

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.526 of 2011

Cuttack this the 16th day of November, 2015

S.K. Ghosh&Ors....Applicants
-VERSUS-
Union of India &Ors...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *yes*
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? *yes*

R.C.
(R.C.MISRA)
MEMBER(A)

A.K.
(A.K.PATNAIK)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.526 of 2011

Cuttack this the 16th day of November, 2015

CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

1. S.K. Ghosh
Aged about 56 years
S/o-Late Haridas Ghosh
At present working as a Senior Section Engineer(P.Way)
East Coast Railway
Baranga, At/PO-Baranga,
Dist-Cuttack
2. B.S. Das
Aged about 51 years
S/o-Late Radhika Prasad Das
At present working as Senior Section Engineer(P.Way)
East Coast Railway
Station Campus,
At/PO-Ashok Nagar,
Town/Dist-Bhubaneswar
3. S.C Paria
Aged about 51 years
S/o-Sri Mahindra Nath Paria
At present working as Senior Section Engineer(P.Way)
East Coast Railway
Head Quarter, Chandrasekharpur
Bhubaneswar
4. B.C Biswas
Aged about 50 years
S/o-Late Dharendra Nath Biswas
At present working as a Senior Section Engineer(P.Way)
East Coast Railway
Head Quarter, Chandrasekharpur
Bhubaneswar
5. P.K. Ghosh
Aged about 49 years
S/o-Sir Dhananjay Ghosh
At present working as Asst. Engineer/Bridge
East Coast Railway, At/PO-Khetrarajpur
Town/Dist-Sambalpur



- 47
6. P.N.Gupta
Aged about 52 years
S/o-Late Sri Akchaibar Prasad Gupta
At present working as a Senior Section Engineer(P.Way)
East Coast Railway/JJKR
At/PO-Jajpur Road, Dist-Jajpur
 7. G.P. Mishra
Aged about 52 years
S/o-Sir Baldeo Prasad Mishra
At present working as a Senior Section Engineer(P.Way)
East Coast Railway, At/PO-Rambha, Dist-Ganjam
 8. D.Kumar
Aged about 52 years
S/o-Late Sir Chhedi Ram
At present working as a Senior Section Engineer(P.Way)
East Coast Railway
At/PO-Talcher, Dist-Dhenkanal
 9. D. Palit
Aged about 51 years
S/o-Late A.B.Palit
At present working as a Senior Inspecting
Engineer/RITES
Eastern Region, S.E.Railway
Calcutta, West Bengal
 10. S. Shome
Aged about 51 years
S/o-Late Narendra Nath Shome
At present working as a Senior Section Engineer(P.Way)
Construction, S.E.Railway,
At/PO-Baripada, Dist-Mayurbhanj

...Applicants

By the Advocate(s)-M/s.N.R.Routray
S.Mishra
T.K.Choudhury
S.Ku.Mohanty

-VERSUS-

Union of India represented through

1. The General Manager
East Coast Railway,
Rail Vihar
Chandrasekharapur,
Bhubaneswar, Dist-Khurda



48

2. Senior Divisional Personnel Officer
East Coast Railway,
Khurda Division,
At/PO-Jatni, Dist-Khurda
3. Senior Divisional Accounts Officer
East Coast Railway,
Khurda Road Division,
At/PO-Jatni, Dist-Khurda

...Respondents

By the Advocate(s)-Mr.M.K.Das

ORDER**R.C.MISRA, MEMBER(A):**

Applicants 10 in number are presently working as Senior Section Engineers as well as Assistant Engineer under the Railways and they have joined together in this Original Application having a common grievance.

2. Facts of the matter in a nut shell are that applicants while working as Permanent Way Inspector (in short PWI) Gr.III, Railway Board issued an Establishment Sl.No.217/1998 for grant of Special Pay of Rs.50/- per month to all Permanent Inspectors, Gr.III, who were in position as on 1.1.1986 with effect from 1.1.1986 to 31.12.1995 or the date on which they were promoted or retired, whichever is earlier. It was directed therein that the Special Pay so granted would also be taken into account for fixation of pay in terms of Rule-7(1)(b) of RSRP Rule, 1997. Senior Divisional Personnel Officer (Respondent No.2) found the applicants eligible for grant of Special Pay of Rs.50/- per month as mentioned against each vide A/1 dated 24.1.2001 and consequently, pay of the applicants was fixed by



49
taking into account the benefit of Special Pay as revised in terms of Rule-1313-FR-22(1)(a) and Rule-7(1)(a) of RSRP Rules, 1997, vide A/2 dated 3.4.2001. Since the applicants were not granted the differential arrears arising out of grant of special pay of Rs.50/- per month with effect from 1.1.1986, they personally approached the authorities, which did not yield any desired result and in the meantime, applicants having been transferred to different places, it was not possible on their part to approach the authorities jointly for payment of arrears. However, applicants submitted a joint representation dated 17.1.2011 to Respondent no.2 with a prayer for grant of arrears on account of grant of special pay of Rs.50/- in terms of RBE No.217/1998 as well as order dated 24.1.2001 and the same having not been responded^{to}, they have approached this Tribunal in this O.A. for direction to be issued to respondents to pay them arrears arising out of grant of special pay for the period as assessed under Annexure-A/1.

