

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 196/92
T.A.NO.

DATE OF DECISION 21.6.2000

Mr.Pramodrai M.Vyas

Petitioner

Mr.P.H.Pathak

Advocate for the Petitioner [s]

Versus

Union of India & Ors. Respondent

Mr.N.S.Shevde

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. A.S.Sanghavi : Member (J)

The Hon'ble Mr. M.P.Singh : Member (A)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lerdships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

...2...

Pramodrai M.Vyas,
Block No.70A,
Rukhadia Hanuman Colony,
Rajkot Junction,
Rajkot.

: Applicant

Advocate: Mr.P.H.Pathak

Versus

1. Union of India
Notice to be served through
The Chairman
Railway Board,
New Delhi.

2. Divisional Railway Manager,
Western Railway,
Kothi Compound,
Rajkot.

: Respondents

(Advocate : Mr. Sheyde)

ORAL ORDER
O.A. NO. 196 OF 1992

Date : 21.6.2000

PER : HON'BLE MR. A.S.SANGHAVI : MEMBER (J)

Heard Mr. Pathak, for the applicant and Mr. N.S. Sheyde, for the
respondents.

2. The applicant, who is working as a fireman, Class-III with the respondents, has moved this O.A., for the fixation of his salary with effect from 1978. The applicant, while working as a fireman was injured in an accident and was medically de-categorised. After ~~de~~^{in de}medical categorisation, he was offered alternative employment as a Marker and since no other post was available at that time, the applicant had accepted the same. According to the applicant, he was required to be posted in an alternative post of Class-III, but since no other post was available at that time, he was given the post of Marker and his pay was reduced in the scale of Rs. 210-270. The fireman's grade was of Rs. 260-400 and the grievance of the applicant is that even though he was given the post of Marker, his pay ought to have been protected in the scale of Rs. 260-400. Later on he was given appointment in the post of peon in the scale of Rs. 196-232 and his pay was fixed at Rs. 232/- Thereafter he was promoted as a junior clerk in 1984 in the scale of Rs. 225-308/- and his pay was fixed at Rs. 308/- . It is the contention of the applicant that he ought to have been given the scale of Rs. 260-400/- from

...4...

1978 as he was fit for ^{the post of} ~~junior~~ ^{his} clerk. He ~~is~~ alleged that ~~his~~ non-protection of his pay right from 1978 was arbitrary and discriminatory also. According to him, other similarly situated persons were absorbed in the scale of Rs. 260-400/-, while in his case, he was given this scale only from 1984.

3. The respondents have contested the O.A. by filing the reply and contending inter alia, ^{that} the O.A. is barred by limitation and that the applicant was given the post of Marker on his own request. It is also further contended that the post of peon was also given to the applicant on his own request and there was no question of protecting his pay, as this post did not carry the scale of higher post. It is also further contended that even the posting of the applicant as junior clerk was by way of sympathetic consideration of his ^{case and} ~~not~~ by way of entitlement. No assurance were given to the applicant, ^{that} his pay would be protected and since the applicant had also accepted the posting in the lower grade and accepted the scale offered to him, he can not now ^{turn} ~~given~~ back and say that the action of the respondents was arbitrary or discriminatory. They have prayed that the O.A. may be dismissed.

...5...

4. Mr. Pathak, learned advocate for the applicant has submitted written arguments, wherein, he has contended that no request was made by the applicant for the post of Peon and that the pay of the applicant was required to be protected on posting the applicant in an alternative employment. He has further submitted that the applicant has accepted the posting as a Marker under protest and had even at that time requested the authorities to consider him for Class-III post of clerk. Both the posts i.e. as a marker and Junior clerk carried the same nature of work and therefore, the applicant ought to have been placed in the scale of Junior clerk, when he was given the posting as a Marker. Given the instances of one Mr. Tarachand. C and Mr. Jathabhai H. Desai, it is argued that both of them were absorbed as clerk in the scale of Rs. 260-400, but the applicant was placed in the scale of Rs. 325-308, when he was promoted as junior clerk in 1984. It is emphasised that the applicant ought to have been given the scale of Rs. 260-400 since 1978.

5. Mr. Shevde, learned advocate for the respondents, on the other

...6...

hand has submitted that the applicant is asking for the protection of his pay in the scale of Rs. 260-400 with effect from 1978 and this itself suggest that the cause of action for filing of this O.A. has arisen in 1978. This O.A. filed on dated 23.1.1992 is therefore clearly barred by limitation and is also barred due to delay and latches. Mr. Shcvdc has also pointed out that Annexure R/2 and R/3 clearly show that the relevant posting was given to the applicant on his own request, as there was no other vacancy available. If he was not willing to this post, he might have been discharged.

6. He has also further submitted that at no point of time from 1978 to till 1992, the applicant has made no grievance regarding non protection of his pay and filing of this O.A. in the year of 1992 is clearly barred by limitation.

7. We have considered the rival contentions. It can not be contended that so far the applicant is concerned, the cause of action for filing of this

O.A. had arisen in the year 1978, when he was offered the post of Marker and his salary was reduced. Thereafter, again in the year of 1984, when he was promoted as a clerk and he was paid in the scale of 225-308/- he had a cause to make the grievance, as according to him he was not paid in the scale of Rs. 260-400. However, at the time also, he did not agitate this point and did not take any steps. Now after the expiry of a period of about 7 years, he can not say that he was given the scale of Rs. 220-308/- in stead of Rs. 260-400 and that injustice was done with him. It is quite obvious that the O.A. is hopelessly time barred and not only that it is barred by ~~limitation~~ ^{in delay & lateless} also. The documents produced by the respondents in the O.A. as at Annexure R/1 and R/2 clearly show that the applicant had willingly accepted the various posts and therefore now he can not ~~be~~ make ^{any} the grievance ~~about~~ ^{that} the orders ~~been~~ ^{were} passed in an arbitrary manner or to say that he was discriminated. We therefore find no merit in this O.A. In our opinion, the

...8...

same requires to be rejected. In the conclusion, therefore O.A. is rejected with no order as to costs.


(M.P. Singh)
Member (A)


(A.S. Sanghavi)
Member (J)

PKN

Sr. No. 627

Dated: 22/4/02

Submitted : Hon'ble Vice Chairman (vacant)

Hon'ble Mr. A.S.Sanghavi, Member (J) ~~IJC V.C.~~

Hon'ble Mr. G.C. Srivastava, Member (A)

Certified Copy of order dated 24/1/02 in CA/

Spt. C.A. No. 6959 of 2001 passed by the
Supreme Court/High Court against the Judgment/~~Order~~

Order passed by this Tribunal in CA/196/92 is placed
for perused please.

~~Prakash
S. J. (J)~~

~~D.R. (J)~~

Hon'ble Vice Chairman (vacant)

Hon'ble Mr. A.S.Sanghavi, Member (J) ~~IJC V.C.~~

Hon'ble Mr. G.C.Srivastava, Member (A) ~~eeq~~

~~Regd. No. 115
Registers~~



7720

Decree Despatch No.
Date

25/2

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 6959 of 2001
(Under Article(s) 14,16,226,227 of the Constitution of India)

1. PRAMODRAI M. VYAS Petitioner
vs
1. UNION OF INDIA & ANOTHER Respondents

To
1. UNION OF INDIA 2. DIVISIONAL RAILWAY MANAGER
THRO' THE CHAIRMAN,
RAILWAY BOARD,
NEW DELHI. W. RLY,
KOTHI COMPOUND,
RAJKOT.

3. THE MEMBER
C.A.T., OPP. SARDAR PATEL
STADIUM, AHMEDABAD.
[REF:OA/196/92 DT.21-6-2000].

Upon reading the petition of the above named Petitioner presented to this High Court of Gujarat at Ahmedabad on 23/08/2001 praying to grant the prayers and etc...

And whereas upon the Court ordered 'Rule' to issue on 24/01/2002

And Whereas Upon hearing
MR PH PATHAK for the Petitioner no. 1
MR MUKESH A PATEL for the Respondent no. 1-2

Court passed the following order :-

CORAM : D.M.DHARMADHIKARI, C.J. & D.A.MEHTA, J
DATE : 24/01/2002

"1.Rule. Mr.Mukesh Patel appears for.....
.....There shall be no order as to costs."

(COPY OF THE ORDER/JUDGEMENT IS ATTACHED HEREWITH)

Recd today

19/4/02
Confiled

22/4/2002

Witness **DEVDATTA MADHAV DHARMADHIKARI, Esquire** Chief Justice at Ahmedabad
aforesaid this 24th day of Jan, 2002.

By the Court

For Deputy Registrar
This 2nd day of Feb 2002

Note : This writ should be returned
duly certified within 2 weeks.
(570) 120220

SC/16952/01

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6959 of 2001

PRAMODRAI M. VYAS
Versus
UNION OF INDIA

Appearance:

1. Special Civil Application No. 6959 of 2001
MR PH PATHAK for Petitioner No. 1
MR MUKESH A PATEL for Respondents.

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE D.A.MEHTA

Date of Order: 24/01/2002

ORAL ORDER

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

1. Rule. Mr. Mukesh Patel appears for the respondents and waives service of Rule. With the consent of learned counsel for the parties, the petition is taken up for final hearing today.

2. This petition under Article 227 of the Constitution of India has been filed against the order dated 21.6.2000 passed by the Central Administrative Tribunal, Ahmedabad Bench.

3. The petitioner now stands retired from the post of junior clerk in the Western Railway in the year 1995. The relief claimed is now confined before us to proper fixation of his pay on the date of his retirement and consequent payment of arrears of salary as also due fixation of his pension.

4. Brief service history of the petitioner is as under:

He was appointed as a cleaner on 30.4.1956. While he was working as a fireman, Grade II, he sustained an injury on 3.1.1978. Because of this injury in the course of employment, he was decategorised and was posted as Marker on 12.7.1978. Later on, he represented for change of category on the ground that as a result of the injury, he was unable to discharge the duties of the post of Marker. His case was referred to the Divisional Medical Officer, Rajkot and as per the opinion of the DMO, he was posted as a peon at his own request on 12.3.1979.

