

Lalit Kumar and ors. Vs. Union of India (Uoi) and ors.

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Court : Central Administrative Tribunal CAT Chandigarh

Decided On : Feb-24-2006

Reported in : (2006)(3)SLJ12CAT

Judge : L Goyal, S Dogra

Appellant : Lalit Kumar and ors.

Respondent : Union of India (Uoi) and ors.

Judgement :

1. Feeling aggrieved by the orders passed by Chandigarh Administration, the applicants who are many in numbers have preferred these O.As.

challenging their transfer orders. These applicants are the employees of Chandigarh Administration working in various departments and have been transferred to Municipal Corporation, Chandigarh (for short MCC).

They have been holding substantive/permanent or promotional posts in their respective Departments/Wings. Since identical questions of facts and law are involved in all these 19 O.As., these are disposed of by passing one common order. However, we are making a reference to most of the facts as pleaded in the case of Lalit Kumar and Ors. v. Union of India and Ors. O.A. No. 218/CH/2005 and Sardara Singh and Ors. v. UOI and Ors. O.A. No. 1067/CH/04. The applicants are also allowed to file joint Applications.

2. The applicants, in nutshell, in all these O.As. have prayed for following reliefs: (i) Quash the action of the respondents in inviting options from the employees of U.T. Chandigarh Administration not transferred to the Municipal Corporation, U.T. Chandigarh on its formation after extension of Punjab Municipal Act, 1976, as extended to the U.T. Chandigarh w.e.f. 24.5.1995 and declare the action of the respondents in violation of law laid down by this Tribunal in O.A. No. 494/CH/1996 with other connected matters like O.A. No. 488/CH/06 in which the directions were issued to invite the fresh options from transferred employees only in terms of the judgment.

(ii) Issue direction to the respondents to consider the options of only those transferred employees strictly in terms of the law laid down by this Hon'ble Tribunal as upheld by Hon'ble Punjab and Haryana High Court in CWP No. 5295-CAT-2002 arising out of O.A. 494/CH/96, since applicants in present cases have never opted to be transferred to MCC neither in 1996 nor thereafter.

(iii) Issue direction to the respondents not to transfer the applicants of Municipal Corporation as the applicants were not transferred in 1996 and got promoted to the higher posts in Chandigarh Administration and some of the applicants were directly appointed in the Chandigarh Administration after 18.5.1996 i.e., the date when the original transfer orders were passed and not to include their names in the joint seniority list to be prepared/prepared for transfer to Municipal Corporation with prayer to allow them to continue in the Chandigarh Administration as the departments in which they are working have all along been treated as different units.

(iv) Quash the impugned notifications dated 15.4.2005 (No. 29) and 6.6.2005 by which the applicants have been declared surplus in the Chandigarh Administration and have been ordered to be transferred to the Municipal Corporation, Chandigarh against their wishes and consent.

(v) Declare the action of the respondents as illegal, arbitrary and abuse of power in utter defiance of the orders passed by this Hon'ble Tribunal in inviting specific options for permanent transfers to the Municipal Corporation instead of giving an opportunity to the employees to exercise option as per their sweet will.

(vi) Issue any other relief to which the applicants are found entitled to in law and equity may also be granted in their favour.

3. Before proceeding further in the matter, we would like to give some background of the facts giving rise to this litigation. The Administrator, U.T. Chandigarh in exercise of powers vested in him under the provisions of Punjab Municipal Corporation Act, 1976, as extended to U.T. Chandigarh by Punjab Municipal Corporation (Extension to Chandigarh) Act, 1994 (M.C.C. Act in short) had ordered transfer of certain functions from Chandigarh Administration to MCC in 1995 and 1996.

In view of this, some posts were also bifurcated/allocated to the M.C.Chandigarh and employees working in Chandigarh Administration were also transferred while inviting their option through Notification dated 13.5.96 and Press Note 15.5.96.

4. The said notifications dated 13.5.96, Press Note 15.5.96 and Office order dated 18.5.96 were, however, challenged by 88 employees of the Chandigarh Administration while preferring O.As. which were decided by one common order being passed in O.A. No. 488/CH/96 by this Court on 9.11.2001 titled Rajinder Singh and Ors. v. Union of India and Ors.

(Ann. A/2.) The said decision was further challenged by the aggrieved party in the Hon'ble Punjab and Haryana High Court, which was further upheld while deciding a bunch of cases in the Writ Petition No.5295/CAT/2002 titled U.T. Chandigarh v. CAT. The Hon'ble High Court has fully agreed with the observations as given by this Tribunal with regard to findings that the Chandigarh Administration should not have exercised its powers under Section 428A(2)(h) of 1994 Act for transfer of the employees of U.T. Chandigarh to MCC, without giving them sufficient time of notice not less than 30 days to enable them to make up their mind to give option for such transfer and there was no justification to transfer the employees who had not given their option for transfer to the MCC. Since liberty was given to the Chandigarh Administration to file an application before the Tribunal for allowing them to continue the services of the applicants with the Corporation by treating them as educationists, all the persons transferred by virtue of said impugned notifications are deemed to be educationists till date.

