

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench, New Delhi

ORIGINAL APPLICATION NO: 1443/95

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DATE OF DECISION: 26.10.99

Shri Manoj Kumar Srivastava and Others Applicant.

Shri B.S. Mainee

Advocate for
Applicant.

Versus

Union of India and others

Respondents.

Shri O.P. Kshtriya.

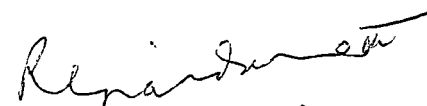
Advocate for
Respondent(s)

CORAM

Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman

Hon'ble Shri J.L. Negi, Member (A)

- (1) To be referred to the Reporter or not? Yes
- (2) Whether it needs to be circulated to
other Benches of the Tribunal? NO
- (3) Library. - Yes


(R.G. Vaidyanatha)
Vice Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO: 1443/95

the 26th day of OCTOBER 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.

Hon'ble Shri J.L.Negi, Member (A)

1. Manoj Kumar Srivastava
2. Gyanendra Singh Kusshwah
3. Dinesh Kumar
4. Alok Kr. Rathi
5. Arvind Kr. Gupta
6. Pramod Kr. Verma
7. Deepak Arya
8. D.P. Bebela
9. Arvind Khare
10. Ashok Kr. Agarwal
11. Balveer Singh
12. Pradeep Bhayana
13. Ram Kr. Gupta
14. Rabendra Singh Sengar
15. Arun Singh
16. Sandeep Srivastava. ...Applicants.

By Advocate Shri B.S.Mainee.

V/s

1. Union of India through
Secretary, Railway Board,
Ministry of Railways
Rail Bhawan, New Delhi.
2. The General Manager
Central Railway,
Bombay V.T.
3. The Chief Administrative
Officer (Const)
Central Railway,
Bombay V.T.

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4. The Deputy Chief Engineer (Const)
Central Railway,
Gwalior. ... Respondents
- By Advocate Shri O.P. Kshatriya.

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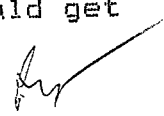
O R D E R

(Per Shri Justice R.G. Vaidyanatha, Vice Chairman)

This is an application filed under Section 19 of the Administrative Tribunals Act 1985. The respondents have filed reply. We have heard Shri B.S. Mainee, counsel for the applicant and Shri O.P. Kshatriya, counsel for the respondents.

2. The applicants who are 16 in number were engaged on casual appointment as Highly Skilled Technical, Mistry at Gwalior in Central Railway. From the pleadings it is not clear as to in what year the applicants were engaged on casual basis. But this was sometime prior to 1.1.1986. It is stated that the applicants are Diploma holder in Civil Engineering and Dis-charging the duties of Inspection of works. Prior to IV th Pay Commission report the salary for the post of IDW was Rs. 425 - 700 which has now been revised as Rs. 1400 - 2300 as per IV th Pay Commission report. Earlier the applicants were placed in the pay scale of Rs. 330 - 560 for which the revised pay scale after the IV th Pay Commission is Rs. 1200 - 2040. The IV th Pay Commission report has suggested that all the Supervisory staff are to be in one grade of Rs. 1400 - 2300. The Railway Board has accepted this recommendation and issued a notification dated 2.1.1987. Though there were earlier two grades in Supervisory cadre, SOM Grade I and SOM Grade II, but both are merged into one cadre after the IV the Pay Commission report in the grade of Rs. 1400 - 2300. Now the department is suggesting that the applicants should get

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SOM Grade II in the scale of Rs. 1200 - 2040. It is stated that there is no such SOM Grade II after IV th Pay Commission. Since both the Grade I and II are merged in one cadre of Rs. 1400 - 2300. The applicant has made number of representation but no reply is given. The decision of the Senior Accounts Officer is that the applicants should get pay of SOM Grade II in the scale of Rs. 1200 - 2040 is not correct. Therefore the applicants have approached this Tribunal praying that the decision of the Accounts Officer dated 19.3.1988 be quashed and the respondents be directed to give the scale of Rs. 1400 - 2300 to the applicants from the date IV th Pay Commission report was implemented by the Government and to make payments and all the arrears.