2. Applicants have filed M.A.No.665 of 2011 seeking condonation of delay. In support of this, it has been submitted that applicants had been assured by the respondents that arrears would be paid to them. Despite that, as nothing was paid to them, they were bound to approach the Tribunal. However, it has been submitted that since the delay is not intentional, the same may be condoned.

P.

50

3. Vide order dated 30.8.2011, this Tribunal directed notice to respondents both on O.A. as well as M.A.No.665 of 2011 for condonation of delay requiring them to file counter. However, vide order dated 22.11.2011, this Tribunal admitted the O.A. keeping the point of limitation open.

4. By filing preliminary counter, respondent-railways have objected to the maintainability of this O.A. on the ground of limitation. According to respondents, the O.A. involves disputed facts and the applicants without availing of the departmental remedies, have approached this Tribunal. It has been contended that grievance of the applicants rests upon A/1 dated 24.1.2001, whereas the present O.A. has been filed in the year 2011, i.e., after a lapse of 10 years and in view of this, applicants ought to have explained each day^{of} delay in approaching the Tribunal beyond the prescribed period of limitation. According to respondents, applicants had never approached the authorities for grant of benefits arising out of A/1 in between 2001 and 2010 and in this respect, onus lies on them to prove their view point. It has been stated that the claim of the applicants relates to 1.1.1986 to 31.12.1995 and the old records pertaining to this period are not readily available. It has been submitted that in the meantime, many Dealers have been transferred and/or retired and therefore, it is not possible on the part of the respondents to establish whether the arrear dues have been paid to the applicants or not. As per Item No.99,

See

51

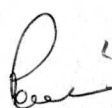
Para-121 of Appendix-IX of Indian Railways Accounts Code, preservation period of paid vouchers of salary bill being 10 years, it is not possible to establish whether applicants have been paid arrears of special pay sanctioned to them vide A/-1.

6. In addition to the above, in the objection to condonadtion of delay, respondents, relying on the decision in 1999 SLJ(2) CAT, page-192 have stated that the present O.A. having been filed after an inordinate delay is liable to the dismissed. They have pointed out the rulings of the Hon'ble Supreme Court in Bhakra Beas Management Board vs. Krishna Kumar Vij & another reported in 2010(2) SCC(L&S) 649 which reads as under.

"Yet, another question that draws our attention is with regard to delay and laches. In fact respondent 1's petition deserved to be dismissed only on that ground but surprisingly the High Court overlooked that aspect of the matter and dealt it in a rather casual and cursory manner.

The appellant had categorically raised the ground of delay of 8 years in approaching the High court for grant of the said relief. But the High court has simply brushed it aside and condoned such an inordinate long and unexpected delay in a casual manner. Since we have decided the matter on merit, thus it is not proper to make avoidable observation, except to say that the approach of the High court was neither proper nor legal".

7. Further, in Chairman, U.P. Jal Nigam vs. Jaswant Singh reported in 2007(1) SCC (L&S) 500, it has been held by the



52

Hon'ble Supreme Court that those who sit on the fence and wake up to take up the matter are not entitled to any relief.

8. With these submissions, respondents have prayed that the O.A. being barred by limitation is liable to be dismissed.

9. In the rejoinder filed by the applicants, it has been submitted that the averments made in the counter are false and fabricated. Respondents, without complying with the direction of the Railway Board slept over the matter thereby compelling the applicants to approach the Tribunal and in such a situation the plea of limitation as well as preservation of records is only to overcome their laches and liability, which should not be accepted.

10. In the reply to objection filed by the applicants, it has been contended that as per settled position of law each case has to be decided on its merit. Therefore, the decisions as relied on by the respondents being distinguishable from the facts of the present O.A., are not applicable.

11. By filing additional affidavit, applicants have brought to the notice of the Tribunal that as per information received under RTI Act, the divisional authorities had already referred the matter to the Railway Board regarding payment of arrears to the beneficiaries under the Office Order No.5/2001. Hence, non-payment of arrear dues even after supply of information by the respondents is due to administrative lapse on the part of the respondents.



53

12. Incidentally, it is to be noted that applicants had filed M.A.No.886 of 2015 on 30.3.2015, i.e., after the hearing was concluded on 23.3.2015, seeking amendment to the O.A. However, it reveals from the record that the above M.A. seeking amendment to the O.A. perhaps not being pressed, is lying over.

13. We have heard the learned counsel for both the sides and perused the records. We have also gone through the written notes of submission as well as the information revealed from the service books of applicants in course of hearing on 27.01.2015. In the written notes of submission, it has been submitted that in terms of A/1 dated 24.1.2001 and office order dated 21.3.2001(R/2) special pay Rs.50/- per month has been granted to the applicants who held the post of PWI Gr.III for the period as indicated against each vide R/3 dated 3.4.2001. After issuance of R/3 dated 3.4.2001 and having taken into account the special pay granted with effect from 1.1.1986, the pay has been revised in terms of Rule-1313 FR-22(1)(a) and Rule-7(1)(b) of RSPRr-1997 vide A/2 in case of each applicant upon their next promotion. Thereafter, while fixing pay in the promotional grade, i.e., PWI, Gr.II(now Section Engineer(P.Way) special pay Rs.50/- has been taken into account. The entries made in the service books in this regard have been duly reflected in the written notes by respondents.