5. After the decision of Hon'ble High Court, in order to implement the order passed by this Tribunal, the respondents have started preparing tentative seniority list of the employees. Before doing that a meeting was also held on 3.5.2004 by the Adviser to the Administrator for implementation of the orders. In the said meeting various issues were decided relating to seeking fresh options from all the employees while deciding to issue fresh ordersed novo. Paras (v) and (vi) of the said meeting are relevant to quote here: (v) Once all options have been received and processed, it shall be necessary to prepare a joint seniority list of each cadre irrespective of whether the employees are presently working in Municipal Corporation or in the Administration. Since the transfer orders of May, 1996, have been quashed it shall be necessary in the first instance to prepare a seniority list reflecting the position as on 23.5.1996, which was the relevant date for coming into operation of the Punjab Municipal Corporation Act. In this regard, once this seniority list is prepared those employees who have opted to stay with the MC, Chandigarh can be safely deleted from this seniority list since they have opted to sever their connection with the Chandigarh Administration. Similarly, those persons who have retired/expired, resigned the job or left the job for any reason can be safely excluded from such seniority list. In this manner, each seniority list would reflect the position of seniority list within the cadre upto date, excluding the aforementioned employees and including the employees recruited in the respective cadres after 5/96.

Some promotions have been made in the Municipal Corporation, Chandigarh of the employees whose seniors retained in the Admn. in 5/96 have not yet been promoted in the Administration and vice-versa. All such promotions would have to be ignored for the purpose of joint seniority lists since otherwise seniorities cannot be decided inter-se. These seniority lists are tentative and will be prepared only for the purpose of implementation of the CAT orders.

Therefore, there is no requirement to either circulate them or seek objections. As a measure of abundant caution, these lists can be displaced on the notice board and clerical errors etc., can be pointed out and corrected.

The employees who are rendered surplus in the Administration as per a decision to be taken by the Administrator under Section 428 A(3)(c) could in the first instance be given an opportunity to join in the MC, Chandigarh provided vacant posts are available in the MC, Chandigarh in the relevant cadre. In this event a time limit of 30 days may be given to such employees to join MC, Chandigarh. If they fail to join MC, Chandigarh they would be terminated from service, being surplus on the expiry of 3 months period which would be mentioned in the same notice. For this notice period of 30 days or three months as the case may be the employees would draw the salary from their place of posting whether MC, Chandigarh or Chandigarh Admn.

(vi) As regards deputationists from other Governments/organizations in various cadres, such deputationists would be adjusted/retained only if any post is available after adjusting U.T. Employees. If no post is available, in the Administration, or MC, Chandigarh, the concerned deputationists would be reverted to their parent cadre.

6. Thus, fresh options were invited from the employees through notifications dated 15.4.2005 (No. 29) and 6.6.2005, in order to implement the above referred order dated 9.11.2001 (A/2). All the employees were given one month's time from issuance of these notifications to join the MCC as its permanent employees, it was also categorically mentioned in the said notifications that if after exercise of option by the employees, it is found that more employees remain with the Chandigarh Administration than posts available in the relevant cadres, they would be rendered surplus and shall be liable to be (a) retrenched from service in case provisions of Industrial Disputes Act or other Industrial Laws are applicable to those categories; (b) that they are likely to lose their jobs due to the fact that the posts on which they were working are no longer available with the Administration, under the relevant service rules applicable to them while applying the principles of 'Last come first go'.

Some of the employees also made representations to seek clarifications as in what status and position they have to give option. They also objected to the joint seniority list prepared by respondents including those who were not even born in

the regular cadre on the cut off dates of 18.5.96 and 23.5.96.

7. Extracts of one of the notifications dated 6.6.05 are reproduced as under: ...And whereas in compliance of the aforesaid order of the Hon'ble Tribunal as upheld by the High Court, the Secy. Local Govt. Union Territory, Chandigarh vide letter No. 800, dated 11.2.2003 decided to invite options from the transferred employees in respect of the cadres which exist under the Engineering Department of the Chandigarh Administration. The last date for submission of such options was initially fixed as 12.6.2003, which was extended from time to time upto 11.2.2004.

And whereas in a joint meeting of the Senior Officers of the Chandigarh Administration and Municipal Corporation, Chandigarh, held on 3.5.2004, it was further decided that the employees working in the Engineering Department of the Chandigarh Administration should also be given an opportunity to exercise options for their permanent transfer to the Municipal Corporation, Chandigarh.

Accordingly, the options were invited from these employees giving date as 16.8.2004, which was extended from time to time upto 31.1.2005.

And whereas the options received from the employees working in the Municipal Corporation, Chandigarh, as well as in the Engineering Department of Chandigarh Administration have now been finalized and after adjusting the officials against the available vacancies in each cadre as per their seniority position in the joint seniority list, the employees mentioned in Annexures B2, B3 & B4 have been rendered surplus in the respective categories/cadre. Since there exists no sanctioned posts to accommodate these employees in the Engineering Department of the Chandigarh Administration, as such keeping in view the directions contained in the order dated 9.11.2001 of the Hon'ble Central Administrative Tribunal, Chandigarh Bench, Chandigarh and further policy decision taken in the meeting held on 3.5.2004, the Administrator, Union territory, Chandigarh in exercise of the powers conferred by Section 428A(3)(c) of the Punjab Municipal Corporation Act, 1976, as extended to the Union Territory, Chandigarh, hereby gives one month's time to these employees to join in the Municipal Corporation, Chandigarh, as its permanent employees, reasonable from the date of this notification. In case any one of these employees whose names are

figuring in the aforementioned Annexures, do not submit their joining reports to the Commissioner, Municipal Corporation, Chandigarh, their services shall be deemed to be retrenched after the expiry of a period of three months reckonable from the day next to the day on which the aforesaid period of one month expires. The employees who are already working/posted in the Municipal Corporation, Chandigarh, shall also submit their fresh joining reports to the Commissioner, M.C., Chandigarh. For this notice period of 30 days or 3 months as the case may be, the employees would draw the salary from their place of their posting in the Municipal Corporation, Chandigarh or the Chandigarh Administration.

