab while issuing order dated 6th January, 1992 (A-6). It is patent from the perusal of the aforesaid order that the Government on his own has created a post of Assistant Legal Remembrancer after abolishing the post of Codification and Publication Officer. In that regard reliance may be placed on a judgment of Hon’ble the Supreme Court rendered in the case of **State of Haryana versus Piara Singh, (1)**.

(15) Likewise, there was a ban on creation of non-plan posts keeping in view the overall austerity measures required to be undertaken in accordance with the instructions issued by the Government. Ordinarily the posts are upgraded if there is any change in the duties involving higher responsibility. By conferring the designation of the post of Assistant Legal Remembrancer on the post which was earlier known as Codification and Publication Officer, the duties and responsibilities had continued to be the same. In any case, *vide* order dated 19th January, 2004 (A/X), even the order conferring designation has been withdrawn. Therefore, we are of the view that the Tribunal has committed grave error in law by allowing the original application filed by the applicant-respondent No. 2 and has wrongly concluded that the petitioner as well as Chandigarh Administration has not come in grip with the reasoning of the order passed by the Tribunal in O.A. No. 1003/CH/01.

(16) As a sequel to the above discussion, this petition succeeds. The order dated 30th June, 2004 (P-3) passed by Tribunal is set aside.

R.N.R.