

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD

(THIS THE 13th DAY OF April, 2011)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. S. N. Shukla, Member (A)

Original Application No.1225 of 2007
(U/s 19, Administrative Tribunal Act, 1985)

B. S Richariya, S/o Sri Shriram Richhariya, Resident of 377-D,
New Railway Colony, Tundala, District Firozabad.

..... Applicant

By Advocate: Shri Pankaj Srivastav

Versus

1. Union of India, through the General Manager, North Central Railway, Allahabad.
2. The Divisional Personnel Officer, North Central Railway, Allahabad.
3. The Senior Crew Controller, North Central Railway, Tundala, District Firozabad.
4. The Senior Divisional Electrical Engineer (R.S.O.), North Central Railway, Allahabad, District Allahabad.

..... Respondents

✓ By Advocate: Shri S. K. Rai

ORDER

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

1. The applicant was initially appointed in a Group 'D' post in October, 1981 in the pay scale of Rs. 196-232 (Rs. 750-940 followed by Rs. 2550-3200). According to the applicant he was asked to work as Drivers Booking Clerk - Tundla Lobby from 05.06.1982 which involved functions of higher responsibility and also which carried higher pay scale of Rs. 260-400 (Rs. 950-1500 followed by Rs. 3050-4590). Despite his functioning in that capacity his pay scale was kept at Rs. 196-232 (Rs. 750-940 followed by Rs. 2550-3200). During this period at times he was charge-sheeted for certain minor lapses and such proceedings were initiated treating the applicants as a Group 'C' employee. The applicant felt that he having functioned as a Group 'C' employee should have been granted the higher pay scale commensurate with higher function responsibilities and accordingly he moved a representation dated 30.12.1996 vide Annexure A-10. His claim, however, has been rejected vide order dated 03.04.2007 stating as under:-

“विषय:- श्री वी.एस.रिघारिया, कालमैन, ट्रण्डला की पदोन्नति के सम्बन्ध में।

संदर्भ:- ओपेन अदालत केस नं० 92

उक्त संदर्भ में अवगत कराया जाता है कि आपकी नियुक्ति दिन 17-10-81 को परिक. नियो/परियो/ट्रॉडला अधीन चतुर्थ श्रेणी में कालमैन के पद पर वेमान 196-232 (आरएस) में हुई है।

आपकी दिनांक 01-10-99 से वेमान 2610-3540 (आरएसआरपी) में एसीपी का लाभ प्रदान किया गया है तथा दिनांक 06-1-06 को आपको उक्त पद पर ही वेमान रु 2610-3540 (आरएसआपी) में पदोन्नति दी गयी है। आप अपनी योग्यता के अनुसार जो पदोन्नति की माँग की है, लिपिक वर्ग में पदोन्नति कोटे की सिक्कियाँ घोषित की जाती है तथा चयन परीक्षा होती है। उस परीक्षा में चयन होने पर ही पदोन्नति सम्भव है। ”

2. The applicant has filed this present OA praying for the following reliefs:-

- (i) To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 3.4.2007 passed by the respondent No. 2 (Annexure A-1)
- (ii) To issue a writ, order or direction in the nature of Mandamus directing the respondents No. 1 and 2 to pay the petitioner his salary in the higher pay scale of Rs. 3050-4590 attached with the post of Drivers, Booking Clerk - Tundala Lobby for the period from _____ upto _____ during which the petitioner has worked on the said post with usual allowances as per Rules within the period as may be fixed by this Hon'ble Tribunal.
- (iii) To issue a writ, order or direction in the nature of Mandamus directing the respondents No. 1 and 2 to allow pay protection to the petitioner while reverting him from the post of Drivers' Booking Clerk - Tundala Lobby to the substantive post of Callman and also that on coming of vacancies of the aforesaid higher post, the case of the petitioner for promotion be considered, giving age relaxation and advantage of experience for the long period spent on the said higher

post within a period as may be fixed by this Hon'ble Tribunal.