5. The petitioner continued to represent for giving him proper status and pay in the light of the Railway Board Circulars which provide for compensation and fair treatment to the employees who have suffered injuries in the course of their employment. The petitioner's case was reconsidered and on 19.7.1984, he was given the post of junior clerk in the scale of Rs.225-308. It is necessary to point out that as a fireman, Grade II, he was in the scale of Rs. 260-300 and at the time, when he was absorbed as Marker in the scale of Rs. 210-270, he was drawing, in the decategorised post, total emolument of Rs. 308/- so that there was drop in his total emolument in the post of Marker because his pay in the post of Marker was fixed at Rs. 270/- per month being the highest pay in that scale of the post. The petitioner was then accommodated as peon in the scale of

Rs. 196-232 and thus, his total pay was brought to Rs. 232/per month. It is only in the year 1984 when he was promoted to the post of junior clerk in the scale of Rs. 225-308 that his pay was fixed at Rs. 308/-.

6. Learned counsel appearing for the petitioner, in assailing the order of the Tribunal before us, submits that in the body of the petition filed before the Tribunal, extracts of the Railway Board Circular dated 11.1.1979 were relied to request the Tribunal to direct the Railway Administration to refix his pay in the post of junior clerk on the basis of his total emoluments which he was drawing while he was serving as a fireman in the running staff and as per the existing policy contained in the Railway Board Circulars, he should also be given running allowance which he was getting while he was a member of the running staff.

7. It may be mentioned that the Tribunal not only rejected the claim of the petitioner on merits but also stated that the claim was highly belated as the cause of action for claiming proper pay fixation arose in 1978 when he had suffered the injury and was offered alternative job.

8. So far as the question of delay is concerned, we may only point out that the Tribunal lost sight of the fact that along with the petition filed before the Tribunal, application for condonation of delay was made which was already allowed by the Tribunal. The Tribunal also lost sight of the fact that along with the petition,

the petitioner had filed two communications dated 19.2.1991 (Annexure 'A') addressed by DRM (E), Rajkot to the petitioner rejecting his representation for correct fixation of pay. By communication dated 15/18-6-1990 (Annexure 'A-3' to the petition before the Tribunal), the petitioner was informed by the General Manager that since decision of pay fixation was not within the competence of the Railway Manager, it had been referred for favourable consideration to the Railway Board. It is in these circumstances that the petitioner approached the Central Administrative Tribunal.

9. So far as claim for pay fixation which is adversely affecting his terminal benefits is concerned, the cause of action is recurring and the petitioner could not have been denied the relief by the Tribunal only on the ground of delay. Period of limitation could not have been counted by stating that the cause of action arose in 1978 when the petitioner suffered injury and he was offered alternative job.

10. Reverting to the merits of the case, what we find is that at the time when the petitioner suffered injury and was given alternative job on the post of Marker, relevant Railway Board circulars dated 11.1.1979 were not in force and, therefore, his case could not have been considered on the basis of the circulars. But subsequently, the petitioner was accommodated on the post of peon and lastly, he was given the post of junior clerk on which he retired. The question of his due pay fixation arose on the post of junior clerk on 19.7.1984.

when the circulars dated 11.1.1979 were very much in force. We have perused the relevant part of the circulars which had been extracted in the body of the petition and we find that they contain guidelines for the railway authorities to sympathetically deal with cases of members of the running staff who suffer injuries in the course of their employment and are medically decategorised by accommodating them on suitable jobs. As a policy, it has been decided that such employees, even on alternative jobs, should be given pay protection and they should be given allowances which they were getting while they were members of the running staff.

11. In the case of the petitioner after he was accommodated on the post of junior clerk on 19.7.1984, no effect was given to the Board Circulars and his pay was not fixed notionally along with allowances when he was member of the running staff and had suffered injury.

12. Learned counsel for the Railway very strenuously urged that the petitioner has given in writing that he was willing to go on lower post and on lower scale of pay. Although he was not eligible for the post of Marker or for the post of junior clerk, he was accommodated and that grace and accommodation should not be misutilised further to raise claims of higher pay.

13. Having given our careful consideration to the submissions made and particularly having gone through the Railway Board Circulars extract of which was filed before the Tribunal, we are of the view that the petitioner's

case for refixation of pay on the post of junior clerk with effect from 19.7.1984 deserves to be accepted on the basis of the circulars which were in force then. We are aware that the petitioner has retired in the year 1995. On due pay fixation, the petitioner would be entitled to arrears of salary from 1984 till the date of his retirement. He had waited for a long period for the decision from the competent Railway Authorities. For this entire period, the petitioner would have been entitled to arrears of pay. Learned counsel for the petitioner states that at this distance of time, he cannot press for arrears of pay, but he would definitely insist on due fixation of pay notionally from 1984 when he was absorbed as junior clerk, and fixation of his total emoluments on that basis on the date of his retirement so that pension is properly fixed and he gets regular pension on that basis.

14. The request appears to be fair and reasonable.

15. For the aforesaid reasons, we partly allow the petition and set aside the order of the Tribunal dated 21.6.2000. We direct the respondents representing railway authorities to consider the petitioner's case for fixation of his due pay on the post of junior clerk with effect from 19.7.1984 on the basis of Railway Board's circulars (extract of which is to be found in the body of the petition) filed before the Tribunal. After considering his case for pay fixation on the post of junior clerk from 1984, his total pay will be fixed on the date of his retirement in 1995 and on that basis, his

be fixed and arrears of pension, if any, be paid from the date of his retirement. We make it clear that the petitioner will have no claim for any interest on that sum. The order of pay fixation and consequent calculation of arrears and payment be completed within a period of three months from the date of the receipt of this order by the respondents.

The petition is accordingly partly allowed. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

sdl
(D. M. Dharmadhikari, C.J.)

sdl
(D. A. Mehta, J.)

parekh

TRUE COPY

Assistant Registrar

The _____ day of _____ 2002

(See Rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH
OA/TA/RA/CP/ 196/92 of 200Pramodrai vs Vyas

APPLICANT(s)

VERSUS

No. 58

RESPONDENT(s)

I N D E X - S H E E T

SR.NO.	DESCRIPTION OF DOCUMENTS	PAGE
01.	<u>ca</u>	<u>1-21</u>
02.	<u>Reply</u>	<u>22-29</u>
	<u>Rejoinder</u>	<u>30-32</u>
	<u>Reply on Ments</u>	<u>33-35</u>
	<u>mt/99/92</u>	<u>36-38</u>
	<u>o.o. 216/10</u>	
	<u>Part of Petition</u>	<u>-39-</u>
	<u>-ca</u>	<u>40-41</u>
	<u>o.o. 217 21/6/10</u>	<u>22/6/10</u>
	<u>Sc/16959/01</u>	<u>Judgment dt. 24/1/02</u>
		<u>7 page</u>

Certified that the file is complete in all respects.

pu 4/92

Signature of S.O. (J)

rd.

Signature of Dealing Hand.

.....

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD.

Submitted: C.A.T./JUDICIAL SECTION.

Original Petition No: 196

of 92.

Miscellaneous Petition No: -

of -.

Shri P M Vyas Petitioner(s)

Versus.

Union of India & C Respondent(s).

This application has been submitted to the Tribunal by

Shri P H Pathak.

Under Section 13 of the Administrative Tribunal Act, 1985.

It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985 and Central Administrative Tribunals (Procedure) Rules, 1985.

The Applications has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant/Advocate may be advised to rectify the same within 14 days/draft letter is placed below for signature.

Index & document not fully submitted

ASSTT:

16/2/92. Rechristian 2/2/92

S.O.(J):

in Gakkaw 7/2/92

objection noted

D.R.(J):

9/3/92 D.R. 9/3/92

KNP181191

*Advocate Concierge has removed office
objection to day : we may fix for
admission Rechristian 16-4-92*

*AS
a.3*

S.O. (J) + 16/4/92

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

APPLICANT(S)

P m Vyas

RESPONDENT(S)

Union of India & C

PARTICULARS TO BE EXAMINED

ENDORSEMENT AS TO
RESULT OF EXAMINATION.

1. Is the application competent ? Yes

2. (A) Is the application in the prescribed form ? Yes

(B) Is the application in paper book form ? Yes

(C) Have prescribed number complete sets of the application been filed ? Yes

3. Is the application in time ? No
If not, by how many days is it beyond time ? No
Has sufficient cause for not making the application in time stated ? No

4. Has the document of authorisation/ Vakalat Namabean filed ? Yes

5. Is the application accompanied by D.D./I.P.O. for Rs.50/- ? Number of D.D./I.P.O. to be recorded. D.D. no 876919

6. Has the copy/copies of the order(s) against which the application is made, been filed ? Yes

7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed ? Yes

(b) Have the documents referred to in (a) above duly attested and numbered accordingly ? Yes

(c) Are the documents referred to in (a) above neatly typed in double space ? Yes

Has the index of documents has been filed and has the paging been done properly ? Yes

PARTICULARS TO BE EXAMINED.

ENDORSEMENT TO BE RESULT OF EXAMINATION.

9. Have the chronological details of representations made and the outcome of such representation been indicated in the application ?

Y

10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal ?

No

11. Are the application/duplicate copy/copies signed. ?

Y

12. Are extra copies of the application with annexures filed ?

Y

(a) Identical with the Original.

(b) Defective.

(c) Wanting in Annexures

No. _____ Page Nos. _____ ?

(d) Distinctly Typed ?

Yes

13. Have full size envelopes bearing full address of the respondents been filed ?

Y

14. Are the given addressed, the registered addressed ?

Y

15. Do the names of the parties stated in the copies, tally with Name(s) those indicated in the application ?

Y

16. Are the translations certified to be true or supported by an affidavit affirming that they are true ?

Y

17. Are the facts for the cases mentioned under item No 6 of the application ?

Y

(a) Concise ?

(b) Under Distinct heads ?

(c) Numbered consecutively ?

(d) Typed in double space on one side of the paper ?

18. Have the particulars for interim order prayed for, stated with reasons ?

Y

checked
Rg
22/92

MR. 21/92
23/1/92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

ORIGINAL APPLICATION NO. 196 OF 1992

Pramodrai M. Wyas

.. applicant

vs

Union of India & ors.

