

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 16<sup>th</sup> day of NOV 2010

**Original Application No. 1578 of 2004**  
(U/S 19, Administrative Tribunal Act, 1985)

**Hon'ble Dr. K.B.S. Rajan, Member (J)  
Hon'ble Mr. D.C. Lakha, Member (A)**

*S.P. Mishra S/o Sri Sharda Prasad Mishra, R/o 316-F, Tribhuwan Dham, Opp. Saraswati Vidya Mandir, Humayun Pur South, Gorakhpur.*

..... *Applicant*

*By Adv. : Shri Bashist Tiwari*

**VER S U S**

1. *Union of India through the General Manager, N.E. Railway, Gorakhpur.*
2. *Chief Operating Manager, N.E. Railway, Gorakhpur.*
3. *Chief Personnel Officer (Administration), N.E. Railway, Gorakhpur.*

..... *Respondents*

*By Adv. : Shri K.P. Singh*

**O R D E R**

**(Delivered by Hon'ble Dr. K.B.S. Rajan, Member-J)**

The applicant originally appointed as Assistant Station Master, promoted as Train Controller in 1979, posted on permanent basis in that cadre w.e.f. 1980, was later on promoted initially on ad hoc basis as Traffic Inspector in the scale of Rs 455 – 700 under the B.G. Construction Organization in 1982 and later on he was placed in the

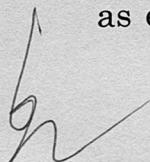


scale of Rs 550 – 750 w.e.f. 01-05-1982. According to him, it was subsequent to his regular selection in the aforesaid scale on regular basis w.e.f. 20-08-1983 that he severed his lien as Train Controller. The applicant was placed in the next higher grade of Rs 700 – 900/- w.e.f. 01-01-1984.

2. As per the Railway Board letter dated 13-05-1999, vide Annexure A-4, as a part of restructuring, Controllers Cadre (Traffic Department) was to be restructured with reference to the sanctioned strength as on 01-08-1983 on the lines of the restructured Traffic Cadres vide Board's letter dated 20-12-1983 and the staff so placed in the revised grade would get the notional fixation of pay in the scale of Rs 700 – 900 w.e.f. 01-08-1982, and actually from 01-08-1983.

3. The applicant who claims that his lien got severed from the traffic cadre only w.e.f. 01-01-1984, made a representation on 29-03-2000 requesting the benefit of the above mentioned Annexure A-4 order of the Board, to which he was informed vide Annexure A-5 communication that as the applicant had moved to the Construction Wing as Traffic Inspector w.e.f. 1-05-1982 itself, he is not entitled to the benefit.

4. The above rejection of his claim made the applicant to prefer an appeal, vide Annexure A-6 dated 17-04-2002 stating that he is entitled to the benefit of the Railway Board's letter dated 13-05-1999 as even his juniors were granted the said pay scale of Rs 700 – 900



w.e.f. 01-08=1982. The authorities however, stuck to their gun, vide Annexure A-1 dated 19-08-2002. It is this order that has been challenged in this O.A. on the lone ground vide para 5 of the O.A. that the decision is contrary to the Board's letter dated 13-05-1999 (Annexure A-4) which was based on the judgment of the Hon'ble Apex Court. Since the applicant was holding the post of Train Controller on 01-08-1983, he is entitled to the proforma fixation w.e.f. 01-08-1982.

5. Respondents have contested the O.A. According to them, as per the Board's letter, it was those who were in the Traffic Cadre as on 01-01-1984 that would be granted the benefit of Rs 700 – 900 w.e.f. 01-08-1982 on proforma basis, and since the applicant was, as of 01-01-1984 brought to the post of Traffic Inspector, he is not entitled to the same. It is also the case of the respondents that the applicant has been practically in the post of Traffic Inspector w.e.f. 1982 itself.

The applicant filed his rejoinder reiterating the fact that his lien was not terminated at the relevant point of time from the Traffic cadre and as such he is entitled to the benefit of the Railway Board's letter dated 13-05-1999.

6. Counsel for the applicant referred to the order dated 02-04-1980 vide Annexure RA-1 wherein it was clearly indicated that his lien would be with the Controller post, which is a Traffic Cadre. He has also stated that his promotion as Traffic Inspector is under the 10% quota meant for Train controllers, vide the chart annexed to the

A handwritten signature in black ink, appearing to read 'G R' followed by a stylized flourish.

