

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

**O.A. No. 192 OF 2013
M.A.No. 1032/2019**

CORAM:

THE HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER(J)
THE HON'BLE MR.C.V.SANKAR, MEMBER (ADMN.)

Mahendra Das, aged about 67 years, S/o. Late Bairagi, Retired ECR-II/BBS/Engineering/Con./ECoRly, Rail Vihar, Chandrasekharpur, Bhubaneswar, permanent resident of Vill-Sainto, PO. Narapada, Dist. Cuttack, Odisha.

.....Applicant

Through Legal practitioner :M/s. N.R.Routray, S.K.Mohanty,
T.K.Choudhury, Mrs.J.Pradhan, Counsel.

-Versus-

1. Union of India represented through the General Manager, East Coast Railway, ECoR Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Senior Personnel Officer, Con./Co-Ord., E.Co.Rly, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Financial Advisor and Chief Accounts Officer, Con/E.Co.Rly, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. Senior Section Engineer/Works, E.Co.Railway, Headquarter, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

.....Respondents

Through Legal practitioner :Mr.R.S.Behera, Counsel

Reserved on: 19 /01/2021

Pronounced on: 01/02 /2021

O R D E R

MR.SWARUP KUMAR MISHRA, MEMJBER (JUDL.)

The Applicant, Shri Mahendra Das, while working in the Railway as ECR Grade II, on attaining the age of superannuation, retired from Railway service w.e.f. 31/05/2006. On 16/04/2012 submitted a representation to the Railway praying for grant of 2nd financial up gradation under ACP Scheme w.e.f. 01/10/1999 and release of differential financial benefits upon grant of such 2nd

financial up gradation. Thereafter, he filed OA No. 13/2013 before this Bench which was disposed of on 14/01/2013 with direction to the Respondent- Railway to consider and dispose of his representation. In compliance of the order of this Bench, Respondent- Railway considered his representation dated 14/01/2013 and intimate the reason/ground for which he was not entitled to 2nd financial up gradation under ACP vide letter No. SPO (Con)/Co-Ordn./BBS/CC/O A No. 13/2013/ Mahendra /084 dated 04/12/2013(Annexure-A/9). Impugning and challenging the said order of rejection dated 04/12/2013 under Annexure-A/9, the Applicant has filed the instant OA with the following reliefs:

“8. Relief(s) sought for:

- I) To quash the order of rejection dated 4.2.2013 under Annexure-A/9;
- II) And to direct the respondent to grant 2nd financial up gradation w.e.f. 1.10.1999 in scale of Rs. 4500-7000/- under ACP Scheme;
- III) And to pay the differential arrear salary, DCRG, Commuted value of pension, leave salary and arrear pension with 12% interest for the delayed period;

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interests of justice;

And for which act of your kindness the Applicant as in duty bound shall ever pray.”

2. Before delving into various submissions of the respective parties, it is worthwhile to take extract of the grounds/reasons as stated in the order of rejection under Annexure-A/9 which reads as under:

“On verification of your service record, it reveals that initially you are engaged in S.E.Railway as casual ECR on daily rated basis w.e.f. 16/08/1979 under PWI/JD/Construction/JJKR. You were granted Ty status w.e.f.

01/01/1983 while working as Casual ECR in scale of Rs. 260-400/- Subsequently you were absorbed in Group D category as Khalasi against 40% PCR post in scale of Rs. 750-940/- w.e.f. 26/04/1988 vide DEN/C/Cuttack's letter No. CRWS/MCS/E-4/779 dated 02.05.1988. The absorption in Gr. D post was antedated to 01/04/1973 vide SPM/Cuttack's O.O No. SPM/CTC/E/PCR/1/450 dated 06.07.93. Accordingly, your pay has been fixed in Gr. D category in scale of Rs. 750-940 and arrear salary was paid. Further you were promoted officiating/ad hoc basis as ECR Gr. II in scale of Rs. 1200-1800/- w.e.f. 16/03/1992 vide DEN/C/HQ/CTC's O.O No. 53 dated 16.3.1992. Again you were regularized against PCR post as ECR Gr. III in scale of Rs. 3050-4590/- w.e.f. 01.4.88 vide CE/C/HQ/BBS's o.o. No. CE/C/HQ/BBS/PCR/Gr.C/Carpenter Gr. III/01283 dated 05.3.1999. Though you have absorbed/regularized against G.r D PCR post in scale of Rs. 750-940/- but you were allowed to continue to work in the ad hoc/officiating post as ECR Gr. II in scale of Rs. 1200-1800/- Rs.4000-6000/- du to exigency of work. Finally you retired from railway service on superannuation w.e.f. 31.5.2006 as ad hoc officiating post of ECR Gr. II in scale Rs. 4000-6000/- with last pay Rs. 5200/- whose corresponding scale in 6th PC is PB Rs. 5200-20200/- with last pay Rs. 9490/- + GP Rs. 2400/- rendering 31 years 02 months qualifying service. Accordingly, you have been paid all settlement dues including pension.