.. respondents

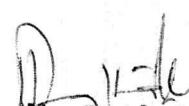
I N D E X

<u>Sr. No.</u>	<u>Annx.</u>	<u>Particulars</u>	<u>Pages</u>
1.	-	Memo of the application	1 & 14
2.	'A'	Copy of order dt. 19.2.91	15 & 16
3.	A/1	Copy of letter dt. 11.4.86	17
4.	A/2	Copy of order of DRM(E) Rajkot dt. 14.8.80	18
5.	A/3	Copy of letter dt. 15.6.90	19
6.	A/4	Copies of letters calling the applicant before Headquarter Office 6/11/89	20
7.	A/5	Copy of advocate's notice dt. 23.9.91	21 & 22

-o--o--o--o-

Date :

Ahmedabad


(P. H. Pathak)
Advocate for the applicant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD
ORIGINAL APPLICATION NO. 196 OF 1991

I. Applicant : Pramodrai M. Vyas
Hanuman
Block No. 70A, Rukhadia Colony
Rajkot Junction
Rajkot

II. Respondents : 1) Union of India
Notice to be served through
The Chairman
Railway Board
New Delhi
2) Divisional Railway Manager
Western Railway
Kothi Compound
Rajkot

III. Order under challenge : The applicant declare that
Non fixation of the scale of
the subject matter of this
pay, payable to the applicant
application is within the
and non extending the
jurisdiction of this tribunal
benefits of consequential
and administrative
benefits thereto.

IV. Jurisdiction &
&
V. Limitation : The applicant declare that
the subject matter of this
application is within the
jurisdiction of this tribunal
and so far the limitation is
concerned, the applicant
has filed a separate
application for condonation
of delay.

VI. Facts of the Case :

1. The applicant here is a citizen of India and his grievances are that as per the Railway Board's circular his case is required to be considered for reviewing his scale of pay and to place him in Class III category after his decategorisation, but the respondent has since long not applied mind and decided properly and now the matter is referred to the Railway Board and is pending before the Railway Board since long. It is submitted that the decision which is conveyed by the respondent No. 2 vide his letter dt. 19.2.91 does not mention about the finalisation of case by the Railway Board, but he said that the case of the applicant is rejected and for the same, the respondent No. 2 has not given any reason whatsoever. A copy of the impugned order dt. 19.2.91 is annexed and marked as Annexure 'A' to this application, whereby he has informed that the fixation of the salary of the applicant is correctly done. That in the said letter, the respondent No. 2 has referred his earlier letter dt. 25.10.90 where also no reason for fixation of the pay of the applicant was given and the decision is conveyed to the applicant after a very long period. That neither of the letter mention about any decision by the Railway Board nor the orders are in confirmity with the Railway Board's direction as well as no reason whatsoever are assigned and therefore, it is a clear case of non application of mind and the powers are exercised arbitrarily and therefore, the impugned decision on the part of the respondent are required to be quashed and set aside.

2. That the applicant has joined the services of Railway with effect from 30.12.1956 as Loco Cleaner. That in the year 1972, he was promoted to the post of Second Fireman and in the year 1974, the applicant was working as First Fireman and was confirmed on that post. That the post of First Fireman is of Class III employee. The applicant has passed the examination for Shunter-cum-driver and Diesel Driver in the year 1976. That on 3.1.78, while the applicant was on duty taking 342 Down Passenger Train, he met with an accident and was admitted in the hospital at Rajkot. That his left eye was injured by a Babool Thorn and after a major operation, it was removed, but unfortunately the applicant has lost his eye and thereafter the applicant was declared fit for duty, but He was decategorised. That prior to his decategorisation, the applicant was working as a Class III employee in the scale of Rs 260-400. That after decategorisation, the applicant was required to be absorbed by giving him an alternative job by protecting his pay as per the direction issued by the Railway Board. Flouting the order of the ~~respondent~~ ^{Railway} Board, the applicant was placed as Marker in the scale of Rs 210-270 and thereafter as a Peon in 196-232, in the year 1979. That in the year 1984, the applicant was again promoted to the post of Clerk in scale of Rs 225-308 and is confirmed on the post w.e.f. 23.11.84, vide letter dt. 11.4.86. A copy of the letter dt. 11.4.86 is annexed and marked as Annexure A/1 to this application. It is pertinent to note that the post of Marker which was given to the applicant on the ^{basis} ~~post~~ of decategorisation, as alternative job, the applicant has accepted the same with objection and without prejudice to his right to get his pay protected.

3. It is pertinent to note that so far the employee who

injured while on duty and is declassified, it is necessary to protect his pay in case he was given alternative job in the lower scale or in case the alternative equivalent post is not available at any cost, the Railway ^{authority} Board has to review his case immediately on the availability of Class III post. The Railway Board's circulars and the relevant rules are as under :

"In case of declassification under circumstances arising out of and in the course of employment the pay of a declassified employee (in the case of running staff, pay plus the percentage of pay treated as emoluments in lieu of running allowance) drawn before declassification should be protected in the absorbing grade and if it exceeds the maximum of the absorbing grade the difference may be allowed as personal pay to be absorbed in future increments/increases in pay. Other allowances such as Dearness Allowance, City Compensatory Allowance, House Rent Allowance drawn by a medically declassified employee should be allowed on pay plus personal pay as admissible in the absorbing grades."

That for the medically unfit running staff, the Railway Board has vide its letter No. E(NG)11-70 RE 3-4 of 3.11.71 (SN 5497) has pointed out the alternative suitable post. While dealing with the alternative employment to be suitable in Rule 1309, it is mentioned that the appropriate offer for suitable post for Group 'C' i.e. Class III employee would not be Group 'D' employment though the emoluments remain the similar. Rule 1309 is reproduced here as under:

"1309. Alternative employment to be suitable :-

(i) The alternative post to be offered to a railway servant should be the best available for which he is suited, to ensure that the loss in emoluments is a minimum. The low level of emoluments should not, however, deter officers concerned from issuing an offer if nothing better is available. The railway servant must be given an opportunity to choose for himself whether he should accept the offer or reject it.

S

(ii) It would not, however, be appropriate to offer a Group 'D' post to a railway servant in the Group 'C' service even if the emoluments are almost similar, except in special circumstances. For instance, a cleaner who had risen to be a Shunter could be offered the post of a Cleaning Jamadar if no better post were available.

(iii) For the purposes of this paragraph, an alternative employment will be considered 'suitable' if the emoluments of the same are at level not more than about 25 per cent below his previous emoluments in his substantive appointment, or officiating appointment from which he was unlikely to revert. In the case of running staff, the former emoluments for the purpose of comparison will be basic pay plus a percentage of such pay in lieu of running allowance as may be in force. The figure of 25 per cent is in the nature of a guide and not a rigid rule. Each case should be judged on its merits. The underlying object is to ensure that the appointment offered will be considered 'suitable' if it will not force the railway servant to adopt a standard of living (as far as the necessities of life are concerned) of a drastically lower standard of comfort. A railway servant with a large family and considerable commitments would merit greater consideration than one without or with few dependents.

(iv) While finding an alternative post for medically incapacitated running staff 30% or such other percentage as may be fixed in lieu of running allowance should be added to the minimum and maximum of the scale of pay of the running staff for the purpose of identifying 'equivalent post' (Board's letter No. E(NG) II-77-RE 3-2 dt. 2.9.77). All cases decided on or after 1.1.1973 may be reviewed and benefits as above given only if (a) there had been an acute hardship, and (b) there should be no effect on others (Board's letter No. E(NG) II-79 RE 3/5 dt. 22.5.79). Even in such cases the matter of payment in the equated scales shall have a prospective effect and no arrears prior to the issue of orders and proforma fixation of pay shall arise".

The Railway Board's circular No. E(NG) II-70 RE 3-4 of 3.11.71 provides that where it is not possible to find out suitable alternative permanent post and/or suitable temporary post during the period of leave, permanent railway servant may be absorbed against the temporary post for which he is considered suitable, as an interim measure and he should be shifted at the earliest opportunity to the suitable permanent post. The further principles required to be considered are mentioned by the Railway Board's letter No. E(NG)1-78 SR 6/6 of 11.1.79 (N.R.S.N. 7195) which are reproduced here as under :

1. Quite often it happens that due to vacancies not being available in equivalent grades a medically declassified employee has to be offered absorption in a lower grade.

In some cases such employees refuse the lower grades in the hope of vacancies in higher grades materialising. It should be open in such cases for an employee to accept a lower grade with a request that if a vacancy in a grade equivalent to what he held before decategorisation occurs in the same cadre he should be considered eligible for the same in preference to a junior medically decategorised employee. While the employee can be expected to put in an application when this contingency happens, it is also necessary for the administration *suo moto*, when considering a subsequently decategorised employee for absorption in a cadre, to look into cases where senior decategorised employees may have been absorbed in lower grades in the same cadre during previous three years and initiate a review. Cases decided before 11.4.75, need not be reopened unless there are very exceptional circumstances.

2. It is also not the intention that even after review the junior employee already absorbed and working in a higher grade should be displaced to make room for the senior. The senior may be promoted against the next vacancy arising in the grade and relative seniority in that grade refixed taking into account the position before medical decategorisation.

3. Where a junior has already been absorbed in an equivalent grade but a senior gets medically decategorised during the next three years period and has necessarily to be considered for absorption in the same cadre but no vacancy in a similar grade is available, he may be provisionally absorbed in a lower grade with the understanding that the next vacancy occurring in the higher grade would be given to him. On such vacancy occurring and his being posted therein, seniority should be recast as per foregoing para.

4. There will be cases where a senior employee was absorbed in a grade taking into account his position before decategorisation and a junior subsequently got promoted to a higher grade but ultimately employment in a higher grade. It is not the intention that such cases which happened because of the efflux of the time should be reviewed."

In light of the above provisions, it is obligation and duty on the part of the respondent administration to consider the case of the applicant for offering alternative employment and for fixation of his salary. It is not the case that at the time when the applicant was decategorised, Class III posts were not available for which the applicant is eligible and entitled to. That the other similarly situated employees are extended the benefits of Class III employment and though the

9

applicant was declared decategorised prior to them, the case of the applicant was not reviewed. As an example, a copy of the order passed by the Divisional Railway Manager (E) Rajkot dt. 14.8.80 is annexed and marked as Annexure A/2 to this application. That it is *prima facie* case that the respondents have acted in arbitrary manner and without application of mind and not considered at all the request on the part of the applicant. That due to non fixation of the salary of the applicant as per the above direction, the applicant is losing about Rs 200/- to Rs 300/- per month and it is a continuous cost which affect the applicant every month and therefore, the order at Annex. 'A' is required to be quashed and set aside.