8. The matrix of the facts as submitted in the present O.As. are that all the applicants are working in the U.T. Chandigarh Administration in various Wings of Engineering Department like Electricity, Public Health etc., in various capacities. Some of them are direct recruits and some have been promoted to their respective posts. Details of these factual positions have been given in these O.As.

9. These applicants have challenged these notifications on the following grounds:
(A) These notifications have been issued in utter disregard to the orders of this Court as while issuing these notifications, the respondents have gone beyond the observations and findings of the Court while inviting options from all the employees including those who have been appointed subsequent to the cut off date of May, 1996 or have been promoted in the cadres which were not in existence at that relevant point of time for the purpose of inviting options.

(B) The respondents have misconstrued the observations of the Court.

The Court has categorically mentioned in the relevant Para 14 of the judgment of invite options only from the applicants who had preferred earlier applications since they were aggrieved by the action on the part of the respondents. Had the other employees been aggrieved, they could have joined with these applicants in the earlier O.As. While inviting fresh options from all employees, the respondents have extended the scope of the judgment which is not permissible under law.

(C) The common and joint seniority list prepared for the purpose of inviting options includes employees of the Public Health, Circle 3 in lists of Engg. Deptt. and in this

way, they have discriminated with the applicants who are employees in the office of Chief Engineer by not including them in joint seniority list. They have also submitted that ministerial staff sent on transfer to MCC on 18.5.96 have never challenged their transfers by filing any O.A. in the Tribunal, therefore, the orders passed in aforesaid cases cannot be enlarged to include the ministerial staff also to the serious prejudice to the employees of this cadre.

(D) During the pendency of the aforesaid Original Application (O.A. No. 488/CH/96) where the transfer of employees to MCC was challenged, the Engineering Deptt. of Chandigarh Administration had filled up the posts from 1996 till date through advertisements in the newspapers by virtue of which many applicants have now joined these departments as fresh recruits, therefore, by inviting options from these applicants, they cannot go back against these direct appointees to their disadvantage while changing their terms and conditions in violation of proviso to Section to 428(A)(h) of the M.C. Act.

(E) The employees who had already given options for transfer to MCC and had gone there on their own request in the hope of better prospects of their promotion, therefore, by this time, they have lost chance for their absorption in the Chandigarh Administration.

These employees were otherwise also transferred along with their posts in the MCC and at this belated stage they cannot be allowed to consider their reshifting to Chandigarh Administration causing prejudice to the applicants while inviting option from them also.

(F) These notifications are bad and are not enforceable on the ground that the decision of the Chandigarh Administration to declare the applicants as surplus is arbitrary, illegal and beyond the scope of the orders passed by this Court in the earlier O.A. as number of posts are lying vacant with them and many employees from States of Punjab and Haryana are working on deputation on these posts.

Applicants cannot be transferred or rendered surplus against their wishes and against their options and they have never opted or requested for their transfer to MCC. (G) The applicants were either appointed after cut off date or on promotion

after the cut off date they have been appointed to higher post in which they are relatively junior and now option cannot be asked from them in this higher post which would be to their disadvantage.

(H) Some of the applicants are governed by the Rules known as Ministerial Establishment (Group-C) Circle Cadre Recruitment Rules, 2002 for the Engineering Department in which the post of Clerk, Sr.

Assistant, Steno typist etc., were included and these are the posts on which some of the applicants are working giving them right to continue on such posts. Therefore, they cannot be subjected to such transfer to MCC while bringing them within the purview of options for which notification was issued on 18.5.96 and if it is done so, it will be illegal and is not permissible by any stretch of imagination.

10. Thus, in nutshell, the claim of the applicants is that they are the employees of the Chandigarh Administration and many of them were appointed or promoted after 18.5.96 or 23.5.96 and any employee appointed after this cut off date either in MCC or in the Engineering Deptt., is not required to exercise the option for permanent absorption in MCC as employees appointed thereafter by MCC or transferred earlier are the employees of MCC and appointees and promotees of the various departments of the Chandigarh Administration remained therein are their own liability. Hence, they have also challenged common seniority lists attached with these notifications as Annexures A, B & C including their names in these lists.

11. Some of the applicants claim that their service conditions are governed by the Punjab Civil Services. They have rendered qualifying service to get pension and retiral benefits. Their family liabilities have also been increased at the verge of their retirement. Thus, their conditions of service cannot be changed without their consent at the fag end of their career/service.