As per your service particulars your direct entry grade on regular post is Group D PCR post in scale of Rs. 750-940/-Rs.2550-3200/- w.e.f. 1.4.1973. After that you were availed one regular promotion in PCR post (regularization) as ECR Gr. III in scale Rs. 950-1500/-Rs.3050-4590/- w.e.f. 01.4.88. Your medical category was C-1 as per entry in the service record vide Sr. DMO/S.E.Railway/KUR's memo No. 019195 dt.27.02.88.

Considering 50% of Temporary Service, you have completed 24 years regular service (after deduction of one year eleven months eighteen days non qualifying service) on 18.3.1999. Accordingly as per Est. Srl. No. 288/99, under ACP scheme you have due the 2nd financial up gradation in scale Rs. 400-6000/- w.e.f. 01/09/2008 over your substantive grade/scale Rs. 3050-4590/- (5th PC). But you will not get any financial benefit if granted the above financial up gradation as you were already enjoyed the scale Rs. 4000-6000/- on officiating/ ad hoc basis prior to 01/10/1999.

....

Your claim in your representation dated 16/04/2012 at Annexure-A/7 for 2nd financial iup gradation under ACP Scheme in scale Rs. 4500-7000/- w.e.f. 01.10.99 is not admissible under extant rule.....”

3. Respondents have filed their counter reiterating the stand taken in the order of rejection and further denying the stand taken by the Applicant that this case is similar to OA Nos.745 & 746 of 2005 disposed of on 31/07/2008 (Annexure-A/5) and praying for dismissal of this O.A.

4. Applicant has filed rejoinder more or less reiterating the stand taken in his O.A.

5. In course of hearing, Learned Counsel have reiterated the stand taken in their respective pleadings. Having heard them at length perused the records.

6. It may be stated that rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in individual actions, and Court/Tribunal naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which legal remedies can be enforced. Thus, in the present case it is thought wise to deal with the point of limitation before proceeding to decide on the merit of the matter.

7. Admittedly, the Applicant retired from service on 31/05/2006 and after 5 years 10 months and 25 days he submitted representation on 16/04/2012 claiming 2nd financial up gradation under ACP Scheme, according to him, fallen

due before 12 years 08 months 15 days i.e. 01/10/1999. According to the Learned Counsel for the Applicant, as per the provision one can approach the Tribunal within one year and the order of rejection of his representation being 04/02/2013 and he has filed this OA on 01/03/2013 this OA is within the period of limitation but this assertion of the Applicant is not sound in law. The Hon'ble Apex Court in the case of **Union of India and Others Vs. M.K. Sarkar, (2010) 2 SCC 59**, on belated representation laid down following, which is extracted below:-

“15. When a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court’s direction. Neither a court’s direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.” (emphasis supplied)

Again, the Hon'ble Apex Court in the case of **State of Uttarakhand and Another Vs. Shiv Charan Singh Bhandari and Others, (2013) 12 SCC 179** had occasion to consider question of delay and laches. The Hon'ble Apex Court has been pleased to hold that representations relating to a stale claim or dead grievance do not give rise to a fresh cause of action. In Paragraph Nos. 19 and 23 following was laid down:-

“19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.