4. It is further submitted that the applicant has made several representations against non fixation of his salary and non extending the benefits of Railway Board's circulars. That there are many representations made by Members of Parliament and representatives of the union etc. to consider the case of the applicant, as there is a gross injustice done to the applicant because ~~there was~~ he has served for 22 years to the department and there was nothing against him and due to bad luck, he met with an accident while on duty and he has suffered a loss of one eye. That the respondents did not care to consider the case of the applicant and as per the information of the applicant, the Railway Board has not decided the case of the applicant and is still pending because vide letter dt. 15.6.90 the General Manager, Western Railway, Churchgate, Bombay has informed the applicant that it is not within the competency of Railway, the matter has been referred for favourable decision to Railway Board and as and when the decision of the Railway Board will be available, the same will be informed to the applicant. A copy of letter

dt. 15.6.90 is annexed and marked as Annexure A/3 to this application. That prior to this letter, the applicant was called personally by the General Manager to consider his representation and at the personal meeting, the applicant has pointed out all the grievances. That the relevant letters calling the applicant before the Headquarter Office are annexed and marked as Annexure A/4 to this application collectively. That thereafter the applicant has received the decision of the respondent No.2 saying that the fixation of pay of the applicant is made properly and nothing is required to be done. As per the information of the applicant, the issue is still pending before the Railway Board and intentionally the respondent No.2 has not mentioned any reason in his letter nor has mentioned anything about the decision of the Railway Board. That the impugned letter is not a speaking order mentioning any reason. That it is the duty and obligation on the part of the respondents to give reason order while rejecting the request of the applicant because due to rejection of the applicant's request, the applicant is adversely affected and it is a issue of civid consequences against the applicant and therefore, a speaking order is required to be given by the respondents. Only on this ground, the application is required to be allowed.

5. It is further submitted that it is a clear case of non application of mind by the respondent No.2 because the similarly situated employees, who are declared unfit after the applicant, are offered the alternative employment of Class III employment, for which the applicant is also entitled to, but as a temporary measure, the applicant has accepted the post of Marker.

It is the duty of the respondents at that time to offer Class III post to the applicant instead of Class IV and the applicant is running staff. That while placing the applicant as Marker, his pay is required to be fixed as mentioned above as per the provisions of Railway Establishment Manual as well as the case of the applicant is required to be reviewed as and when Class III posts are available with the respondents. Inspite of repeated representations on the part of the applicant to reconsider his case and to give him the benefits of Railway Board's circular and to fix the salary accordingly, the respondents did not care to go into the merit of the case and to find out the truth and when the General Manager has referred the matter to the Railway Board, the respondent No.2 mentioned in his letter that as per the letter of the Headquarter Office, the fixation of the salary of the applicant is proper. The applicant is not informed on what reason the respondent state that the fixation is correct.

6. It is submitted that after the various representations made by the applicant, when the applicant has received the last letter from the respondent, the applicant has approached to the advocate and while pointing out all the relevant rules, a notice was issued informing the respondent No.2 that while deciding the case of the applicant the relevant rules are not taken into consideration and therefore, it is required to be reviewed. A copy of the advocate's notice dt. 23.9.91 is annexed and marked as Annexure A/5 to this application. The respondent did not care to reply the notice of the advocate nor reviewed the case of the applicant and therefore, the present application is required to be filed against the respondents, challenging the arbitrary and illegal action on the part of the respondent No.2 to reject the fixation of pay of the applicant. From the above, it is clear that the

It is submitted that as per the Railway Board's circulars and provisions abovementioned, the respondents are under obligation to fix the salary of the applicant accordingly namely, to protect his pay and to give 30% Running Allowance to the applicant. That in 1978, the applicant met with an accident. He was working in Class-III and in the scale of when Rs 260-350. That in 1979, he was declared fit, instead of offering any Class-III post he was given posting in Class-IV in scale of Rs 210-270 and subsequently in 196-232. That when the applicant was declared medically decategorised, his salary was Rs 308/- in scale of Rs 260-350. That the Fireman is Class-III employee and therefore, he was required to be accommodated in the employment for Class-III. That the fixation of pay of the applicant is required to be made as Rs 308/- as basic pay + 30% running allowance (mileage) which comes to about Rs 92.40. The total comes to about Rs 400.40 and therefore, the fixation of the salary of the applicant was required to be made at Rs 400/- basic. Instead of fixing the salary as stated above, the applicant was accommodated in Class-IV employment in scale of Rs 210-270. That if the pay of the petitioner is fixed according to the relevant rules, the effect will be that, in the year 1977, the applicant was getting Rs 308/- basic salary + 30% mileage allowance + other allowances. That in 1978, he will earn one increment that will be Rs 314/- in 1979, Rs 320/-, in 1980, Rs 326/-, in 1981, Rs 334/-, in 1982, Rs 342/- and in the year 1983, Rs 350/- + other allowances. Accordingly in the year 1986, his pay is required to be fixed at Rs 1,320/- and the same will be in 1989 as Rs 1,410/-, and accordingly in the year 1991, the applicant will get the pay fixation

at Rs 1,480/- with permissible allowances. That from the initial stage of his decategorisation, his pay is not properly fixed by the respondents nor he was extended the benefits of 30% running allowance known as mileage allowance. Therefore, every month the applicant is losing a substantial amount. That the fixation made by the respondent authority is ex facie bad in law and have not at all considered the Railway Board's circulars. Thus looking to ~~overall~~ ^{these} circumstances, the pay of the petitioner is required to be protected.

7. It is further submitted that as stated in the application, the second obligation cast by the Railway Board and the provisions of Railway Establishment Manual on the respondents is, when an employee is offered Class IV employment, as soon as Class-III employment is available, his case is required to be reconsidered for the same. Here, after decategorisation of the applicant, many a times, the posts were available vacant. Not only this but junior to the applicant, who is similarly situated, was considered for the posting in Class-III employment. There is no justification available with the respondents to deprive the applicant of the benefits of Class-III employment and to fix the pay of the applicant accordingly, but the respondents have without application of mind and acting in total arbitrary manner, not fixed the salary of the applicant properly and it affects the salary of the applicant every month and the effect will be on the pensionary benefit at the time of retirement of the applicant and therefore, the present application is required to be filed.

8. Looking to abovementioned overall circumstances of the case, the applicant is having a strong *prima facie* case in his favour. The balance of convenience is also in favour of the applicant. The provisions of Railway Establishment

Manual specifically provide ~~that~~ for protection of the pay and granting of running allowance to the employee working in the running side. That the balance of convenience is also in favour of the applicant because on one hand, due to hard luck, he met with an accident while on duty and after the operation he lost his eye. It is the obligation on the part of the respondents to help the person like applicant injured on duty and to accomodate them at appropriate place, but here, the case of the applicant is tossed from table to table without any fruitful result and even the highest authorities of the respondent are not provided with the correct facts. Thus it is a fit case to grant interim relief prayed for in the application.

VII. Relief sought for :

In the abovementioned facts and circumstances of the case, the applicant pray that :

(A) The Hon'ble Tribunal be pleased to declare the impugned decision dt. 19.2.91, rejecting the ~~request~~ of the applicant regarding fixation of his salary, as arbitrary, illegal and unconstitutional and pleased to quash and set aside the same and direct the respondents to fix the salary of the applicant, as per the direction of the Railway Board, by granting Running Allowance etc. and further direct to pay the arrears of salary on the basis of refixation, from the date on which the applicant was decategorised, with all consequential benefits and with 18% interest.

(B) Be pleased to declare the inaction on the part of the respondents not fixing the salary of the applicant, who is injured on duty, as per the

13

direction of the railway board, as arbitrary and direct the respondents to refix the pay of the applicant and further declare the inaction on the part of the respondents not considering the case of the applicant for alternative employment in Class III, as illegal and direct the respondents to extend all the benefits considering in Class-III employment from the date of his decategorisation and grant all consequential benefits.

- (C) Be pleased to direct the respondents to pay Running Allowance to the applicant as per the direction of the Railway Establishment Manual from the date of his decategorisation and pay the arrears with 18% interest.
- (D) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice.

VIII. Interim Relief :-

- (A) Pending admission and final disposal of the application be pleased to direct the respondents to fix the pay of the applicant granting him the benefits of decategorisation and running allowance etc. and start paying the same with immediate effect.
- (B) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice.

IX. The applicant has not filed any other application in any other court including the Hon'ble Supreme Court of India with regard to the subject matter of this application. The applicant has no other alternative remedy available except to approach this Hon'ble Tribunal by way of this application.

X. Details of Postal Order :

Postal Order No. 87619
Issued by M/s. *Pathak & Co.*

Dated : 22/1/92
Amount of Rs 50/-

XI. An index in duplicate containing the document is produced herewith.

XII. List of enclosures as per above index.

Date : 22/1/92
Ahmedabad

P. H. Pathak
(P. H. Pathak)
Advocate for the applicant

VERIFICATION :-

I, Shri B. M. Patel adult, resident of occupation V.Y.D. has gone through the application and do hereby verify that the contents of para 1 to 12 are true to my personal knowledge and paras 1 to 12 believed to be true on legal advice and that I have not suppressed any material facts.

Date:-

Ahmedabad.

DEPONENT.

R.H. Pathare
Filed by M. R.H. Pathare.....
Learned Advocate for Petitioners
with second set of 2 copies
copies copy served, not served to
other side

23/11/19, Dy. Registrar C.A.T.(I),
A'bad Bench

15

ANNEXURE - 'A'

Dated : 20.10.90 /9/2/90

No. EP/P/12 (T)

From : DRM(E) To : Sh PM Vyas Ck.
RJT Th Supdt. ET

Sub : - Fixation of Pay of Medically deccate go

Ref : - rised staff

Ref: - HG Office letter No. E(P&A) 773/27 dt. 11.10.90

HG Office has advised vide letter under reference
that your pay has been correctly fixed as per orders
existing at the time of your medical decategorisation

This is for your infomration.

sd/-

DRM(E) RJT.

TRUE COPY:

(Advocate)

Dated 19/2/1991

16

No. ED/P/12 (T)

From : - DRM(E)

RJT

To , Sh PM. Vyas Clerk

Through Supdt. ET.