3. The defence of the respondents is that the application is not maintainable and it is barred by principles of Res-judicate, since the applicants had already filed Writ Petition in the Supreme Court. It is further stated that this Tribunal at Delhi has no jurisdiction to entertain this case. The applicants have not applied for regular recruitment as per the directions of the Supreme Court in its order dated 3.5.1989 in Writ Petition 1198/88 and connected cases. The applicants have also filed OA 161/94 and 398/95 at Jabalpur and therefore the present OA should be stayed till the disposal of the OAs. On merits, it is stated, that the applicants came to be engaged as daily rated labourer @ the rate of Rs. 18.75 per day. They were given monthly rated labour status after completion of 180 days and they were given the benefit of temporary status in the grade of Rs. 1200 - 2040 on completion of 360 days. It is stated that the

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the applicants were never placed in the scale of SOM Grade II. Hence the applicants are not entitled to the grade of Rs. 1400 - 2300. The post of SOM is regular Supervisory cadre post whereas the post of the applicants are of Casual labour. The duties of SOM and the applicants are entirely different. The applicants have been given temporary status in the scale of Rs. 1200 - 2040 and they are not entitled to the grade of Rs. 1400 - 2300. Since the applicants are not holders of permanent post of SOM or IOW they are not entitled to pay scale of Rs. 1400 - 2300. It is also stated that the application is barred by limitation.

4. In the light of the pleadings and the arguments before us, the points for consideration are:

1. Whether the application is maintainable in this Tribunal?
2. Whether the application is barred by principles of Res-judicata?
3. Whether the applicants are entitled to the pay scale of Rs. 1400 - 2300 and if so from what date?
4. Whether the application is barred by limitation?

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5. Point No:1

This objection regarding jurisdiction is taken on the ground that the applicants are working at Gwalior, within the jurisdiction of Jabalpur Bench of the Tribunal, but the case is filed in Principal Bench, New Delhi.

One of the grievance of the applicants is enforcement of the circular issued by the Railway Board and since the Headquarters of the Railway Board is at New Delhi, the OA can be filed at New Delhi. Further the Principal Bench has overall jurisdiction over any matter and anybody can approach Principal Bench, New Delhi, but the rules provide for permission of the Chairman should be taken. The respondents have not raised this objection and got the OA rejected at the admission stage on the ground of Teritorial Jurisdiction. The OA has been admitted and now being pending for final hearing for 4 1/2 years and hence at this stage we do not want to give any merit to the objection of Teritorial Jurisdiction. Since we have heard the OA on merits, we are disposing of the OA on merits.

6. Point No.2

The learned counsel for the respondents contended that since the applicants had approached the Supreme Court and had also approached the Jabalpur Bench of this Tribunal they cannot approach the Principal Bench again and the case is barred by Principles of Res-judicata.



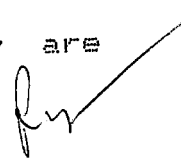
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7. As could be seen from the record, the applicants had approached the Supreme Court regarding apprehended termination. The respondents stated that the applicants would be given opportunity to apply before the Supreme Court for regular appointment and their case would be considered. The question of pay scale was not the issue in Writ Petition filed before the Supreme Court. The Supreme Court has not given any opinion on that question. Hence the plea about Res-judicate has no merit and is rejected.

The Jabalpur Bench of this Tribunal has given some directions regarding regularisation. Even there the question of proper scale of pay for the applicants was not in issue and has not been decided. Therefore the plea of Res-judicata has no merit. Point No2 is answered in the negative.

8. Point No.3:

Now coming to the merits of the case, the applicants were initially appointed as Highly Skilled Technical Mistry on casual basis and after 360 days they have been conferred with temporary status. As provided under the Rule 2005 of Indian Railway Establishment Manual Volume II (1990 Edition), the Casual labourers who were granted temporary status are entitled to the same rights and benefits as admissible to temporary Railway Servants. It is not in dispute that temporary employees are entitled to pay scale of the grade in which they are appointed. Therefore though the applicants were originally appointed as daily rated casual labourers, after acquiring the temporary status, they are entitled to pay in the scale in which they are appointed.



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In fact in this case the question is as to which scale of pay the applicants are entitled and there is no dispute that the applicants are entitled to scale of pay. In fact the applicants after acquiring temporary status have been given pay scale of Rs. 1200 -2040 as admitted in the written statement, but the applicants want pay scale of Rs.1400 -2300. Hence there is no dispute that casual labour acquiring temporary status is entitled to regular pay scale but the dispute is only about the particular scale of pay.

9. The applicant's case is that though they were appointed as Highly Skilled Technical Mistry they have been working as either Inspector of Works or as SOMs, but in the reply the respondents asserted that the applicants were never appointed as IOWs or SOMs and therefore they are not entitled to pay scale of IOWs or SOMs. Both sides have filed number of documents in support of their contentions.