- (iv) *To issue any other and further suitable writ, order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*
- (v) *To allow this petition with costs in favour of the petitioner.*

3. Respondents have contested the OA. According to them, the applicant is not entitled to any relief. They have stated that the applicant never claimed the relief, which he claims now. He was a Group 'D' employee right from the beginning and he has not been appointed as Class III Staff. The post of Booking Clerk is a Class III post filled by positive act of selection and the applicant never appeared in any such selection. The reference of the designation, as Booking Clerk, of the applicant in SF-11 vide annexure A-4 has been made by inadvertence. Hence, the applicant is not entitled to any benefits claimed.

4. At the time of hearing the applicant was not present and hence permission was granted to file written submissions and counsel for the respondents' arguments were heard.

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5. On his part, the applicant filed his written submission reiterating his stand and relying upon a decision by this tribunal in OA 1442 of 1998 decided on 05.10.2005.

6. Arguments were heard and documents including written submission by the applicant perused.

7. The following documentary evidences adduced by the applicant in this OA have all emanated from the respondents side. A look at them would show that in the eye of the respondents the applicant had been functioning in a Group 'C' post only:-

- a. Appreciation letter dated 10.08.1991 (page 18 of the OA).
- b. Memorandum dated 20.10.1998 (page 19 of the OA) issued by Senior Crew Controller.
- c. Memorandum dated 29.01.1999 (page 20 of the OA)
- d. Memorandum dated 16.08.2000 (page 22 of the OA)
- e. Memorandum dated 27.08.2001 (page 23 of the OA)
- f. Memorandum dated Nil (page 24 of the OA)
- g. Letter dated 08.05.1998 (page 25 of the OA)
- h. Letter dated 20.09.2000 (page 26 of the OA)

8. In contrast to the above respondents have annexed letter dated 25.04.2007 from the applicant regarding non-promotion to Group 'C'.

9. It is true that the applicant has claimed promotion to Group 'C' vide Annexure at CA-1. This claim of the applicant is on regular basis, whereas hitherto he was addressed as booking clerk/acting booking clerk which is obviously on an ad hoc basis. The respondents having addressed the applicant as booking clerk all along cannot take a somersault and contend that it was by mistake that he was addressed as booking clerk. No doubt, it is true that there is a set procedure for filing up the vacancies of booking clerks or for that matter any other Group 'C' post and the applicant would not have undergone those rigours. His claim in this O.A. has to be restricted to pay for the work he has done. Obviously, when he had been performing the duties of booking clerk, to the knowledge of Assistant Operating Superintendent vide Annexure A-2, and similarly when charge sheets were issued by the Disciplinary Authority, addressing the applicant as booking clerk, the same would mean that the applicant was asked to perform the duties of booking clerk by his superiors under there ostensible authority. The duties performed by the applicant as a

booking clerk was not for negligible period but for a substantial span. Admittedly, however, during this period the applicant was paid only the pay of the Group 'D' employee.

10. The applicant has relied upon the decision of this Tribunal in O.A. No. 1442/1998 decided on 05.10.2005. The said case has an identical set of facts in that the applicant therein was a Group D employee but was asked to perform the duties of a Group C post (ATK) and his claim was for payment of salary as for Group C employee during the period he functioned as ATK. The Tribunal allowed the O.A. on the basis of a decision by the Apex Court in Selvaraj V. Lt. Governor of Island Port Blair (1998) 4SCC 291.

11. In the following decisions the Apex Court has held that when an individual had assumed higher responsibilities under the orders of competent authorities, he becomes entitled to the pay attached the post in which he was functioning:-

(a) Jeet Singh v. M.C.D., 1986 Supp SCC 560,

We understand that the services of the petitioners have been regularised recently. Petitioners claim that they have been in continuous employment ever since the year 1979 and that they are entitled to the salary and allowances are paid to regular and permanent employees on the principles of equal

pay for equal work. Following the order made in the Writ Petition Nos. 3077-3111 of 1985 we direct that these petitioners shall be entitled to the salary and allowances on the same basis as paid to regular and permanent employees from the date of their continuous employment. Respondent will ascertain the date of their continuous employment and payment as aforesaid will be made to the petitioner within 3 months from today. The matter is disposed of accordingly.

(b) *Selvaraj v. Lt. Governor of Island, Port Blair, (1998) 4 SCC 291,*

It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground.