12. In support of all these contentions (supra), learned Counsel for the applicants have drawn our attention to Section 428A(2)(a)(h) and 3(c) of the Punjab Municipal Act as extended to the Chandigarh Administration. The contents thereof read as under: 428-A(2) On and from the commencement of the Punjab Municipal

Corporation Law (Extention to Chandigarh) Act, 1994: (a) all stores, articles and other movable properties belonging to the administration immediately before the specified date and utilized for or in connection with the transferred functions shall pass to and vest in the Corporation; (h) every officer and other employee serving under the administration immediately before such commencement in connection with the transferred functions shall be transferred to and become an officer or other employee of the Corporation with such designation as the Corporation may determine and hold office by the same tenure and at the same remuneration and on the same terms and conditions of service as he would have held the same if the Corporation had not been established and shall continue to do so unless and until such tenure, remuneration and terms and conditions are duly altered by the Corporation; Provided that the tenure, remuneration and terms and conditions of service of any such officer or other employee shall not be altered to his disadvantage without the previous sanction of the Administrator; Provided further that the Corporation may employ any such officer or employee in the discharge of such functions as it may think proper and every such officer or other employee shall discharge those functions accordingly.

(3) As soon as may be after the commencement of the Punjab Municipal Corporation Law (Extention to Chandigarh) Act, 1994, the Administrator shall decide: (c) which officers and other employees referred to in Clause (h) of that sub-section served under the administration in connection with the transferred functions.

13. While referring to these provisions, the contention of the learned Counsel for the applicants is that after issuance of the said notification in May, 1996, the employees who were transferred to MCC vide order dated 18.5.96 were of two categories. First were those, who had given option to switch over to MCC and second, who though had not given option, yet, being down below in the seniority list of their respective cadres, whereas, some of the present applicants being senior at that time were not transferred and had also not given option for the purpose. Thus, by virtue of Section 428A(2)(h) these employees have now lost their lien with Chandigarh Administration and are employees of MCC for all intents and purposes. They were otherwise fully satisfied as they never challenged such

transfer. Thus, the applicants who, by efflux of time have become senior in their respective cadres or promoted, their settled position cannot now be unsettled after lapse of ten years while extending the scope of the Court order dated 9.11.2001 in such arbitrary and illegal manner.

14. It is further argued by the learned Counsel for the applicants that the orders passed in aforesaid O.As. (supra) can not be made applicable in rem but the judgment is applicable in personam to those 88 applicants only who felt aggrieved by the impugned order of their transfer to Municipal Corporation without their consent while not implementing the orders of this Court, the respondents have not even followed the instructions of Govt. of India (MHA) vide letter dated 24.01.03 as well as decision taken in their meeting dated 3.5.04 (A/2), wherein, it was specifically provided to seek option only from those employees/ applicants, who have challenged their transfer. The said order of this Court otherwise has attained finality, when it was upheld by the Hon'ble Punjab and Haryana High Court.

15. Next contention as raised by applicants is that after transfer of employees to the Municipal Corporation, all transferred employees have lost their lien in the Chandigarh Administration for all purposes, particularly, in view of the fact that respondents have not issued any notification to treat these transferred employees on deemed deputation till date. Thus, if fresh option is re-exercised on these transferred employees, it would unsettle the settled position leading to nothing but chaos.

16. It is also one of the contentions of the applicants that undue delay in implementing the order has led to this uncertainty, badly affecting their seniority in their respective cadres for no fault of theirs. Moreover, while passing orders in aforesaid original applications, Court has not passed any orders for formation of policy by the respondents, hence, they cannot go beyond the orders and against the spirit of the provisions of Section 428A(2)(h) of the Punjab Municipal Corporation Act while treating these regular employees as surplus without proper procedure and defining their terms and conditions for such transfers. Thus, termination or retrenchment of the applicants would amount to violation of Article 311 of the Constitution.

17. The respondents, otherwise, also cannot declare these employees as surplus since number of vacancies are available in Chandigarh Administration. The notifications under challenge, in fact, are not an option but these are orders coercing the employees to opt for transfer to MCC against their will, failing which to face retrenchment as no bilateral proforma was prescribed and provided for such option to individuals. Thus, it was not a valid option in its real legal sense either to give option for MCC or to remain in Chandigarh Administration, as the case may be, by the employees.

18. In support of all these contentions learned Counsel for the applicants have relied on various decisions, particularly, judgments in the following cases: State of Punjab v. Gurdev Singh.

(6) O.A. 558/CH/98 Raghvender Singh v. Chandigarh Administration and Ors. decided by this Bench on 1.8.2000. State of Mysore v. H. Papaana Goweda.

(10) 1989 SLR 730 : 1989 (3) SLJ 48 (SC) (SN) Jawahar Lai University v. K.S. Jawalkar.

19. The respondents have made detailed submissions in their written statement and replies filed from time to time. They have justified the issuance of these impugned notifications on the ground that the same have been issued under the powers provided under Section 428A(2)(h) and (3) of the Municipal Corporation Act, 1976, with an object to implement Court's order in its letter and spirit which was further upheld by Hon'ble High Court of Punjab and Haryana. Since the Court has given verdict to invite option from all the employees "not applicants" only, respondents could not confine this notification to selected persons.

Had it been so, it would have discriminated those employees, who by afflux of time have also either directly appointed or promoted after cut off date of notification dated 18.5.1996 or who had got their transfer to MCC in haste.

20. The respondents have, however, not denied the factum of meeting held on 3.5.2004 and instructions sent by Ministry of Home Affairs (MHA in short) vide letter dated 24.1.03. But the plea of the respondents is that in order to streamline

the resultant situation, wherein there was multiplicity of claims/counter claims, it was inter-alia decided to include employees working in the Engineering Deptt. of Chandigarh Administration to give them also an opportunity to exercise option for their permanent transfer to MCC. This exercise has thus protracted the entire process to be undertaken by the respondents compelling them to further extend the date for option by the employees. Hence, delay in completing the process of transfer in no way be attributable to respondents only. The respondents were otherwise having no other practical solution to streamline the process of transfer of employees to MCC for its smooth functioning and in public interest to act in fair and impartial manner. Till date, all the employees transferred to MCC, have been treated to be deemed educationists in view of Court's orders, though no specific notification was issued to that effect.