The Senior Accounts Officer, Central Railway in his letter dated 19.2.1988, which is at page 30 of the paper book, says that there are two grades of SOM I and II and that the applicants should be placed in SOM grade II, in the original pay scale of Rs. 330 -560 which is equivalent to Rs. 1200 - 2040 after the IV th Pay Commission report. According to the applicants though there were two grades SOM I and II prior to IV the Pay Commission Report but now Pay Commission has given only one grade of Rs. 1400 - 2300 and hence the opinion or direction of Senior Accounts Officer is not according to Rules. It may also be noted that one A.V. Bhagwat was also appointed as HST and he has been

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given higher grade of Rs. 1320 -2040 as mentioned in one of the letters of the department dated 22.12.1989, which is at page 31 of the paper book.

10. Then we have very crucial and conclusive document which supports the case of the applicants for engagement in the particular post and scale of pay. The document is at Exhibit A 2 attached to applicant's rejoinder dated 27.4.1996. The document is at page 110 of the paper book. It is a letter written by Dy.Chief Engineer to the Headquarters office.

The letter says that 8 HSTMs were recruited on daily wages for six months. Then it mentions as follows:

"These HSTMs are carrying out duties of IOW Grade III Rs. 425 -700 (RS)/1400 -2300 (RPS)"

This clearly shows that HSTM's/IOW grade III are in the pay scale of Rs. 425 - 700 revised pay scale of Es. 1400 - 2300.

We have already seen that opinion of the Accounts Officer is, there are two grades of SOM namely Grade I and II and applicant should be placed in the lower grade of 1200 -2040. The learned counsel for the applicants contended that after IV th Pay Commission Report there is one grade of SOM in the pay scale of Rs. 1320 - 2040 and therefore the suggestion of the Accounts Officer that the applicants should be given SOM grade II has no basis.

Then we have the Railway Board's circular dated 2.1.1987 which states that Supervisory Mistry placed in Workshops, Production Units and open line Establishment should be placed in the grade of Rs.1400 - 2300.

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In view of the above reasoning, we hold that the applicants are entitled to pay scale of Rs. 1400 -2300 from 1.1.1986 when IV th Pay Commission Report was accepted by the Government of India. Point No.3 answered accordingly.

11. Point No.4.

The applicants are claiming the benefit of pay scale and arrears from 1.1.1986, but the OA was filed 9 years later in 1995. The learned counsel for the applicants contended that this is a continuing cause of action and therefore there is no limitation and even otherwise the applicants have filed M.P. for condonation of delay.

The only reason given for condonation of delay is that the applicants were sending repeated representations.

Sending repeated representation will not ^{Save} ~~serve~~ limitation as observed by the Supreme Court in a recent judgement reported in 1996 SCC L&S 205 (Administration of Union Territory of Daman and Diu V/s R.B. Valand)

The Supreme Court in M.R.Gupta's case, 1995 SCC (L&S) 1273, has held that fixation of proper pay is continuing cause of action. Even though the Supreme Court has held that this is continuing cause of action, as far as arrears are concerned the question of limitation gets attracted.

Hence in the above circumstances we hold though the applicants are entitled to the benefit of revised pay scale of Rs. 1400 - 2300 from 1.1.1986, we grant the benefit notionally from 1.1.1986. However the applicants are entitled to actual monetary benefit only from the date of filing the application.

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The DA was filed on 28.7.1995 and therefore we grant actual monetary benefits only from 1.8.1995. We also take into consideration the burden on the exchequer if monetary benefits are granted earlier. In the facts and circumstances of the case we grant actual monetary benefits only from 1.8.1995 till today and onwards. We may also take judicial notice that V th Pay Commission report has been accepted by the Government during the pendency of the DA with effect from 1.1.1996. Therefore the applicants are also entitled to corresponding benefits under the V th Pay Commission Report also.

12. In the result the DA is allowed as follows:

1. The applicants are entitled to notional benefit of fixation of pay in the scale of Rs. 1400 -2300 from 1.1.1986.
2. The applicants are granted actual monetary benefits including the arrears only from 1.8.1995 till today and onwards.
3. The respondents are directed to comply with this order within a period of four months from the date of receipt of copy of this order.
4. In the circumstances of the case there will be no order as to costs.

Jh. Negi
(J.L.NEGI)
MEMBER(A)

R. G. Vaidyanatha
(R.G.VAIDYANATHA)
VICE CHAIRMAN