Sub :- Representation from staff received by

Hon'ble minister for Railway

Ref :- Your representation dt. 07/08/90.

In regard to your representation quoted above.

It is advised that your case has been thoroughly examined at HG office level and as already advised to you vide this office letter No even dt. 25/10/90, your pay has been correctly fixed as for orders existing at the time of your medical decategorisation.

DRM (E) RJT

Copy to :-

P.I. (R) /Astt.

in ref to this office

letter No. e.804/2 conrl 121 dt. 28/1/91

TRUE COPY

(Advocate)

17

ANNEXURE - A/1

A copy of memorandum No. ED/P/12 dated 11.4.86 issued by DPO Rajkot.

Sub :- Promotions, reversion & transfers-class III staff.
Ref :- This office memorandum No. ED/2p/23 dt. 19/7/84 & This office memorandum No. ED/P/12 dt. 23/11/84.

The promotion of Shri P M Vyas working in ET section who was promoted as Clerk scale Rs 225-308(R) on adhoc basis/on trial basis for 6 months in terms of this office memo. quoted above is regularised as Clerk scale Rs 225-309 (R) from 19.7.84.

.....

TRUE COPY.

(Advocate)

No. EP369/9/vol.V(Mech.)

14/8/80

Office Note :-

Sub :- Absorption of medically declassified staff
class III staff - Mech deptt.

Joint note recorded at NP 6 of file No. EP.369/9/Vol.V(Mech) by Mr. DME(L); DCS & DPO is reproduced below for information and immediate necessary action ;

"Shri Tarachand C. medically declassified Shunter scale Rs. 290-240(R), fit in C-1 was screened for alternative post in the category of clerk scale Rs 225-308(R)/260-400 (R). He does not know English. As such he is not considered fit for the above posts. He was also offered the post of Marker. He stated that since he has put in ~~the~~ ~~max~~ 29 years service he would like to request for retirement after checking up amount of pension admissible to him.

(2) Shri Jethubhai H. Diesel Asstt scale Rs 290-350(R) declared fit in B.1 was screened for the ~~max~~ post of TC scale Rs 260-400(R) as requested by him. He has been medically declassified as he met with accident while not on duty. He was tested and is considered quite fit for the post of TC. He is therefore strongly recommended for the post of TC".

His posting as TC has un approved of DRM

For DRM (E) RJT.

Copy to :-

CC EM(Duplicate). He will pl. obtain willing note for item 0.1 viz. Shri Tarachand C. for retirement if he desires as he has stated that the same will be submitted through the LF MSH.

For item No.2 viz. Shri Jethubhai H. his willing note is enclosed.

DA: as stated.

SE(ET) for information and necessary action. Reg. absorption of Shri Jethubhai H. His absorption as TC has the approval of DRM.

TRUE COPY.


(Advocate)

P/3 19

A/5

WESTERN RAILWAY

HEADQUARTER OFFICE
CHURCHGATE
BOMBAY 400 020

No. E 1025/29/1.

Dated 15th Jund, 1990.
18

Shri P.M.Vyas,
Jr. Clerk,
DRM'S Office, RJT.

Through Divl. Railway Ma nager, Rajkot.

Reg : Interview with the General Manager,
on 11.12.89.

Ref : Your Telegram dated 8-6-90.

As the case in not within the competence of the Railway to decide, the matter has been referred for favourable consideration by the Railway Board. On receipt of reply from the Board, you will be advised further in the matter, in due course.

(P.P.Kunhiknishnan)
for GENERAL MANAGER

TRUE COPY,

(A. Advocate)

No. ED/P/R (T)

Dated 6.12.89

From : DRM(E)

To, Shri P M Vyas Clerk

Rajkot

Sub :- ~~Partitions~~ of Memorials staff grievances.

Ref :- This office letter No. even dated 4.12.89.

It is further advised that special pass has been given to you and your son to go Bombay. There are no provisionous to freat the period as on duty. However, this assue can be examined later on if necessary, by making a reference to HQ office.

DRM (E) Rajkot.

No. ED/P/R (T)

Dated 7.12.1989

From :- DRM(E)

To, Shri P M Vyas Clerk

Rajkot

Sub :- Special leave

Ref :- Your application dated 6/12/89 addressed to DRM Rajkot.

DRM has directed that inntratly, you may go on your own leave.

Simultaneously HO office decision is sought for about period to be treated which will be couraged to you on its receipt.

Please note that you have to attend HO office ccg for GM's interview on 11/12/89 10/12/89 being Sunday as advised vide this office letter NO. even of 4.12.89

DRM (E) Rajkot.

TRUE COPY

(Advocate)

21

ANNEXURE - A/5

Date : 23/4/1991

To,

Divisional Railway Manager
Western Railway
Kothi Compound
Rajkot.

Regd.A.d.

Under the instruction of my client, Shri Pramodrai M. Vyas, working at present under you as Jr. Clerk, residence of Rajkot, I the undersigned advocate inform you by this notice as under :-

That my client has joined the services of Railway in the year 1956 and has passed Diesel Driver training. That while on duty taking 342 Down Passenger Train, he was injured and his left eye is damaged and he lost eye for ever. That after long time, my client was declared fit. That before the accident, my client was working as Class IIII employee in the scale of Rs 260-400. But after his successful operation ~~was restrained to keep the job fit~~ fitness given by the Doctor, my client was constrained to accept the job of class IV i.e. of Market. That the difference in total employment payable to Class III employee i.e. Fireman 'B' and to the Marker is more than Rs 200/-. That for Marker, my client was placed as Peon and subsequently now working as Clerk. That my client has represented to you as well as to the higher authorities. That after his medical de-categorization, he is required to be placed in Class III employment and he is also required to be paid damages for loss of ~~one~~ ~~eye~~ eye while he was on duty. That you have delayed the case of my client and has informed him that the same is pending before the Headquarter and sometime it was pending before the Railway Board, but nowhere you have given clear details on which date the case of my client is sent to the Railway Board, or the Headquarter Office. That your action to constrain my client to accept Class IV employment, though he has accepted the same with objection, is ex facie illegal and arbitrary. That you are under obligation to accomodate my client in Class III post and as per Railway Board's circular No. RB'S No.E(NG) 10 SR 6/83 of 5.3.81 That it would not be proper to offer Class IV post to a Railway servant who is working in Class III service even though the employment is equivalent. That further the Railway Board has vide its letter No. RB'S E(NG) 1-78 SR 6/6 of 11.1.79 (N.R. S.N. 7195) has given the guideline to be followed strictly for absorption in alternative category after medical declassification of an employee. That in the said letter, four conditions are mentioned which specifically provide that the employees should be accomodated in his equivalent post and in case he was accomodated in his lower post, due to non availability of post, then also immediately on availability of post in Class III, the case of client was required to be reviewed. That the family circumstances and the assurance on your part had compelled my client to accept Class IV employment, but you have failed to fulfil your ~~employment~~, but ~~you have~~ obligation as per the abovementioned Railway Board's circular. That my client has also pointed out to you that juniors to my client are promoted in the higher post and the persons who is declared IOD after my client,

is continued as Class III employee namely, Jethubhai H. who was working as Diesel Asstt. After his medical decategorisation, he was posted as T.C. That there were many vacancies of Class III were available when my client was declared as medically decategorised, but the reason best known to you, you have not absorbed him in Class III category, which has resulted into great injustice to my client who has served about 20 years faithfully, That the conditions mentioned in above two Railway Board's orders are openly flouted by you.

It is specifically mentioned that it will be duty and ~~order~~ ~~immediately on availability~~

obligation on the part of the authorities to review the orders immediately on availability of vacant post in the same class decategorised employee was working and he ~~should be absorbed in his own class~~ ~~should be absorbed in his own class~~ should be absorbed in his own class. Here my client was required to be absorbed as Class III employee under you. That my client has time and again made several representations to you as well as the Minister concerned and to the Railway Board also, but time and again my client was informed that his case is pending before some authority and in the lat letter you have mentioned Office, but unfortunately you have not given any date and No. etc. regarding sending of the request of my client for decision. Thus you have delaying the absorption of my client in his own cadre i.e. in class III employment, which has resulted into great injustice to my client. That you have further failed to comply with the direction issue by the Railway Board. That Railway Board has stated while accomodating medically decategorised employee, it is the duty of your administration to see that there should not be difference of salary of more than 30%. That for the medically unfair running staff, the Railway Board has vide its letter No. E(NG) II-70 RE 3-4 of 3.11.71 mentioned various categories to be offered. That my client here though worked as Class III employee and the post of Class III employee was available vacant at that time and as stated in earlier para juniors to my client was also accomodated in class III employment, you have reason best known to you, neither reviewed that case of my client for he is accomodated in Class III employment. That my client is not paid the damages as provided under the law for his losing of one eye.

Looking to the above circumstances of the case, by this final notice I inform you that if within 15 days of receipt of this notice, you will not review your decision and will not give effect of Class III employment with retrospective effect ~~as~~ to my client and pay his damages accordingly, my client shall be constrained to move Court proceeding against you, at your cost and risk. That you are further informed to give the details to my client about sending of his representation to the Headquarter Office and give its Reference etc. in detail to enable my client to take appropriate step either with the Headquarter office or the other authority to whom his representation is sent.

Pay Rs 151/- as cost of this notice to my client as is to be issued due to your non extending the benefits of medical decategorisation to my client.

Date: - 23/9/91
Ahmedabad, *TRUE COPY*
of Advocate

P.H. Pathak
Advocate)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

O.A. No. 196 of 1992.

P.M. Vyas Petitioner.

Vrs.

Union of India & ors. Respondents.

I N D E X

Annexure	Description	Page Nos.
-	Preliminary reply by the Respondents.	23-26
R.1	Copy of Memo No. EL/P/133 dt. 12-7-1978	- 27 -
R.2	Copy of Memo No. EL/2P/53 dt. 13-6-1979.	- 28 -
R.3	Copy of Office Order No. EL/P/12 dt. 19-6-1985.	- 29 -

Ahmedabad.
Dt.: 9/7/92

SD
(B.R. Kyada)
Advocate for the Respondents.

1590
15171

23

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

O.A. No. 196 of 1992.

P.M. Vyas Petitioner.