Rejoinder and the same having materialized only w.e.f. September, 1983, albeit earlier he was posted in that capacity on ad hoc basis, his lien continued only in Traffic Cadre. The applicant argued that the cadre of the applicant in the Traffic Inspector Grade has to be reckoned only from the date of his regular appointment and the services rendered on ad hoc basis cannot be considered.

7. Counsel for the respondents submitted that the sequence of events would show that the applicant switched over from Traffic Cadre (Train Controller) to the Traffic Inspector post right from 1982 and hence, he cannot claim the benefit of the Railway Board's letter dated 13-05-1984. <sup>1999</sup> ✓

8. Arguments were heard and documents perused. Though the respondents have contended that the application is not within the limitation period, vide reply to para 3 of the O.A., the same was not canvassed at the time of hearing. Nevertheless, in so far as pay fixation matter is concerned, the decision in the following cases would support the case of the applicant that there is no delay and even if it were there, it is bound to be condoned.

(a) *M.R. Gupta v. Union of India, (1995) 5 SCC 628*, wherein the Apex Court has held as under:-

*"The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to*

*computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished.*

While holding so, the Apex Court has also held that in so far as withdrawal of arrears is concerned, limitation would apply. And in so far as arrears, the extent of arrears that would not be affected by the law of limitation is three years prior to the filing of the OA as held by the Apex Court in the case of ***Jai Dev Gupta v. State of H.P., (1997) 11 SCC 13*** wherein the Apex Court has held as under:-

2. *Learned counsel appearing for the appellant submitted that before approaching the Tribunal the appellant was making a number of representations to the appropriate authorities claiming the relief and that was the reason for not approaching the Tribunal earlier than May 1989. We do not think that such an excuse can be advanced to claim the difference in back wages from the year 1971. In Administrator of Union Territory of Daman and Diu v. R.D. Valand this Court while setting aside an order of the Central Administrative Tribunal has observed that the Tribunal was not justified in putting the clock back by more than 15 years and the Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way. In the light of the above decision, we cannot entertain the arguments of the learned counsel for the appellant that the difference in back wages should be paid right from the year 1971. At the same time we do not think that the Tribunal was right in invoking Section 21 of the Administrative Tribunals Act for restricting the difference in back wages by one year.*

3. *In the facts and circumstances of the case, we hold that the appellant is entitled to get the difference in back wages from May 1986. The appeal is disposed of accordingly with no order as to costs.*

(b) ***Shiv Dass vs Union of India (2007) 9 SCC 274*** and ultimately held as under:-

*h*

"7. To summarize, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion,etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring-successive wrongs will apply. As a consequence, the High Courts will restrict the consequent relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

9. In the instant case, the Railway Board order itself is of May 1999 and the applicant had penned his representation in March, 2000 and reply came in 2002, followed by his appeal in the same year, for which the final reply was on 19-08-2004. The O.A. has been filed in the very same year. Thus, the application is well within time.

10. As regards the merit of the matter, the point for decision is as to when the applicant has switched over from Train Controller to Traffic Inspector. If the switching over is posterior to 01-08-1983, the applicant is entitled to the benefit of order dated 13-05-1999 (Annexure A-4) and if the crucial date of switching over is anterior to 01-08-1983, he has no case.

*b*

11. Lien in the post of Train Controller the main factor which would decide the issue. In so far as the Railway employees are concerned, the I.R.E.C. contains provisions relating to lien. In the case of ***Paresh Chandra Nandi v. Controller of Stores, N.F. Rly., (1970) 3 SCC 870*** the Apex Court had occasion to deal with the subject and has in that case, held as under:

*11. Rule 2007 provides that unless the lien of a permanent employee is suspended under Rule 2008 or transferred under Rule 2010, a railway servant holding substantively a permanent post retains a lien on that post while performing the duties of that post, or while on foreign service or holding a temporary post or officiating in another post, or during joining time or transfer to another post, or while on leave, or lastly, while under suspension. Under Rule 2010, the power to transfer lien is confined to any other permanent post in the same cadre.*

12. In the case of the applicant, admittedly, his initial posting as Traffic Inspector in 1980 was on ad hoc basis, and his lien has been retained at Lucknow Division in the Train Controller post. Annexure RA-1 refers. It was under the 10% quota for Train Controller that the applicant had participated in the selection to the post of Traffic Inspector and on qualifying the same; he was posted on regular basis from September, 1983 in that post. Had the applicant not been in the Train Controller Cadre at the material point of time when the selection took place, he would not have been permitted to participate in the selection under the 10% quota for the post of Train Controller. The applicant had made an averment in para 4.5 of the OA as under:-