(c) *Jaswant Singh v. Punjab Poultry Field Staff Assn., (2002) 1 SCC 261*

“.... while the appellant's promotion to the post of Chick Sexer cannot be upheld, given the fact that the appellant had discharged the duties of a Chick Sexer, he was at least entitled to the pay and other allowances attributable to that post during the period he carried out such duties.”

12. The above decisions of the Apex Court fully apply to the facts of this case so far his entitlement to the pay of Group C is concerned. As such we have absolutely no hesitation to hold that the applicant is entitled to pay and allowances attached to the post of booking clerk for the period he worked in that capacity. As per

the records hearing the applicant is stated to have functioned as drivers booking clerk w.e.f. 05.06.1982 and the latest communication of the respondents addressing him as booking clerk reflects the date as 27.08.2001. For the above period the applicant could be paid the higher pay and allowances. This has not been paid to him. The applicant has, no doubt prayed for protection of this pay and allowances for future also. That part of the prayer has to be outright rejected for, unless he undergoes the procedure for promotion or appointment as a Group C employee in accordance with the laid down Rules, there is no question of his claiming any benefit of his past performance of duties as a booking clerk.

13. Coming to the point of his claim for the past period when he had worked as Booking clerk, though the applicant had made out a case for his entitlement, the question is whether he had claimed the same on time and if not whether his case could be considered ignoring the limitation. For this purpose, the decided cases are to be looked into. The latest decision of the Apex Court in this regard, which takes into account at least two cases of the past is *State of M.P. v. Yogendra Shrivastava, (2010) 12 SCC 538*

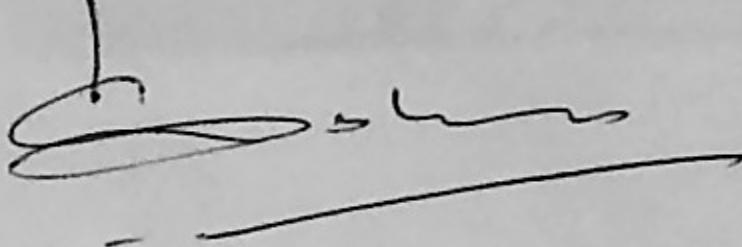
wherein the Apex court has held as under:-

Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application. (See M.R. Gupta v. Union of India and Union of India v. Tarsem Singh.)

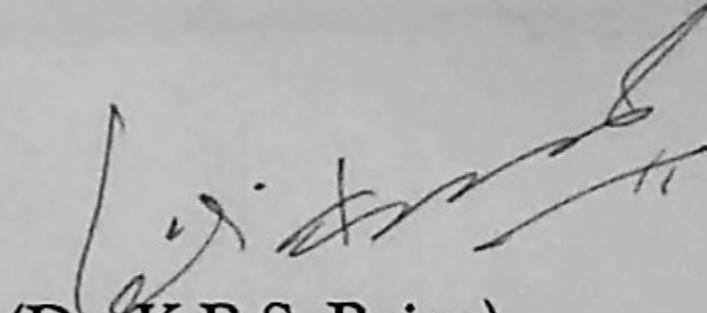
14. In the instant case, the applicant requested for pay and allowances as well as pay scale for Group C on 17-03- 2007 and he had filed the OA on 11-12-2007. Thus, his claim for Group C pay scale has to be restricted only for three years prior to the date of filing i.e. from 11-12-2004 and not earlier. It is not exactly known as to which period he was holding the post of Booking Clerk. If he was serving for any period from 11-12-2004, his claim for pay and allowances as for booking clerk is within the limitation period. It is pertinent to mention that if the applicant had been functioning almost since beginning in the post of Booking clerk, he would also be entitled to annual increment, which would have to be stretched up to the period he was holding the post of booking clerk. In that case, his basic pay as on 11-12-2004 should include the annual increments for the past period.

15. In view of the above, the OA is allowed to the extent that the respondents shall work out the pay and allowances of the applicant for the period from 11-12-2004 if the applicant had functioned as Booking Clerk in the pay scale of Rs 3050 - 4590 with due increments as per rules and pay the difference arising out of the pay and allowances due and drawn. If the applicant has not worked in that capacity, the same be informed to the applicant. Time calendared for this purpose is four months.

16. Under the circumstances, there is no order as to cost.



(S.N. Shukla)
Member-A



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

Sushil