

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD**

ALLAHABAD this the 10<sup>th</sup> day of April, 2012.

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER - J.  
HON'BLE MS. JAYATI CHANDRA, MEMBER- A.**

**ORIGINAL APPLICATION NO. 15 OF 2007**

Budhi Ram, S/o Shri Mahanand, Aged about 51 years, Resident of village - Samari, Post - Besara Bazar, Distt. Mirzapur.

...Applicant

**V E R S U S**

1. Union of India through the General Manager, North Central Railway, Headquarter Office, Allahabad.
2. The Divisional Railway Manager, North Central Railway, Allahabad.
3. The Senior Personnel Officer, North Central Railway, Allahabad.
4. The Head Mistress, Railway Mixed Primary School, North Central Railway, Tundla.

.....Respondents

Advocate for applicant : Sri S.S. Sharma  
Advocate for the respondents : Sri Avnish Tripathi

**O R D E R**

**BY Hon'ble Mr. Sanjeev Kaushik, J.M..**

The present Original Application is directed against the inaction of the respondents for not granting the grade of Rs. 2650-4000 on absorption w.e.f. 15.04.1998.

1  
16



2. At the outset learned counsel for the applicant made a statement at the Bar that he does not want to press relief No 8.3.

3. Brief facts of the case are that the applicant was initially appointed as Gangman on 14.05.1978. While he was working in pay scale of Rs. 2650-4000 as Gangman, by order dated 07.04.1997 he was directed for medical examination by the Section Engineer, P/Way, Northern Railway, Mirzapur where he was declared medically unfit for the post of Gangman by the Senior Divisional Medical Officer, Northern Railway, Mirzapur. The applicant was screened for alternative job by the Screening Committee and found fit for the post of Mali by letter dated 11.03.1998 issued by the Divisional Personnel Officer, Northern Railway, Allahabad. Vide letter dated 24.03.1998 the applicant was posted as Mali in pay scale Rs. 750-940/2550-3200 under Head Mistress, R.M.P School, Tundla (Annexure A-1). The applicant was spared by Senior Section Engineer, Mirzapur to report for duty on 06.04.1998 in pay scale of Rs. 2650-4000 and his basic pay was fixed at Rs. 3300/- (Annexure A-2). He joined on 15.04.1998 at R.M.P. School, Tundla where his basic pay was fixed at Rs. 3200/- in pay scale of Rs. 750-940/2550-3200 w.e.f. 15.04.1998 (Annexure A-3). It is submitted that being illiterate class IV employee the applicant could not able to know the reason as to why he was posted in the lower grade and his pay was also reduced. He was compelled to get lower pay what he was getting before absorption. The post of Mali belongs to Horticulture and as per the recommendation of 5<sup>th</sup> CPC, the pay scale of Mali is Rs. 775-1025 /2650-4000. Railway Board vide order dated 16.01.1998 has also issued instructions to this effect. Against the above illegality the

1  
26



applicant stated to have made several representation. His first representation is of 31.05.1999, which was supplemented by another representation and lastly he made representation on 06.02.2006 (Annexure A-6). Hence the O.A.

4. Pursuance to the notice the respondents objected the claim of the applicant firstly by taking a preliminary objection that the O.A suffers from delay and latches as he was absorbed way back on 15.04.1998 and has filed the present O.A in the year 2007, therefore, the O.A be dismissed.

5. On the other hand learned counsel for the applicant categorically stated that being recurring cause of action delay cannot be the hurdle for getting the relief. He placed reliance upon the order of Jaipur Bench of this Tribunal in the case of Narendra Singh Naruka and Ors. Vs. U.O.I & Ors reported in A.T.J 2000(1) page 56. In view of the above we are of the view that being recurring cause of action the delay cannot be said to be the hurdle in deciding the matter on merit, therefore, the objection raised by the respondents regarding delay and latches is rejected.