23. In State of T.N. v. Seshachalam, (2007) 10 SCC 137, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: (SCC

p. 145, para 16) “16. ... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

It has been submitted by Learned Counsel for the Applicant that the facts of this case being same and similar to the Applicant In OA No. 192 of 2010, delay should not stand as way for granting the same benefit to the Applicant. In this regard learned Counsel for the Applicant has placed into service the decision of the Hon’ble Apex Court in the cases of State of Uttar Pradesh and others v Arvind Kumar Srivastav & Others, (2015) I SCC (L&S) 191 and in the case of Union of India and others v K.C.Sharma & Others. We have gone through those cases and it may be stated that law is well settled in the case of **SS Balu v. State of Kerala** dated 13 January, 2009 in CIVIL APPEAL NO. 104 OF 2009 (Arising out of SLP (C) No. 8586 of 2006) as under:

17. It is also well-settled principle of law that delay defeats equity. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.

Further in the case of **Chairman/Managing Director, vs Ram Gopal** on 30 January, 2020 in CIVIL APPEAL NO. 852 OF 2020 [Arising out of Special Leave Petition (Civil) No. 36253 of 2016] the Hon’ble Apex Court has been pleased to observe as under:

“22.3.where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of

the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India [K.C. Sharma v. Union of India, (1997) 6 SCC 721: 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was *in personam* holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

8. We have gone through the order in OA of this Bench cited by the Applicant but we find no reason to hold that the said order of this Bench is *in rem* with intention to give benefit to all similarly situated persons, whether they approached the court or not. Thus, by applying the ratio of the decisions of the Hon’ble Apex Court

Balu v. State of Kerala & Chairman/Managing Director, vs Ram Gopal (supra), it cannot be held that the principle of delay and laches cannot stare against the Applicant.

9. Now coming to the merit of the matter, we note that the Respondents themselves have stated in the order of rejection that the Applicant was initially engaged in S.E.Railway as Casual ECR on daily rate basis w.e.f. 16/08/1979 under PWI/JD/Con/Jajpur but it is not known as to how his absorption in Gr. D post was antedated to 01/04/1973. If it is really given, then this is one premium, which the Applicant was not entitled, has been granted to him by the Respondents.

That apart, the Applicant did not controvert either in his OA or in the rejoinder that his initial engagement in the S.E.Railway as casual ECR on daily rated basis w.e.f. 16/08/1979 under PWI/JD/Construction/JJKR. He was granted Ty status w.e.f. 01/01/1983 while working as Casual ECR in scale of Rs.

260-400/-. Subsequently he was absorbed in Group D category as Khalasi against 40% PCR post in scale of Rs. 750-940/- w.e.f. 26/04/1988 vide DEN/C/Cuttack's letter No. CRWS/MCS/E-4/779 dated 02.05.1988. The absorption in Gr. D post was antedated to 01/04/1973 vide SPM/Cuttack's O.O No. SPM/CTC/E/PCR/1/450 dated 06.07.93. Accordingly, his pay was fixed in Gr. D category in scale of Rs. 750-940 and arrear salary was paid. Further he was promoted officiating/ad hoc basis as ECR Gr. II in scale of Rs. 1200-1800/- w.e.f. 16/03/1992 vide DEN/C/HQ/CTC's O.O No. 53 dated 16.3.1992. Again he was regularized against PCR post as ECR Gr. III in scale of Rs. 3050-4590/- w.e.f. 01.4.88 vide CE/C/HQ/BBS's Office Order No. CE/C/HQ/BBS/PCR/ Gr.C/Carpenter Gr. III/01283 dated 05.3.1999. Though he was absorbed/regularized against G.r D PCR post in scale of Rs. 750-940/- he was allowed to continue to work in the ad hoc/officiating post as ECR Gr. II in scale of Rs. 1200-1800/- Rs.4000-6000/- due to exigency of work. Finally he retired on superannuation w.e.f. 31.5.2006 as ad hoc officiating post of ECR Gr. II in scale Rs. 4000-6000/- with last pay Rs. 5200/- corresponding to Rs. 5200-20200/- with last pay Rs. 9490/- + GP Rs. 2400/-.

10. In view of the above, since he has already got financial up gradation within 24 years of his service, his case was rightly rejected by the Respondents which does not warrant any interference at this distant place of time.

11. For the discussions made above, we find no reason to interfere in the matter. Thus MA as well as OA are accordingly dismissed. There shall be no order as to costs.

(C.V.Sankar)
Member (Admn.)

(Swarup Kumar Mishra)
Member (Judicial)