21. Besides this, since all the employees being shifted/transferred to MCC have been treated to be on deemed deputation, therefore, option was invited from all these employees and not from 88 employees who have challenged such option in earlier O.A. (supra), whereby earlier notification of May, 1996 was held to be improper. Hence, on receipt of options from the employees along with common seniority lists, fresh notifications dated 15.4.05 and 6.6.2005 have been issued.

22. The respondents have also supported these contentions with an argument that this Court has already crystallized the things when interim prayer of the applicants to allow them to remain in Chandigarh Administration was rejected on 31.5.05 in O.A. No. 680/CH/03, titled Hardial Singh and Ors. v. U.T. and Ors. But later on said order was stayed by the Hon'ble Punjab and Haryana High Court. Thus, the plea of the respondents is that applicants cannot claim any right that may have accrued to them from the earlier transfers in 1996. The seniority also has to be taken into account as it exists today i.e. at the time of these notifications of 2005. In the prevailing situation and circumstances, no other practicable and equitable mechanism was possible except to invite option from all the employees including other wings under the Engineering Deptt. of the Chandigarh Administration.

23. The respondents have also given details of the adjustment of persons against the available vacancies in the respondent Deptt. as per seniority and options

exercised. After such adjustment, maximum number of employees though rendered surplus, yet, every effort has been made to protect the interests of the employees. Daily wagers and work charged employees have not been included in these lists.

24. In the rejoinder, applicants have reiterated their submissions already made in the original application. They have categorically contended that by passage of time, some of the applicants were unconditionally promoted to the higher posts and some are direct recruitees in Chandigarh Administration after the crucial date i.e.

18.5.96 and 23.5.96. Therefore, there was no occasion for respondents to prepare joint seniority list of all those employees in utter violation of intent and true spirit of the earlier order of this Court.

They should have given an opportunity to the employees to exercise their option as per their choice instead of inviting specific option for their permanent transfer to the MCC. They have also given details of certain vacant posts against which applicants can be adjusted without sending them to MCC or rendering them surplus.

25. The respondents have further given details of posts and persons sent to MCC but for the sake of brevity, we do not think it necessary to give these details in our order.

26. In nutshell, the plea of the respondents is that while issuing these notifications, they have tried to carry out the order of this Court in a fair and impartial manner. They have also denied the accusation of arbitrary exercise of power as transfers have been effected strictly in accordance with the rule of seniority and followed the principle of "Last come first go".

27. We have heard learned Counsel for all the parties and carefully gone through the record.

28. After thoughtful consideration of the matter, the vital points which have come for our consideration are as under: (i) Whether the earlier judgment dated

9.11.2001 in Rajender Singh's case (supra) passed by this Court was applicable "in rem" in the present facts and circumstances of the case? (ii) If, it was applicable "inrem", then was it applicable only to the employees working with the Chandigarh Administration in May, 1996, when its functions were transferred/bifurcated between MCC and Chandigarh Administration or it also covers the employees who were working on the date when options were invited including those who were recruited/promoted subsequent to May, 1996? (iii) If the answer to these points is in affirmative, what method should be adopted for inviting options, so that employees could exercise their choice/option effectively? 29. Before proceeding further in the matter, we find it appropriate to quote relevant paras of the judgment dated 9.11.2001 (O.A. No.488/CH/96), in compliance of which, fresh options were invited from all the employees as are on roll, today of Chandigarh Administration, which are as under: 14. The findings recorded above and the directions given in preceding paragraphs shall apply to cases before us. However, since we are aware that this order is likely to have effect on the working of number of jobs as mentioned in Annexure A-2 and may have a disturbing effect on extending the services to the citizens of U.T. Chandigarh, we order that our present orders and directions shall come into effect w.e.f. 1.4.2002 only. We expect the respondent Administration to resort to options given to them in the directions mentioned above, for completing the exercise of inviting options from employees afresh and preparing the lists and thereafter issue orders of transfer for absorption on permanent basis in Municipal Corporation, Chandigarh which may be made effective on or after 1.4.2002.

17. Considering the facts of the case of Labh Singh and Others, we do not find any merit in their case as far as it relates to recruitment of four persons against 13 vacancies existing, vide Annexure A2, dated 11.11.1996. Such recruitment came much after the cut off date for transfer to Municipal Corporation, Chandigarh which had been finalized by 23.5.1996. Since, however, a fresh option has to be given to all the employees, applicants in this O.A. will also be given liberty to exercise option as mentioned above. We have already expressed opinion that transfer of Government employees to Municipal Corporation without there being their consent, even if they are juniors, would be illegal.

18. Considering the peculiar facts and circumstances in the case before us, we order that transfers to be decided or ordered afresh will be deemed to be within the period of limitation under the law and under provisions of Punjab Municipal Corporation Act, 1976 as extended by 1994 Act and shall not be questioned on this ground.

After fresh exercise of option by employees in case some transfers are ordered either to the Municipal Corporation or of the persons who stood already transferred to the Municipal Corporation to Chandigarh Administration, their inter se seniority under these two organizations vis-a-vis their earlier colleagues shall not be altered and they shall also be assigned their seniority position as per their earlier position before their transfer or not being transferred to Municipal Corporation.

