

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 303/2013

Reserved on :09.09.2020
Pronounced on :14.09.2020

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Kamal Kumar Bakshi S/o Shri Madan Lal Chibbar, age 64 years, retired Mail/Express Guard, Western Central Railway, Kota resident of 92, Janakpuri Mala Road, Kota Junction-324002.

...Applicant.

(By Advocate: Sh Dev Krishan Purohit with Sh Arun Sharma)

Versus

1. Union of India through the Chairman Railway Board, Rail Bhawan, New Delhi.
2. The General Manager, Western Central Railways, Jabalpur (M.P.).
3. The Divisional Rail Manager, Western Central Railways, Kota.
4. The Senior Divisional Personnel Officer, Western Central Railway, Kota.
5. The Division Rail Manager (Estt.), Western Central Railway, Kota.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

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ORDER**Per: Dinesh Sharma, Member (A):**

In this OA, the applicant has mainly sought the following reliefs:

(a) By an appropriate order or direction the impugned letter (Annexure A/1) No.ET/III/1880 dated 22.01.2013 and letters [No.iejs@ih&dksvk@437@bZVh1/4xkMZ1/2](mailto>No.iejs@ih&dksvk@437@bZVh1/4xkMZ1/2) dated 14.6.2012 (Ann.A/11) and E/T/III/1880 dated 14.6.2012 (Annx.,A/12) issued by the Divisional Rail Manager (Estt.), Western Central Railway, Kota may kindly be quashed and set aside.

(b) By an appropriate order or direction the Respondents be directed to modify the memorandum dated 08.06.2011 (Annexure A/3) sanctioning second stagnation increments w.e.f. 1.7.85 and third financial upgradation benefit of M.A.C.P. and to revise his pay fixations accordingly with all consequential benefits including revision of pension and arrears of pay.

2. Applicant claims that he has been given only two promotions in his career and therefore deserves the third promotion benefit under the scheme of MACP. He has also claimed that he should have been given a second stagnation increment in the year 1985, and consequentially all subsequent pay fixations and pension finalization should be corrected. He claims to have made representations to the Divisional Rail Manager and he was informed, by letter dated 28.02.2012 (Annexure A/4) that he had already been given

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three promotions. He has made further representations, on 15.05.2012 (Annexure A/5) and on 18.05.2012 (Annexure A/9), which were also replied in the negative (Annexure A/11 and Annexure A/12 respectively). He again requested on 16.07.2012, by way of two separate appeals to the DRM, for granting the above benefits. Since these claims were rejected vide communication from the DRM dated 10.09.2012, the applicant filed an OA (836/2012) before this Tribunal. This OA was withdrawn with liberty to file a fresh detailed representation and also to challenge any prejudicial order that may be passed on such representation (Refer Annexure A/15). Following this, the applicant filed his representation (Annexure A/16) but the same has been rejected by the impugned order dated 22.01.2013 (Annexure A/1). The applicant has challenged this rejection on grounds of it being against facts and rules.

3. The respondents have denied the claims of the applicant. It is stated that the applicant had three promotions in his career. Besides the two promotions admitted by the applicant, he had also one promotion - to the upgraded post of Goods Guard (B), w.e.f. 01.06.1981, which is mentioned in the service book (a copy of which is produced by the applicant at Annexure A/2). They have also denied the claim about non-granting of stagnation increment

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in the year 1985 and have stated that all pay fixations have been made as per the Rules in this regard (Annexed as R/1). The respondents have also stated that the OA is barred by the period of limitation fixed for filing any such claim under the CAT Act.

4. A rejoinder has been filed by the applicant in which he has reiterated his claims and stated that the respondents are deliberately misinterpreting and confusing upgradation with promotion. It is also stated that the cause of action arose only after rejection (on 22.01.2013) of representation filed under direction of this Tribunal. Hence, the case is within the period of limitation. The applicant has also stated that the fixation of applicant's pay at Rs.1920/- while applying IV Pay Commission was wrong and it should have been Rs.2018/-.