Vrs.

Union of India & Ors. Respondents.

Preliminary reply by the Respondents.

1. At the outset the Respondents states and submits that the averments made in this petition are not correct and is denied hereby. The Respondents states that as such no cause of action has arisen in favour of the Petitioner nor is there any breach of service conditions and therefore the same deserves to be dismissed. Not only this, this is a clearly time barred application and therefore the same is not maintainable.
2. Keeping the above, the Respondents states that the averments made in para 6(i) are not correct and is denied hereby. The Petitioner has not given full details and without the same the Respondents are not in a position to give full reply. At the outset it is stated that this Office Letter dt. 19-2-1991 is challenged in this Petition which is nothing but a reply to the Petitioner and reply cannot be challenged. There must be an Order to be challenged, according to law. But some how or the other the same has been done in this present case. So far as this case is concerned, it relates to the year 1978 in which the Applicant was decategorised medically and thereafter he has been given alternative job and his pay has been correctly fixed as per the prevailing rules at that time. And therefore looking to the grievance made by the Petitioner, there is no substance in it and besides, the matter relates to the year 1978 and therefore the Hon'ble Tribunal cannot sit and decide matters on which

the Hon'ble Tribunal has no jurisdiction.

3. With reference to para 6(2) the averments made in the said para are not correct and is denied hereby. The Respondents states that the Applicant had joined service on 30-12-1956 and thereafter he was promoted as 2nd Fire man and then as a Fire man. At the time of decategorisation the Petitioner was working as Fire Man - B. Having been decategorised in AI as a result of injury sustained by him while on duty he was given alternative job as Cleaner Mukadam as he was not considered suitable for the post of Clerk by the Screening Committee. The Petitioner did not accept the above post offered to him and therefore the Screening Committee adjudged him suitable for the post of Market in the Scale Rs. 210-270(R). Even at this time the Committee did not find him suitable for the post of Clerk but considered him suitable for the post of Marker and therefore he was offered the said post. He accepted the above post and accordingly he was fixed in the pay scale of Rs. 210 -270(R) on pay of Rs. 270/- vide Memo No. EL/P/133 dt. 12-7-1978. Copy of the said order dt. 12-7-78 is enclosed herewith market as Annexure R.1. Anx R.1

4. The Respondents further state that after some time the Petitioner made representation to post him as a Peon in the Scale Rs. 196-232(R) on reversion post. He was thus considered and posted as a peon in the Scale of Rs. 196-232 by Order dt. 13-6-1979. A copy of the same is enclosed herewith marked as Annexure R.2. Anx R.2

5. Again he made representation to the DRM to consider him for the post of Jr. Clerk in the Scale of Rs. 225-308 which was considered by the then DRM. The said was not a review of the earlier Scale but the same was considered on sympathetic grounds ^{with prospective effect} and therefore there is no substance in

the allegation made by the Petitioner in this Petition.

6. With reference to para 6(iii) the averments made in the said para are not correct and is denied hereby. I call upon the Petitioner to cite the circular of the Railway Board as stated in this para. It appears that he is referring to the Railway Board's Circular dated 22-6-1979 Circulated by the HQ office. If that is so, then the Circular is not applicable in the present case as the effect of the Circular was given from 1-6-1979. Regarding Para 1309, the Petitioner has not given to which Rule Book this para relates and therefore the Respondents are not in a position to give a reply. The Respondents reserve their right to clarify further if the Petitioner will make it clear in his rejoinder.

7. With reference to para 6(iv) the Respondents states that it is true that the Applicant has made several representations regarding fixation of his salary and extending the benefits of Railway Board's Circular and each time the case has been thoroughly examined at the HQ and Divisional level. Not only this, the GM has also given him a personal interview in this connection. On his posting as Clerk in the Scale Rs. 225-308(RP) he was refixed at Rs. 308/- in terms of Rule No. 2613 of IREM as per Office Order No. ED/P/12 dt. 19-6-1985, a copy of which is enclosed

Anx R.3 marked as Annexure R.3. As per letter dt. 19-4-1990 he was advised that the department has made reference to the Railway Board for decision and as soon as they receive the reply they will be advised. The HQ advised by their letter dt. 25-10-1990 that the pay of the Petitioner was correctly fixed as per the existing orders which was prevailing at the time of his decategorisation. The alleged Circular dt. 22-6-1979 is not applicable in the present case because it is effective only from 1-6-1979 and therefore

looking to the facts of the present case the ~~xxxix~~ letters and orders is not applicable in the present case.

8. With reference to para 6.(v) it is nothing but repetition of the earlier allegation and it is not necessary to reply them further as it is already replied in the earlier paras.

9. With reference to para 6(vi), the notice was received through the Advocate, but the contents of the Notice are not correct and is denied hereby.

10. With reference to the relief and other allegations the Respondents states that the Petitioner is not entitled to any relief as claimed by him and therefore the Petition of the Petitioner is to be dismissed.

11. The Respondents reserve their right to file further reply if the Petitioner clarifies the points raised by the Respondents in this reply.

Ahmedabad.

Dt:

Byada

(B.R. Kyada)
Advocate for the Respondents. Additional Divisional Railway Manager
Western Railway, Rajkot.

For and on behalf of the
Union of India.

b291 31/7/82

VERIFICATION.

I, S.C. Agarwal, Additional Divisional Railway Manager, Western Railway, Rajkot do hereby verify that the contents of this reply are true on legal advice and that I have not suppressed any material facts.

Ahmedabad.

Dt: 9/7/82

b291 31/7/82
Additional Divisional Railway Manager,
Western Railway, Rajkot.

Reply/Rejoinder/written submission
filed by Mr. B.R. Kyada
earned advocate for ~~petitioner~~
Respondent with second set.
Copy served/not served & other side.

9/7/82
By Register C.A.T. (D) 147
4th floor

Annex RL

27

Western railway
No. EL/P/133

Divisional office(P.br)
Rajkot: dt. 12-July 78

Memorandum

Sub-Employment-offer of Alternative to medically incapacitated
in medically known staff-Mech deptt- Shri Pramodrai M.
Fireman-B RJT shed.

====

Shri Pramodrai M., Fireman-B scale Rs.260-350(R) of RJT shed
having been declared medically unfit in A-1, A-2, A-3, B-1 & B-2
but fit for C-one & under as per DMO RJT's No. MD/216/1/1 of
12.4.78, was offered the post of Marker scale Rs.210-270(R)
and he has accepted the same as per his willing note dt. 5.7.78.
Accordingly, he is absorbed as Marker scale Rs.210-270(R) on
pay Rs. 270/- pm and posted at BKNG against existing vacancy.

for
Marker 2
for Fireman 1
AS 1 Vyas

This issues with the approval of competent authority and
has immediate effect.

thaker/12/7*

for DME(E)/DCS(E)-RJT

Copy to-
The LF RJT for information and necessary action;
The SM BKNG; DAO RJT; CC EPB: memo file;
ss / increment/ seniority / L&P clerks; CC ET.
HC EP.

TRUE COPY

=o=

सहायक कार्मिक अधिकारी - राजकोट
Assistant Personal Officer - Rajkot

Annex R II

SM. BKNC
JG/28

Western Railway
Divisional Office
Rajkot.

Ad. EC/ZP/53
dt/- 13th April 1979.

Memorandum.

Sub- Promotions, reversions and transfers- Shri
Pramodrai M. Vyas, Marker scale B.210-270(R).
Ref- His application dt. 12.3.79.

Shri Pramodrai M. Vyas, Marker BKNC scale B.210-270(R)
is hereby transferred at his own request as Peon in
scale B. 196-232(R) on pay B. 232/- pm and is posted
in General Branch, Divisional office Rajkot.

He will acquire position at the bottom of seniority
in the category of Peons as per extant rules on the
subject. He has accordingly given the declaration for
the same.

Joining time, etc. is not admissible.

C/c Subject
for DCS (E) RJT.

Copy to-

DAO RJT; GM BKNC; GMI RJT;
HC(G)RJT; OG RJT; HC ED(3);
CC APB memo file; party concerned;
increment / leave / pass / qr clerks;
training / ss / seniority clerks.

TRUE COPY

thakor/13/4/79.



सहायक कार्मिक अधिकारी - राजकोट
Assistant Personal Officer - Rajkot

Annex R III

Western railway
No. ED/P/12.

(78)

Divisional office,
RJT: DT: 19 -6-85.

29

Memorandum:

Sub - Refixation of pay -

Shri P M Vyas adhoc clerk scale Rs.225-308(R) in ET section
Divisional office RJT was a EM-B in scale Rs.225-308(R) and
declared medically unfit.

His pay has been fixed Rs.240/- p.m. in scale Rs.225-308(R) as
adhoc clerk from 19.7.84 vide memo. No. ED/ZP/23 dt. 19.7.84.
Now in terms of rule No. 2613 chapter XXVI of IEM his pay is
refixed Rs.308/- per month from 11.10.84.

His pay may please be charged accordingly. Over payment
involved if any may be please be recovered.

N.B.: Before completing requisite officiating period he has
availed leave 23.7.84, 27.7.84 to 20.8.84, 8.8.84,
23.8.84, 4.9.84, 12.9.84, 25.9.84 to 26.9.84, 5.10.84
and 10.10.84.

copy to -

Sr.DAO RJT. Supdt/EPB. ET.
ED511/1 vol.V. memo. file.
ss/increment/promotion-clerks.

Party concerned. ----

H.O. file
in SIS

s14/6::

Y/M/DR
DPO RJT. (816)
1/1
21/10/85

TRUE COPY

सहायक कार्मिक अधिकारी - राजकोट
Assistant Personal Officer - Rajkot

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD
 O.A. NO. 196 OF 1992

P. M. Vyas

..applicant

vs

Union of India & ors.