Ravi

54

14. As regards payment of arrears, it has been submitted that there is no arrear remained unpaid/to be paid to the applicants since that has been extended to all the applicants at the relevant point of time, which is apparent from the service records. However, the payment vouchers are not available since they are not liable to be preserved beyond a period of ten years.

15. We have considered the rival submissions threadbare. At the out set, what we find from the O.A. is that the name of applicant no.1 (S.K.Ghosh) does not find place at A/1 based on which relief has been sought. However, at A/2 dated 23.4.2001 which is the revised pay fixation order on account of grant of special pay, the name of Shri S.K.Ghosh is found at Serial No.7.

16. From the facts as narrated above, there is no doubt that applicants were eligible and entitled to special pay Rs.50/- per month for the period indicated against each in A/1 and A/2. It is not in dispute that as a consequence of grant of special pay, revised pay fixation has been made in terms of Rule-1313 FR-2(1)(a) and Rule-7(1)(b) of RSPR-1997. However, grievance of the applicant in this O.A. is that even after their pay having been fixed by granting them the special ^{pay} of Rs.50 per month, they have not been granted arrear dues arising out of grant of such special pay for the period indicated against each vide A/1 dated 24.1.2001. It is the case of the applicants that they approached the authorities personally from time to time for payment of arrears dues on account of grant of special pay and the same

55

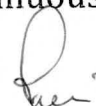
was in vain. In the meantime, they having been transferred to different places, it was not possible on their part to approach the authorities jointly ventilating their grievances. However, they submitted a joint representation on 17.1.2011 to res. no. 2 in this regard, which did not evoke any ^{response} ~~result~~ and this is why they have approached this Tribunal. This part of submission ^{when} ~~often~~ read harmoniously with M.A.No.665 of 2011 filed for condonation of delay does not lead us to a satisfactory conclusion as to what prevented the applicants from making individual representations when they were not granted the arrear dues notwithstanding the fact that they had been transferred to different places. Was there any embargo for making individual representation ? If it is not so, there was no justifiable reason to wait until a joint representation could be made by them without laying individual claim. It is also not the case of the applicants that in such a situation rule did not provide for making individual representation. Considered from this angle, we are at a loss to understand how the applicants who were all through conscious of having not received their arrear dues in pursuance of A/1 dated 24.1.2001, managed to rise from the slumber after a decade and if it is so, a duty is cast on them to convincingly explain the unconscionable delay that was caused in seeking remedy to their grievance. It is the settled position of law that mere existence of right is not adequate to seek remedy after a long lapse of time, without



56

however, explaining the delay as to what prevented the aggrieved person from approaching the authorities concerned or the Tribunal, as the case may be, in the nick of the time. Therefore, in the existing circumstances, onus lies on the applicants to at first justify the delay on their part in approaching the Tribunal for redressal of their grievances. We also have to take into account the counter claim of the respondents that payment of arrears has been ensured, and that they cannot produce the payment vouchers since the period of preservation of records has elapsed. This is what happens in the case of undue delay in raising a claim. It is rightly said that procrastination is the biggest thief of time. After such a long lapse of time, no material could be produced to counter effectively the claim of the respondents, and judicial scrutiny becomes well-nigh impossible. It is also not the case here that non-disbursement of arrear dues has adversely affected subsequent fixation of pay on promotion. Therefore, there is no continuous cause of action, and no valid ground exists to overcome the period of limitation.

17. Having taken into account the totality of circumstances of the matter, as already indicated above, we are of the opinion that since the claim of the applicants regarding disbursement of arrear dues pertains to the period from 1.1.1985 to 31.12.1995 ^{is} ² having no adverse effect on their revision of pay, it cannot be said that the cause of action is a continuous one. Secondly, as



57

the claims of the applicants are not fortified with materials on record and admittedly, in the meantime, more than a decade has passed, at this stage, it would not be permissible for the Tribunal to accede to the relief sought in the O.A. The defence of the respondents that after a lapse of more than 10 years, payment vouchers are not available to be produced cannot be wholly contradicted. Such is the result of any unwarranted delay. It is the settled position that law helps those who are diligent but not indolent. Since the applicants have failed to agitate their claim of arrears on account of special pay within a reasonable period and the delay not being satisfactorily explained, no relief could be granted to him.

18. Last but not the least, we may note that in this O.A. notice had been issued without permitting the applicants to jointly prosecute the O.A. Since the matter is being disposed of finally, permission to jointly prosecute this O.A. by the applicants is deemed to have been allowed by the Tribunal.

19. For the reasons recorded above, both O.A. as well as M.A.No.886 of 2015 being devoid of merit are dismissed, with no costs to the parties.

(R.C.MISRA)
MEMBER(A)

(A.K.PATNAIK)
MEMBER(J)

BKS