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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1196/2000

New Delhi, this the 15th day of May, 2001.

HON'BLE MR. S.A.T.RIZVI, MEMBER (A)

1. Inder Bihari Sharma
S/o Sh. Raj Bihari Sharma,
R/o Moh. Gari, Khaka Katghar,
Muradabad (UP)
2. Tej Pal Singh, S/o Sh. Ram Swaroop,
R/o Sh. Basant Bahikar Colony,
Chandausi,
Muradabad (UP) Applicants
(By Advocate : Shri Yogesh Sharma)

V E R S U S

1. Union of India through The General Manager,
Northern Railway,
Baroda House,
New Delhi
2. The Divisional Railway Manager,
Northern Railway,
Muradabad Division,
Muradabad
3. The Chief Electrical Foreman (TS)
Northern Railway,
Muradabad (UP) Respondents
(By Advocate : Shri B.S. Jain)

O R D E R

By S.A.T. Rizvi, Member (A):

Heard the learned counsel on either side and have perused the material placed on record.

2. The two applicants in this OA were appointed as casual workers from 2.8.1977 and 1.7.1975 respectively. Both of them worked as Switch Board Attendants. In due course, they were regularised in Group 'D' posts on 1.2.1980 and 25.7.1979 respectively. Subsequently they were promoted to Group 'C' posts w.e.f. 21.2.1992 and in 1989 respectively. While they worked as casual

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workers and performed the duties of a Switch Board Attendant, they were paid on daily wage basis at the rates applicable at the relevant time. The aforesaid rates varied from Rs.7/- to Rs.9/- and then to Rs.10/- per day. According to the applicants, those who worked in positions equivalent to group 'D' were paid daily wages at the lesser rate of Rs.5/- per day. Thus, a distinction was made between the rates applied to the applicants and to the rates otherwise applied to those working in positions equivalent to group 'D' posts. The post of Switch Board Attendant, according to the applicant, is a group 'C' post. The applicant No.1 has been paid at the rate of daily wage applicable at the relevant times as mentioned above right from 2.8.1977 to 1.2.1980 on which date he was made regular against a group 'D' post. The applicant No.2 has been paid similarly in respect of the period from 1.7.1975 to 25.7.1979 on which date he was regularised against a group 'D' post.

3. The applicants have not made any grievance out of their regularisation against group 'D' posts even though as casual workers they were working in a position equivalent to group 'C' post. Their grievance arises on the other hand from the fact that though they have performed as Switch Board Attendants, a post in group 'C', they have not been considered for payment in accordance with the pay scale applicable to Switch Board Attendants, in any case following the conferment of temporary status on



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them on completion of 120 days after 2.8.1987 and 1.7.1975 respectively. In other words, after completing 120 days from the respective dates of their first appointment, they should have been paid by placing them in the pay scale applicable to Switch Board Attendants. Instead they have been paid at the rates of daily wage then prevalent. The difference between the amount thus payable and the amount actually paid is due to them but the same has not been paid. That is why this OA. The pay scales then applicable to groups 'D' and group 'C' posts respectively were Rs.196-232 and Rs.260-400/-.

4. The learned counsel appearing in support of the OA has placed reliance on Salvaraj v. Lt. Governor of Island, Port Blair and Others decided by the Supreme Court on 6.3.1998 and reproduced in II 1998 (4) S.C. at page 500. In the aforesaid case, a person who, though formally appointed against a lower post had discharged the duties and responsibilities of a higher post for a long enough time on officiating basis and in view of the same the Hon'ble Supreme Court held that such a person should be paid at the rates applicable to the higher posts. Thus, in essence, it was the principle of equal pay for equal work which was in issue in the aforesaid case. The ratio of the aforesaid case will find application in the instant situation, is the case of the applicants in the present OA.

5. The learned counsel appearing on behalf of the respondents has placed reliance on Suresh Kumar

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& Ors. v. Union of India & Ors., decided on 12.9.1996 and reported in 1997 (Volume II) S.L.J. 74 and Union of India and Another v. Moti Lal and Others decided on 15.2.1996 and reported in (1996) 33 ATC 304. In the former case, the plea that though appointed in group "D", the applicant had been working for many years as Clerk and so must be regularised as Clerk in Group "C" was not accepted. Similarly, in the latter case, persons appointed directly as casual mates though continuing as such for a considerable period thereby acquiring temporary status were held not entitled, ipso-facto, to regularisation. The learned counsel appearing in support of the OA submits that the ratio of the aforesaid decisions will not find application in the present case inasmuch as the applicants herein are not seeking regularisation against group "C" posts. I am inclined to agree with the learned counsel for the applicantss inasmuch as in both cases the applicants have sought regularisation against higher posts.

6. The next plea advanced by the learned counsel appearing for the respondents is with regard to limitation. It is not disputed that the applicants were regularised against group "D" posts on 1.2.1980 and 25.7.1979 respectively, that is, something like 20 years ago. According to the learned counsel, the cause of action arose on 1.2.1980 in the case of applicant No.1 and on 25.7.1979 in the case of applicant No.2. As a

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matter of fact, according to him, the cause of action had arisen much earlier and that is because the applicants could as well claim payments in accordance with the then pay scale for Gr. 'C' (Rs.260-400) soon after the dates of their respective appointments on 2.8.1977 and 1.7.1975. Thus, the cause of action, according to the learned counsel, dates back to 1975 and 1977 respectively. The applicants have not given any good reason which could justify that much of delay. The learned counsel appearing in support of the OA, however, refers to OA No.1266/1996 filed by the applicants and two others seeking the same relief. That OA was decided on 28.3.2000 (Annexure A-5). The said OA was disposed of by holding that both the preliminary objections then raised by the respondents had been sustained. In fact, that OA was found to be premature and the Tribunal was also found to have no jurisdiction. The issue of limitation was not raised in that OA. In view of this the applicants cannot take advantage of the fact that their previous OA, being OA No.1266/1996, was decided as late as on 28.3.2000. According to the learned counsel for the respondents, the aforesaid decision cannot assist the applicants in reviving limitation. I am inclined to agree.

7. Since the OA, according to me, is barred by limitation and suffers from laches and delay, I do not consider it necessary to go into the merits

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of the issue raised by the applicants for payment for the periods in question in accordance with the pay scale applicable to group "C" post.

8. Being time barred the OA is dismissed. No costs.

S. A. T. Rizvi

(S.A.T. RIZVI)
MEMBER (A)

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