..respondents

REJOINDER

*Par. 1 served
on 16/7/93*

1. I, Shri P.M. Vyas, applicant has gone through the reply filed by the respondents and am conversant with the facts of the case and I say that contentions and submissions of the reply are far from truth and are denied by me. I deny all the contentions and submissions of the reply except those, which are specifically admitted by me in the rejoinder.
2. That the respondent has not mentioned who has filed the present reply and no authority letter whatsoever is produced to support the statement that he is authorised to file the reply on behalf of the respondents.
3. With reference to para 1 & 2 of the reply, I submitted that it is not true that there is no cause of action arise in favour of the applicant to file the present application and therefore the application is required to be dismissed. It is also not true that the application is time barred. I reiterate and rely what I have stated in my application para 6.1. I say that all the details are given with the application. Moreover, all the correspondence and details of service record etc. are also in the custody of the respondents and therefore the contention of respondent that the applicant has not given his full details is misconceived and not maintainable. Which details the respondent want is also not specified. The contention of respondent that there is no order

*242
P.M. Vyas
22.3.93*

which is under challenge is also misconceived and not maintainable. It is not true that after decategorisation, the salary of the applicant was fixed properly. It is also not true that the fixation of pay of the applicant was as per the rules. The contention of respondent that there is no grievance survive as well as the application is time barred etc. are misconceived and not maintainable. It is not true that this Hon'ble Tribunal has no jurisdiction.

4. With reference to para 3 & 4 of the reply, I reiterate and rely what I have stated in para 6.2 of the application and say that it is not true that after medically decategorisation of the applicant, the applicant was given alternative job as Cleaner Mukadam. It is also not true that the applicant was not found suitable for the post of Clerk by the Screening Committee. The contention of respondent that the applicant was given alternative job as Cleaner is ex facie false statement because the post of Cleaner also require the medical A/1 category and after the decategorisation of the applicant, he cannot be continued in a running staff. That there is no document or anything produced before this Hon'ble Tribunal to say that the case of the applicant was considered by the Screening Committee. I say that I was not called by any Screening Committee to consider my case case for the post of Clerk. I called upon the respondents to produce the letter by which they have informed my client to appear before the Screening Committee to get alternative suitable job of a Clerk. I say that my case was intentionally not considered nor I was given any chance as per the rules. The contention of respondent that the petitioner has not

accepted the post offered to him is also far from truth because the post of Cleaner is of a running staff post and cannot be offered to the applicant i.e. decategorisation. The contention of respondent about Screening Committee etc. is also false statement. I called upon the respondents to produce all the relevant record on which they rely to say that the case of the applicant was considered by the Screening Committee. I say that on decategorisation, I was offered the work of Marker and the same was accepted by me. The contention of respondent that the Screening Committee has against considered my case for Clerk and not found suitable is also far from truth. It is not true that the scale of pay of the applicant was fixed properly. Though the respondent has referred the Annexure R.1,2 etc. in the reply but the same are not annexed to the reply. Therefore, I reserve my right to file further reply about the annexures on which the respondents rely.

5. With reference to para 5 & 6 of the reply, I say that posting me as a Jr. Clerk was a review. It is not true that the posting of Jr. Clerk was on sympathetic consideration. I say that my right under the rules are not considered by the respondents. I reiterate and rely what I have stated in para 6.3 of the application. I have reproduced the relevant circular of the Railway with the application. Moreover, all the circulars and rules, documents etc. are of the respondent Railway administration and therefore they cannot say that they are not aware about such circulars. It is not true that the Railway Board's circular dt. 22.6.79 is not applicable in the present case. So far the para which I have quoted are from the Railway Establishment Manual. The contention of respondent about not aware about the rule etc.

is misconceived and such statement is ill in the mouth of the respondent administration.

6. With reference to para 7 of the reply, I reiterate my contention in para 6.4 of the application. I further say that it is not true that at every time the case of the applicant was thoroughly examined by the HQ and Divisional level. I called upon the respondent to produce the documents to point out to the Hon'ble Tribunal in what manner the case of the applicant was considered by the authorities. Again the respondent has not produced the Anxx. R.3 to enable the applicant to reply the same. It is not true that the pay of the applicant was correctly fixed as stated by the respondent. It is not true that the circular dt. 22.6.79 is not applicable in the case of the applicant as it is effective only from 1.6.79. I say that the rules are framed long back and accordingly the case of the applicant is directly covered by the relevant rules and the direction issued by the Railway Board, and I reiterate the same.

7. With reference to para 8 to 11 of the reply, I reiterate my contention in para 6.5 & 6.6. of the application. The respondents have not replied the notice issued by the Advocate and it is not true that contents of the notice of the Advocate are not correct. The respondents have never informed the applicant ~~about~~ the contents of the notice of the advocate are not correct. It is not true that the petitioner is not entitled to get any relief claimed in the present application and the application is required to be dismissed.

(3)

That from the reply of the respondents, it is a clear case that the respondents have tried to mislead the Hon. Tribunal by making a false statement as the same is made on verification. Moreover, the respondents have not mentioned who has filed the present reply and on whose behalf.

That there are totally false statement made by the respondents and therefore, required to be dealt with under the provisions of Contempt of Court Act, to interfere with the process of justice. I again called upon the respondents to produce the documents about consideration of the case of the applicant by the competent authority time and again. That looking to the overall circumstances, it is a fit case to allow the application with special cost.

Date : 22/3/93

Ahmedabad


H. Pathak
Advocate for the applicant

VERIFICATION

I, Shri Pramodrai M. Vyas, adult, residence of Rajkot, do hereby verify that what is stated above is true to my personal knowledge and that I have not suppressed any material facts.

Date : 23/3/93

Ahmedabad

X — R. M. Vyas. 23/3/93.

✓
Reply/Regoinder/written COMMISSION
filed by Mr. P. H. Pathak
earned advocate for petitioner/
Respondent/other party
Copy served/

Dt. 24/3/93 By Registrar of
AARVAT

(33)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

O.A. No. 196 of 1992.

P.M. Vyas

..... Petitioner.

Vrs.

Union of India & Ors

..... Respondents.

Reply on merits

1. The Respondents states and submits that the present Application is clearly time barred and no cause of action has arisen in favour of the Applicant to file this present Application.

2. The Respondent further state that the averments made in para 6(1) are not correct. Though the Respondents have asked in the Preliminary Reply to furnish the full details the same has not been done till now. But on the basis of the letter dt. 19-2-1992 the Petitioner has filed this Petition challenging the same. As such it is nothing but a reply which cannot be challenged. The letter shows that there is nothing against the Applicant to challenge the same. The Original grievance of the Applicant starts in 1978 when the Applicant was medically declassified and thereafter he was offered an alternative job after screening by the Screening Committee and as per their recommendation. The Petitioner had accepted the same at that point of time. Otherwise the department had no other option but to discharge the Petitioner from service after medical declassification and therefore the Petitioner now making grievance regarding the issue of 1978 cannot be entertained now as it is clearly time barred.

3. With reference to para 6 (2) the averments made in the said para are not correct and is denied hereby. After

receiving the injury the Petitioner was send for medical check-up and he was declared medically unfit for the post which he was holding. At the time of offering him an alternative job the post of Clerk was considered not suitable for the Applicant by the Screening Committee and he was thus offered the post of Cleaner Mukadam and ultimately the Committee adjudged him suitable for the post of Marker in the scale of Rs.210-270(R) and therefore the Petitioner cannot make any grievance why he was not posted as Cleaner at the time of medical decategorisation. This was left open for the Screening Committee to judge his ability and adjust him to a post suitable to him. Thereafter, the Applicant requested by an application to post him as a Peon in the scale of Rs.195-232(R) on reversion post. The same was considered by the department and he was posted vide Order dt. 13-6-1979 on the post of Peon. After that the Applicant has tried to get the post of Jr.Clerk in the scale of Rs.225-308(R) which was sympathetically considered by the DRM. This cannot be said as revision of earlier post or his scale but the same was considered on sympathetically. And therefore it cannot be said that the pay scale offered as Jr.Clerk should be protected, right from the beginning. At the time of medical decategorisation it was not open for the Petitioner to point out to the Screening Committee as to which post he should be posted to as an alternative and therefore there is no substance in making allegation against the Respondents that though he was able he was not offered the post. At the time of posting, there should be a clear cut vacancy existing and the recommendation of the Screening Committee should be there without no one can be appointed on any post.

4. The Respondents further state that the Railway Board's circular dt. 22-6-79 referred to by the Applicant is not applicable to the present case as the effect of the circular given from 1-6-79 and thus para 1309 is also not applicable

suppressed any material facts.
replies are true on legal advice and that I have not
Rajkot, do hereby verify that the contents of this
I, S.C. Kataria, Divisional Personnel Officer, Western

VERIFICATION

Advocate for the Respondents. Western Railway - Rajkot.
(B.R. Kavada) Divisional Personnel Officer,

J. K. Kavada

Union of India.
For and on behalf of the
Date : 8/1/83
Ahmedabad

the offer of alternative job.
his past services which he has accepted and legalised by
now after a long time he cannot make grievances regarding
time of medical decategorisation at that point of time and
he has with open eyes accepted the alternate job at the
 prima-facie it seems that the applicant is not entitled as
 1-6-79 and thus it is not applicable in this case. But
the Railway Board's circular dt. 22-6-79 is effective from
stands finalised. As already clarified in earlier para,
and thus with the receipt of HQ Office decision his case
-ing orders at that time of his medical decategorisation
has advised that his pay was correctly fixed as per exist-
referred to the Railway Board for decision. The HQ Office
5. The Respondents further state that the matter was
given reasonable opportunity of being heard.

After the applicant is making grievance that he was not
Manager had given him a personal interview and even there
considered by the Respondents. Not only this, the General
the applications and representations he was making was
regarding salary or extending to him benefits. And all
of making representations to the department on and off
in this case. It is true that the applicant has a habit

Apparatus
Cylinders

18-11-93. James By Register Co. A.C. 49.

filled by Mr. B. K. Kydd and dated 20 July 19 00

卷之三

1. *Leucania* *luteola* (Hufnagel) *luteola* (Hufnagel) *luteola* (Hufnagel) *luteola* (Hufnagel)

Digitized by srujanika@gmail.com

MAST 26. 192

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

36.

AHMEDABAD

OA/196/92

OA/TA/MA/RA/C.A. No.

199/92 in origin on 192

P M Vyas

P H Pathak

APPLICANT(S)

COUNSEL

VERSUS

Mr. B R Kada

RESPONDENT(S)

COUNSEL

Date	Officer Report	Orders
28/6/92 P.A.	Condonation & delay	(Advance copy not served)
9/7/92 P.A.		
10/6/92 P.A.		Pl. issue writ of habeas corpus to ready 6/8/92 6/15
26/6/92 P.A.		Pl. file 5
11/7/92 P.A.		
13/7/92 P.A.		
28/7/92 P.A. & IR		Pl. file to MA filed by Mr. Kada for records in court
5/8/92 P.A/IR		

.....