19. During the course of arguments, we were informed by Counsel for respondents that Central Government on the recommendations of the Chandigarh Administration is thinking of treating the persons transferred to Municipal Corporation on deputation. Our orders mentioned above and observations recorded are not to have any adverse effect if such decision is taken by the Competent Authority/Government.

30. The decision referred to hereinabove was further challenged in the Hon'ble High Court of Punjab and Haryana and while disposing CWP 5295/CAT/02 along with other connected matters, the order of Tribunal was upheld with following observations: In the present case, the Tribunal has taken the view that even though Section 428A(2)(h) of the 1976 Act provides for transfer of officers and other employees serving under the Chandigarh Administration before the commencement of the Punjab Municipal Corporation Law (Extension to Chandigarh) Act, 1994 in connection with transferred functions to the services of the Corporation. The transfer of the applicants could not be effected without their consent because that would amount to termination of their services from the civil posts.

We entirely agree with the Tribunal and hold that the power under Section 428-A(2)(h) of the 1976 Act could not have been exercised by the Chandigarh Administration for transfer of employees of Union Territory to the services of the

Corporation without their consent.

The question which remains to be considered is whether the employees were transferred after giving them opportunity to exercise option.

According to the petitioner, options were given vide office order dated 13.5.1996 which was followed by Press Note dated 15.5.1996.

The Tribunal considered these documents and held that the time given to the employees to exercise option was ridiculously short so as to enable them to make up their mind and in any case, there could be no justification to transfer the employees who had not exercised options for transfer of their services to the Corporation. Learned Counsel for the petitioner could not give any tangible explanation as to why the Administration had not given sufficient time to the employees to consider their service prospects and then take decision on the issue of their transfer to the Corporation. Therefore, we do not find any valid reason to differ from the view taken by the Tribunal.

The plea of the petitioner that the employees should be allowed to continue in the services of the Corporation for some time till the Administration takes a decision on their absorption need not detain us because we feel that such a prayer should have been made before the Tribunal and not before the Court.

For the reasons mentioned above, the writ petitions are dismissed.

However, we give liberty to the Chandigarh Administration to file an application before the Tribunal for being allowed to continue the services of the applicants with the Corporation by treating them as deputationists.

It is also made clear that if the Chandigarh Administration finds that the private respondents are surplus, then it will be free to take appropriate action in accordance with law.

31. Bare perusal of these decisions clearly envisages that the Court has quashed the notification dated 13.5.96 and Press Note dated 16.5.96 by virtue of which options were invited from the employees, while deciding the legal point that the

holder of civil post cannot be permanently transferred without his consent to serve under a statutory autonomous body.

32. Thus, once the notification as such is quashed , it is obvious that it is quashed in its entirety and loses its applicability even to those who have earlier given their option in haste. Hence, we are not convinced and agreed to the plea of some of the applicants that the judgment dated 9.11.2001 was applicable in personam, only to those applicants who have challenged said order in those applications.

33. Though, in Para 14 of the order, it has been observed by the Court that the findings recorded above and the directions given in preceding paragraphs shall apply to cases before the Court, yet, in the concluding paragraphs, position has been clarified in Para 17 thereof.

Moreover, we cannot lose sight of the fact that decision of the Tribunal has been further upheld by the Hon'ble High Court while deciding the legal point relating to inviting option from all employees for their transfer to statutory autonomous bodies.

34. Besides this, we have noticed while going through the decisions placed on record by learned Counsel for respondents that after decision in Rajinder Singh's case (supra, O.A. No. 488/CH/96), other similarly situated employees of Chandigarh Administration who were transferred without their consent and had challenged such transfer and their cases were decided on the similar lines being covered by Rajinder Singh's case. These cases are O.A. No. 987/CH/96, decided on 13.11.2001 by this Bench in the case of U. T. Building Maintenance Workers Union and Anr.

v. b'01 and Ors., O.A. 230/CH/97, decided on Nov. 13, 2001, Roshal Lal v. U.T. Administration and Ors. O.A. 596/CH/97 decided on 26.11.2001 titled Surinder Singh and Ors. v. UOI and Ors. along with other connected matters, O.A. No. 341/CH/2000, decided on 29.5.2002 in the case of S. K. Aggarwal and Ors. v. UOI and Ors.

35. We have also perused the case law cited by learned Counsel for the applicants as detailed hereinabove, but the same are not found to be applicable in the facts and circumstances of the present case. In the case of Ashok v. State of Karnataka (supra) what we notice is that the Court has declined to give identical relief already granted to others on the ground of not approaching for redressal within reasonable time.

The said case relates to the examination and selection of candidates.

Hon'ble Supreme Court has observed that since appointments under the impugned Rules were made as back as in 1987, only those applicants having approached the Tribunal in the time were entitled for relief.

Whereas in the present case, as observed by us that since Notifications dated 13.5.1996 and 15.5.1996 stand quashed, the entire process for inviting option has to be started afresh, irrespective of the fact that some of the employees have already given option which was given otherwise in haste.