*4.5 That, the applicant had been designated as Train controller in scale of Rs.470-750/- and he was casted to*

*appear in selection for the post of Traffic Inspector in scale of Rs.550-750/- on regular basis since 10% post of Traffic Inspector had to be filled up from Train Controller in scale of Rs.470-750/- on the basis of seniority-cum-suitability. ”*

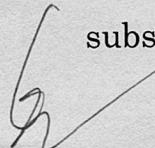
13. Vide para 12 of the counter, the respondents have replied to the above para as under:-

*“12. That the contents of paragraph 4.5 of Original Application are not correct hence denied. In reply it is submitted that the applicant was posted as Trains Controller but he was again posted on the post of Traffic Inspector on ad hoc basis and subsequently regularized on the same posts i.e. to the post of Traffic Inspector in the pay scale of Rs.550-750/- against 10% post of Traffic Inspector. ”*

14. The applicant has in para 4 of the rejoinder has countered the above contention of the respondents in the following words:-

*“4. That the contents of paragraph no.12 of counter reply is not correct hence denied and it is submitted that applicant earlier posted TI in scale of Rs.550/- to 750/- on ad hoc basis and regularized T.I. there was 10% quota of Traffic Inspector. It is submitted that there was 10% quota for TNL and yard master to be called for filling up vacancy of T.I. (550-750) as such GM(P) Gorakhpur vide XR (Radiogram) No.Ka/210/4/suitability/TI (VI) dated 28.02.83 called the applicant to attend suitability test along with other TI 455-750 as well as yard master and controller the applicant was called in capacity of TNL vide GM(P) Gorakhpur's above Radiogram and posting of the applicant as TI (550-750) on regular basis was done vide GM(P) Gorakhpur office order No.Ka/210/4/1/T.I. dated 20.09.83. A photocopy of office order dated 28.02.82 and Radiogram dated 28.02.83 as well as office order dated 20.09.83 issued by GM(P) Gorakhpur is being filed herewith and marked as Annexure No. RA3, RA-4 and RA-5 to this replication. ”*

15. Though there has been a denial, the fact is that the applicant was promoted to the post of Traffic Inspector under 10% quota. This 10% quota, as could be seen from the statement of promotion channel annexed to the Rejoinder refers only to Train Controller. There is full substance in the contention made in para 4 of the rejoinder. Thus,



when the applicant's promotion as Traffic Inspector on regular basis is based on his position as Train Controller (retaining the lien therein), till 11-09-1983 (i.e. a day prior to his regular promotion as Traffic Inspector, the applicant did remain a part of Train Controller Cadre and as such, he is entitled to the benefits of the Restructuring scheme meant for Train Controller of the Traffic Cadre.

16. In fact, the applicant had been given the benefit Rs 700 – 900 w.e.f. September, 1983, while it has to be notionally fixed w.e.f. 01-08-1982. The benefit of such fixation would be available to the applicant for fixation of his pay in the scale of Rs 700 – 900 by reckoning his last basic pay drawn in the scale of Rs 700 – 900 under the Restructuring scheme and the same would continue incremented with the normal annual increment. His pay would thus have to be enhanced from Rs 610/- as on 01-08-1982 to Rs 700/- in the scale of Rs 700 – 900. There would be no other benefit save the protection of pay drawn when the applicant has been taken on regular basis as Traffic Inspector in the said Scale. Of course, as a consequential benefit, the applicant may be given the option for fixation of his pay at the time of implementation of the Vth Pay Commission recommendation effective from 01-01-1996 as prayed for by him. The difference in the pay from 01-08-1983 shall have to be worked out and paid to the applicant. Though the applicant has claimed interest at 18%, we are of the view that the rejection of the claim of the applicant is not on any malafide intention of the respondents, but purely due to erroneous



interpretation of the rules. As such, it would not be appropriate to saddle the respondents with cost.

17. **The OA thus succeeds.** Respondents are directed to fix the pay of the applicant at Rs 700/- notionally w.e.f. 01-08-1982; actually w.e.f. 01-08-1983 and work out the due drawn statement from 01-09-1983; afford the applicant the benefit of option under the V Pay Commission and add the difference in pay arising out of the same too and all such arrears are to be paid to the applicant within a period of six months from the date of communication of this order.

18. Under the circumstances, there shall be no orders as to cost.



(D.C. Lakha )  
Member-A



(Dr. K.B.S. Rajan)  
Member-J

Sushil