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD.

Submitted: C.A.T./JUDICIAL SECTION.

Original Petition No: _____

of _____ 99 .

Miscellaneous Petition No: _____

of _____ 92 .

Shri P M Vyas Petitioner(s)

Versus.

Union of India & others Respondent(s).

This application has been submitted to the Tribunal by
Shri P H Rathore.

Under Section 13 of the Administrative Tribunal Act, 1985.
It has been scrutinised with reference to the points mentioned in
the check list in the light of the provisions contained in the
Administrative Tribunal Act, 1985 and Central Administrative
Tribunals (Procedure) Rules, 1985.

The Applications has been found in order and may be
given to concerned for fixation of date.

The application has not been found in order for the
reasons indicated in the check list. The applicant/^{Advocate} may be advised
to rectify the same within 14 days/draft letter is placed below
for signature.

ASSTT:

S.O.(J): P Chintamani 4.2.92

D.R.(J): Maelcas
4.2.92

KNP181191

MM 25/92

37

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

MISC. APPLICATION NO. 29

OF 1992

IN

ORIGINAL APPLICATION NO. 5121

OF 1992

25/196192

Pramodrai M. Vyas

.. applicant

vs.

Union of India & ors.

.. respondents

Application for Condonation of Delay

MAY IT PLEASE THE HON'BLE TRIBUNAL :

1. That the applicant here has filed the main Original Application challenging the decision on the part of the respondents for non extending him the benefits of proper fixation of pay and granting Running Allowance etc. That after a long period, first time the respondent has informed the applicant about his rejection of the request on 25.10.90. Against that the applicant has given the details and pointed out that his case is not properly dealt with. That the matter was referred to the Railway Board and the applicant was informed regarding the same. That the applicant was under impression that the Railway Board will decide the issue regarding the fixation of salary of the applicant and grant him the benefits of running allowance etc. on his decategorisation. But ultimately on 19.2.91, again the respondents have reiterated the earlier decision and in the same, there is no reason given by the respondents. That it was informed to the applicant that the matter is referred to Railway Board for appropriate direction. That since 19.2.91 the present decision is conveyed to the applicant and again the applicant is repeatedly representing to the Railway authorities for the decision in his matter. It seems that



till date the Railway Board has also not decided the issue which was referred to it by the respondents. That the applicant is entitled to get the benefits of running allowance as per Railway Board's circulars and the fixation of salary in Class III category. The applicant's case is a strong *prima facie* case and is directly covered by the provisions of Railway Establishment Manual quoted in the application.

2. It is submitted that first time the decision of rejection of the request of the applicant was conveyed to the applicant on 25.10.90 and thereafter the applicant is required to file the present application within 1 month year i.e. 25.10.91, but as stated above, the applicant was waiting for the further details and reason order of his representation and the respondents have informed the applicant that the case is pending before the Railway Board. That in these circumstances, in the bonafide belief of the applicant, the present application is filed after about two months after one year's limitation period has expired. That there is no malafide intention on the part of the applicant to file the present application a little late. That the delay is due to correspondence between the respondents and the applicant and the applicant was waiting the decision of the Railway Board. That the applicant has suffered a lot due to his injured on duty and he was hopeful that the respondents will apply sympathetic consideration in his matter. But unfortunately, the same is not accepted by the respondents and therefore, the applicant has to file the present application before this Hon'ble Tribunal.

: 3 :

3. It is submitted that the applicant is having a strong prima facie case in his favour and so far the delay is only about two months. *I rely on the statements & documents annexed to main application.* That the delay in filing of the application is a technical objection and which cannot be permitted to prevail over the substantial justice. It is pertinent to note that so far the salary and recurring losses to the applicant are concerned, which will affect ultimately to his pensionary benefits also, is a continuous cause of action. In light of the judgement of the Hon'ble Supreme Court in case of P. L. Shah. That there is no justification for the respondents for non granting the benefits of Railway Board's circulars and provisions of Railway Establishment Manual to the applicant regarding fixation of salary and granting the allowances.

Thus looking to overall circumstances, it is a fit case for condoning the delay and to entertain the main application.

4. In the abovementioned facts and circumstances of the case, the applicant pray that :

- (A) The Hon'ble Tribunal be pleased to condone the delay of about two months for filing the main Original Application before this Hon'ble Tribunal and direct the office to number the main application and place it before the Hon'ble Tribunal for hearing.
- (B) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice together with cost.

Date : 27/11/92
Ahmedabad

(P. H. Pathak)
Advocate for the applicant

AFFIDAVIT

I, Shri Pramodrai M. Vyas, adult, residence of Rajkot, the applicant do hereby solemnly affirm that what is stated hereinabove is true to the best of my knowledge and information and I believe the same to be true.

Solemnly affirmed at *Dhmedals* on this *27th* day of *Jan* 1992.



Ytteri 2 in 2192.

DEPONENT

Serial No... *428/92*
Book No.....*1*
Page No.....*32*
Date.... *27/1/92*

V.J. D.P.T.
Notary

**SOLEMNLY AFFIRMED
BEFORE ME**

V.J. D.P.T.

NOTARY

filed by Mr.

Learned Advocate for Petitioners
with second set & *.....* spares
copies copy served/not served to
either side

Dt. 3/2/92 *Gaurav*
Dy. Registrar C.A.T.(P)
A'bad Bench

**SOLEMNLY
AFFIRMED
BEFORE ME**

NOTARY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

ORIGINAL APPLICATION NO 196 OF 1991

39

Mr. P.M.Vyas

APPLICANT

V.S

Union of India & ors

RESPONDENTS

POINTS FOR ARGUMENTS

1 That on 3.1.1978, while on duty, the applicant was injured. At that time the applicant was working as 1st fireman, class III post. The applicant has passed examination for further promotion as Shunter-cum-Driver/Diesel Driver in the year 1978. That as per the Railway Board circular quoted on page 4, class III employee should be accommodated in Group'C' i.e. class III employment only and not in Group-D post. Class III posts were available with the respondent at the relevant time but no reason given by the respondent for not absorbing the applicant in the class III post. No reason whatsoever given, in the reply why I was not found suitable for class III employment.

2 No request was made by the applicant for the post of peon. The pay of the applicant was required to be protected on posting applicant in alternative employment. The statement made by the respondents that the applicant was given alternate job as cleaner is false. Cleaner also requires a medical certificate of A/1 and after decategorisation the applicant, he cannot be posted as running staff, where A/1 vision was required. No reason whatsoever given for not considering the case of the applicant for absorption as clerk, Class III employment. The applicant was offered alternate employment as Marker which was

~~filed in C.T~~
Before Hon'ble M.A. Z
M.J.

6
13-6

2.

accepted under protest by the applicant and requested to consider for class III post of clerk. That the pay of the applicant was also not protected, as required under rules. If I am found fit as marker, which is also a clerical nature of work, the vision test for Jr.Clerk and Marker are the same, both have to do clerical job. It is not true that posts were not available for the clerical cadre. That similar case of other employees were accepted by the respondents i.e. one Mr. Tarachand C was absorbed as clerk in scale Rs 260-400 and Mr. Jathabhai H. Desai, in same way posted as clerk (Reference Annexure-A/2). Subsequently the applicant was promoted as Jr.Clerk in 1984 scale Rs 225-308 instead of protecting my pay in the scale of 260-400. I was required to be given scale of 260-400 ,since 1978. My subsequent promotion shows that I am fit for the work as clerk and there was no justification, for non-absorption of the applicant for clerical cadre of work and non-fixation of pay of the applicant and also non-fixation of running allowance and payment of the same to the applicant.

3. That the amount payable to the applicant is illegally withheld. That my pay was required to be fixed for class III employment taking into consideration of running allowance payable to me.

UO

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD
ORIGINAL APPLICATION NO 196 OF 1991

Mr. P.M. Vyas

APPLICANT

V.S

Union of India & ors

RESPONDENTS

POINTS ~~FOR~~ ARGUMENTS

1 That on 3.1.1978, while on duty, the applicant was injured. At that time the applicant was working as 1st fireman, class III post. The applicant has passed examination for further promotion as Shunter-cum-Driver/Diesel Driver in the year 1978. That as per the Railway Board circular quoted on page 4, class III employee should be accommodated in Group 'C' i.e. class III employment only and not in Group-D post. Class III posts were available with the respondent at the relevant time but no reason given by the respondent for not absorbing the applicant in the class III post. No reason whatsoever given, in the reply why I was not found suitable for class III employment.

2 No request was made by the applicant for the post of peon. The pay of the applicant was required to be protected on posting applicant in alternative employment. The statement made by the respondents that the applicant was given alternate job as cleaner is false. Cleaner also requires a medical certificate of A/1 and after decategorisation the applicant, he cannot be posted as running staff, where A/1 vision was required. No reason whatsoever given for not considering the case of the applicant for absorption as clerk, Class III employment. The applicant was offered alternate employment as Marker which was

Submitted
by Mr. Pathak
PH-Pathak
in 2021

3/12/98

2.

accepted under protest by the applicant and requested to consider for class III post of clerk. That the pay of the applicant was also not protected, as required under rules. If I am found fit as marker, which is also a clerical nature of work, the vision test for Jr.Clerk and Marker are the same, both have to do clerical job. It is not true that posts were not available for the clerical cadre. That similar case of other employees were accepted by the respondents i.e. one Mr. Tarachand C was absorbed as clerk in scale Rs 260-400 and Mr. Jathabhai H. Desai, in same way posted as clerk (Reference Annexure-A/2). Subsequently the applicant was promoted as Jr.Clerk in 1984 scale Rs 225-309 instead of protecting my pay in the scale of 260-400. I was required to be given scale of 260-400 ,since 1978. My subsequent promotion shows that I am fit for the work as clerk and there was no justification, for non-absorption of the applicant for clerical cadre of work and non-fixation of pay of the applicant and also non-fixation of running allowance and payment of the same to the applicant.

3. That the amount payable to the applicant is illegally with-held. That my pay was required to be fixed for class III employment taking into consideration of running allowance payable to me.