36. Other case law cited by learned Counsel for the applicants is found having no direct bearing on the points involved in the present case, hence, for the sake of brevity, we do not find it necessary to discuss these decisions. Even the order passed in O.A. No. 558/CH/98 decided on 1.8.2000, in the case of Raghvender Singh v. Chandigarh Administration and Ors. is held to be merged in the subsequent decision rendered in the Rajender Singh 'a' case. In Raghvender Singh's case, he has also given his option vide press note dated 15.5.96 and was held to be an employee of Municipal Corporation Chandigarh. As observed by us hereinabove, that since the impugned Notification and Press Note issued thereunder have been held to be illegal and the judgment is further held to be applicable in rem; we need not find it appropriate to rely on this judgment to accept the plea of those applicants, who have pleaded that decision in Rajender Singh's case is applicable in personam.

37. We also do not agree to the preposition of those applicants, who have averred that by virtue of coming into force of Municipal Corporation Act, 1994, all the employees transferred to MCC after 1996 have become employees of MCC for all

intents and purposes and cannot be asked to give fresh option for the simple reason that the matter is still subjudice before the Court of law and all the employees who have been transferred to MCC have been held to be deemed deputationists, despite the fact, that no such notification was issued, still by virtue of Court's order, they are to be treated as employees of Chandigarh Administration for the purpose of asking for their fresh option. We have also noticed that in order dated 10.12.2002 passed in M.A. No.1038/CH/2002 alongwith connected M.As. in Rajinder Singh case, Court has observed that Administration through notification had considered for treating all those employees for intervening period on deputation.

38. The earlier order passed by this Court and further upheld by Hon'ble High Court has to be seen in its entirety and not what has been said in one para or other. Moreover, since the notifications impugned stand quashed, entire exercise of inviting option in haste become nullity, and the plea that said notifications were quashed was those applicants only who had approached this Court is not valid and we reject the same.

39. The second point which needs our consideration is to determine about the employees from whom option is to be taken, as to whether they want to be transferred to MCC or not. For this, we would again refer to the provisions of Section 428A(2)(h) and Section 428A(3)(c). It has been strenuously argued by the learned Counsel for the applicants that Section 428A(2)(h) is applicable only in case of the employees who were in position on the commencement of the Punjab Municipal Corporation Act, as extended to U.T. Chandigarh by Punjab Municipal Corporation (Extention to Chandigarh) Act, 1994. On the other hand, the learned Counsel for the respondents has argued that under Section 428A(3)(c), the Administrator is empowered to decide which officer and other employees referred to in Sub-clause (h) of the said sub-section actually served under the Administration in connection with the transferred functions and, therefore, he was fully justified in asking for options from all the employees working in the Chandigarh Administration as on the date of asking of such options. A plain reading of the provisions of these two sub-sections together leaves no doubt in our minds that on the commencement of the Punjab Municipal Corporation Act

(Extension to Chandigarh) Act, 1994 and transfer of functions to MCC, the following two situations would arise: (i) Whether certain identified functions have been transferred completely to MCC and nothing of those functions remained with the Chandigarh Administration and there are identified persons who were performing those functions.

(ii) Whether the functions transferred to MCC are such that a part of those functions are going to be performed in addition by Chandigarh Administration and, therefore, it has to be determined how the employees have to be bifurcated between MCC and Chandigarh Administration.

In the first situation mentioned above, since there would be no corresponding post left in the Chandigarh Administration about those functions, the choice before employees performing those functions would be either to agree to go to MCC on a permanent basis or to be rendered surplus while staying in Chandigarh Administration.

In the second situation, under provisions of Section 428A(3)(c), the Administrator would decide which officers or employees served in connection with the transferred functions and what policy is to be framed for transfer of such employees.

In either of the two situations, the employees who are to be divided between MCC and Chandigarh Administration are those who were in position at the time of commencement of Punjab Municipal Corporation Act (Extension to Chandigarh) Act, 1994 which in the present case is May, 1996.

40. We, therefore, hold that the Chandigarh Administration while implementing the judgment in Rajinder Singh's case (*supra*) should not have invited options from those employees who were not in the regular cadre before the cut off date of May, 1996. We do not agree with the plea of Chandigarh Administration that it was done by them in order to give a fair chance to every one in position when options were invited.

In our considered 'opinion, this was not legally permissible and this was also not the intention of the Court while rendering decision in that case as is evident from Para 17 of the order wherein Court has only given liberty to the applicants in the case of Labh Singh and Others to give option, but, no such liberty or order was issued to the Chandigarh Administration to invite options from those applicants whose recruitment related to periods subsequent to 23.05.96. We, therefore, hold that fresh options should be invited from all those who were in regular employment of Chandigarh Administration in various posts held by them in May, 1996, ignoring any promotion obtained by them during the intervening period; whether they would like to be permanently absorbed in MCC.⁴¹ The only other question left for our consideration is what method should be adopted for inviting options so that the employees could exercise their choice/option effectively.

42. We have also noticed after perusal of the notifications under challenge that the option invited from the employees is not option in its legal term and literal meaning of the term 'option' itself. Option cannot be unilateral. It should be bilateral to enable the employees to choose or opt for any of the choices, given in the proforma prescribed for the purpose. The notifications impugned are found to be a mandate sort of option whereby employees have been almost ordered to give option for their transfer to MCC failing which they have to face retrenchment or termination. The respondents should have adopted a proper process for inviting such option from those employees and on receipt thereof should have proceeded further as observed in preceding para. Departure from such due process as per settled law, their termination, as observed by Hon'ble High Court, would amount to termination of their services from the civil posts.