5. We have gone through the pleadings and have heard the arguments of the learned counsels of both the parties. The applicant retired in January 2009. His claims relate to different matters (not granting of stagnation increment in 1985, not granting of third MACP and wrong pay fixation). These are clubbed together and a request was made for redressal by way of a representation following an earlier OA before this Tribunal that was allowed to be withdrawn. The

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applicant has admittedly raised all these issues, for the first time, in the year 2012. This was after the respondent Railways accepted, following a representation made by him, his claim for benefit of fixation on promotion from the date(30.09.1993) of adjustment of stagnation increment (Ref. first sentence in the Memo at Annexure A/3). All these claims, raised in the year 2012, are not shown to have been ever raised before. These claims cannot be said to have risen on account of the Memorandum at Annexure A/3, which, in effect, was a result of accepting the request of the applicant to grant a related benefit. The applicant has stated that his claims are within the period of limitation and has not filed any application for condonation of delay. His argument is that it is as per the direction of this Tribunal. We are, therefore, reproducing our earlier order (a copy of which is annexed by the applicant at Annexure A/15):-

"Learned counsel for the applicant wants to withdraw this Original Application with liberty to file a fresh detailed representation before the respondents.

2. In view of the submissions made on behalf of the applicant, the Original Application is dismissed as withdrawn. The applicant is at liberty to file a fresh detailed representation before the respondents. In such eventuality, the respondents shall consider and decide the representation of the applicant on its merit strictly in accordance with the provision of law and shall pass a reasoned and speaking order expeditiously but in any case not later than a period of three months from the date of receipt of a copy of the representation.

3. If any prejudicial order against the interest of the applicant is passed by the respondents, the applicant

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will be at liberty to challenge the same by way of filing the substantive Original Application as per rules.

4. With these observations and directions, the Original Application stands disposed of with no order as to costs."

6. A perusal of this order would make it clear that it was passed, at the request of the applicant's counsel, at the admission stage. It did not say any thing about the merit of the claim of the applicant. It also made it clear that the applicant was at liberty to challenge any prejudicial order "as per rules". The rules obviously include rules relating to period of limitation also and the order cannot be said to have condoned any such delay relating to the period of limitation. Needless to mention, any filing of an OA, and later withdrawing it with liberty to file fresh representation, *ipso facto*, cannot create a freshcause of action, thereby circumventing the express provisions regarding the period of limitation. The applicant has not sought condonation of delay (despite this issue having been raised in the reply by the respondents) on any possible ground (e.g.recurrent loss, etc making it a continuing cause of action). This makes that plea unavailable to the applicant now and we are constrained not to condone the delay on any such considerations, whichare not even pleaded by the applicant. The OA therefore fails on the ground of it being barred by period of limitation prescribed under the C.A.T. Act.

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7. Despite it being so barred by limitation, we have also examined, *prima-facie*, the merits of the issues raised in this OA. This is done in order to ensure that there is no loss of substantial justice on a mere technical ground. By looking at the Service Book, it is clear that the applicant, who was recruited as Guard on 09.08.1975 (in the scale of 290/530), was "promoted" in upgraded Goods Guard (in the scale of 330/560) on 01.06.1981 (Ref Ann. A/2, which, though not completely legible, clearly shows the words "promoted"). He had two later promotions in the year 1992 and 1993 respectively. The applicant has claimed that the first promotion was not a promotion and drawn our attention to the seniority list at Annexure A/8 where there is no separate column showing such promotion (it shows only columns relating to date of appointment, date since working as Goods Guard and the date since working as Passenger Guard). As against the express mentioning of promotion to an upgraded scale of Goods Guard in the Service Book, this omission in a seniority list, cannot be taken as a conclusive proof of no other promotion, entitling the applicant for a 3rd MACP.

8. The claim regarding stagnation increment has also been sufficiently explained by the respondents in their reply

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by quoting the relevant Rules. We do not find any apparent violation of these rules in not granting the second stagnation increment in the year 1985 as another increment was given on 1st January 1986 (following Rule 8 of RBE 168/86, which provides for additional increment in cases where ad hoc increment had already been given). As mentioned earlier, even if there could be another, more beneficial interpretation of the rules, the applicant has lost his right to claim benefit by his prolonged sleeping over such alleged rights for close to three decades.

9. The OA is, therefore, dismissed, both on grounds of it being barred by period of limitation and also on account of apparent lack of merit in these claims. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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