6. On merits, it is submitted that the applicant was declared medically de-categorised, therefore, he was ordered to be posted as Mali. Accordingly order was issued on 24.03.1998 (Annexure A-1) granting him pay scale of Rs. 750-940/2550-3200 (RP), which is according to rules. Averments to this effect has been made in para 14 of the CA wherein it is stated that the pay of the applicant has been protected.

16.



7. We have heard Shri S.S. Sharma, learned counsel for the applicant and Shri A. Tripathi, learned counsel for the respondents.

8. Learned counsel for the applicant vehemently argued that the impugned order dated 24.03.1998 (Annexure A-1) suffers from illegality as the applicant has to be absorbed on equal post corresponding to the pay scale previously drawn in the post held by him before de-categorization. He submitted that the applicant was getting salary in the pay scale of Rs. 750-1032 as Gangman, whereas after medically de-categorization he has wrongly been posted one post below i.e. Mali Khalasi whereas he has to be posted as Mali in pay scale of Rs. 750-1025. He drawn our attention to a circular issued by the Railway Board 16.01.1998 wherein the post of Mali has been shown in the pay scale of Rs. 775-1025/2650-4000 (RPS) whereas the applicant has wrongly been placed in the pay scale lower than what he was getting. Therefore, he argued that the impugned order be set aside and the applicant be granted the same pay scale, which is admissible to Mali , on which he was ordered to be absorbed.

9. On the other hand learned counsel for the respondents argued that it is no where stated that the pay of the applicant is to be fixed in the corresponding pay scale where the applicant is be absorbed after being medically de-categorized. He argued that since there was no vacancy of Mali at that time, therefore, the applicant was appointed as Mali Khalasi in pay scale of Rs. 750-940/2550-3200.

1  
lb.



10. We have considered the rival submissions and have perused the record.

11. To settle the controversy, para 1313(a) of Chapter XIII, which deals with Absorption of Medically Incapacitated Staff in Alternative Employment is relevant, which reads as under: -

"1313. Fixation of Pay

(a) On absorption in an alternative post, the pay of the railway servant decategorised on account of circumstances which did not arise out of and in the course of his employment will be fixed at a stage corresponding to the pay previously drawn in the post held by him before decategorization. If there is no such stage in the post in which he is absorbed, he may be given the stage just below the pay previously drawn by him. For running staff, the fixation will be based on basic pay plus a percentage of such pay in lieu of running allowances as may be in force.

12. Perusal of the above, it is clear that on absorption in an alternative post the pay of a railway servant de-categorised on account of circumstance will be fixed at a stage corresponding to the pay previously drawn in the post held by him. If there is no such stage in the post in which he is absorbed, he may be given the stage just below the pay previously drawn by him. No where it is stated in the C.A that at that time there was no vacancy of Mali rather in the order dated 24.03.1998 the designation of the applicant has been shown as 'Mali'. Moreover, the Railway Board circular dated 16.01.1998 made it abundant clear that the post of Mali carries the pay scale of Rs. 775-1025/2650-4000. Therefore, it is clear that the

1  
Sb



applicant is to be given pay scale of Mali as per Railway Board's Circular dated 16.03.1998 as the order of absorption and fixation of pay is of later date i.e. 24.03.1998. Accordingly his pay is to be fixed in the pay scale of Rs. 775-1025 / 2650-4000(RPS).

13. In view of the observations made above the impugned order dated 24.03.1998 is set aside to the effect of fixation of pay of the applicant in the lower grade. Respondents are directed to grant pay scale of Rs. 775-1025 / 2650-4000(RPS) to the applicant with effect from the date when the applicant was absorbed on the post of Mali with all consequential benefits. However, it is made clear that the applicant will not be entitled for any arrears of pay.

14. Let the above exercise be completed within a period of three months from the date of receipt of certified copy of this order. No costs.

*J. Chandra*

**(Ms. Jayati Chandra)**

Member- A.

*Sanjeev*

**(Sanjeev Kaushik)**

Member-J

/Anand/