43. Even, as observed in the notifications under challenge or otherwise, respondents have not specified any thing about the policy, if any, framed for such transfers of the employees to safeguard their interest relating to their terms and conditions of services on their transfer to MCC in view of the mandate of the provisions enshrined under the proviso to Section 428(2)(h) of the MC Act (supra). Had it been done so, the concerned employees would have given due consideration to give options for their transfer.

44. We are aware and conscious of the fact that a lot of time has elapsed since May, 1996, yet, for inviting options we would have to go back in time to May, 1996 and prepare cadre-wise seniority list of all regular employees who were in position in the job held in May, 1996, ignoring any promotions made after May, 1996. It is made clear here that persons who were recruited after May, 1996, would be junior to persons who were in position prior to May, 1996. Options need not be invited from the persons who have either died, resigned or retired in the intervening period. Bifurcation of posts between MCC and Chandigarh Administration, on the basis of division of functions, should be disclosed before hand. This information was supplied to us. Where the functions have been completely transferred to MCC and resultant posts in the Chandigarh Administration would be nil. If the person falling in this category is still wanting to stay in the Chandigarh Administration, he would be rendered surplus and liable to be retrenched as per law. A minimum of 30 days' time be given for exercising the option. It should be made clear in the letter inviting options that in case more number of persons opted for staying in Chandigarh Administration than the number of posts available, the junior most would be declared surplus and retrenched as per law.

45. After receipt of options, the posts in two organizations, namely, MCC and Chandigarh Administration would be filled up. If it is found that more persons have opted than the posts available in Chandigarh Administration, the junior most including those who were recruited after May, 1996, would be rendered surplus. In case, vacant posts are available in MCC, an opportunity would be given before retrenchment to those who are rendered surplus to join the MCC on permanent transfer basis.

46. Thus, in the conspectus of facts and circumstances and legal position of the matter as discussed and analyzed hereinabove, we hold the view that the impugned Notifications No. 29, dated 15.4.2005 and dated 6.6.05 are held to be not sustainable being issued while extending the scope of the judgment in O.A. 488/CH/96, dated 9.11.2001 in Rajinder Singh's case (supra) for its implementation in true letter and spirit. These notifications are further held to be legally not valid and sustainable being found to be issued while preparing common or joint seniority list of all the employees as were on roll at the time of issuance of

these notifications, who were not even either born or were in existence in the regular cadre on cut off date of May, 1996, in Chandigarh Administration. Thus, these notifications giving prospective effect to the judgment (supra) are hereby quashed and set aside.

47. Thus after overall analysis of the matter as above, our ultimate conclusion is as under and we now hold that direct that: (a) Provisions of Section 428A(2)(h) are applicable to the employees working under the Chandigarh Administration on or before the transfer of functions of MCC. Section 428(3)(c) empowers the Administrator to decide which of these employees were functioning in connection with the transferred functions and frame a policy about their transfer to Municipal Corporation.

(b) Fresh options should be invited from all the employees of Chandigarh Administration who were in service on the post held by them in May, 1996 when certain functions were transferred to MCC (for short the crucial/cut off date) regardless whether they have earlier opted for going to MCC. Option should be invited in bilateral form to enable the employee to give his choice to opt for either of these two Departments i.e. Chandigarh Administration or Municipal Corporation, Chandigarh and thereafter to act accordingly.

(c) No option be taken from those who were in service on the crucial/cut off date but are no longer in service includes retire resigned or have died or those who were daily wagers or on work charged establishment or have been recruited after the crucial/cut off date.

(d) A minimum period of 30 days should be given for exercising option.

(e) A combined seniority list of staff would be made category-wise in the posts held by them on crucial/cut off date ignoring any promotion made subsequently. The allocation between Chandigarh Administration and MCC would be made as per seniority and choice/option received.

(f) Bifurcation of posts between MCC and Chandigarh Administration, on the basis of functions transferred to MC shall remain the same as had been done earlier

except that wherever the posts have been abolished, their number would stand reduced to that extent.

(g) If the number of persons opting to stay with Chandigarh Administration is more than the number of posts available in relevant cadre, the senior most would be retained as per combined seniority list referred to in Para (e) above. Those who are found to be in excess and are the junior most would be given another chance in a time bound manner either to revise their option and opt for their absorption in the MCC or be ready to be retrenched as per law having become surplus.

(h) Persons recruited after crucial/cut off date, who would obviously be junior to the persons already in service on crucial/cut off date. If after completion of the process of allocation of employees between Chandigarh Administration and MCC as above, some posts in MCC remain vacant and there are surplus employees in Chandigarh Administration including those recruited after crucial/cut off date, they would be given an opportunity to opt for absorption in MCC before retrenchment on the basis of "last come first go".

48. The above exercise be carried out by the concerned respondents within a period of four months from the date of receipt/production of copy of this order.

49. Before parting with the matter, we must observe that undue delay in implementing the judgment in Rajender's case by the respondents, has caused all this uncertainty, which was otherwise not warranted taking into consideration the clear legal position in the cases earlier decided by this Court and further upheld by the Hon'ble High Court. We now expect that while implementing the said order, clarified in the present case, concerned respondents would not repeat it to cause further undue and inordinate delay in the matter and to leave the employees in lurch for infinite period.

50. In the result, original applications where these notifications were challenged are allowed with above observations and directions. Other O.As. wherein applicants have claimed applicability of this judgment in personam, are rejected. Hence, all these O.As. and M.As. with these observations and directions are disposed of accordingly with no costs.

