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M.K.Rath & Anr-Vrs-UOI&Ors

ADMISSION Sl.No.4
MA No.343/2014
OA No.260/00314/2014

ORDER Dt.08.05.2014

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THE HON'BLE MR.A.K.PATNAIK, MEMBMER (JUDL.)
THE HON'BLE MR. R.C. MISRA, MEMBER (ADMN.)

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Heard Mr.S.K.Das, Learned Counsel for the Applicants and Mr. T.Rath, Learned Senior Standing Counsel for the Railway-Respondent both on MA filed by the applicants under Rule 4(4) of the CAT (Procedure) Rules, 1987, seeking permission to prosecute this OA jointly as also on the merit of the OA.

2. It has been contended by Mr.Das that similarly situated employees have approached different Benches of the Tribunal praying for stepping up of their pay at par with their juniors which was allowed by the Tribunal. Though the applicants are similarly situated the said benefits have not been granted to them. It has further been stated that representations filed praying for extension of the benefits of the said benefits by way of stepping up of their pay did not yield any result till date. Hence they have filed this OA jointly as their relief sought by the applicants is one and the same.

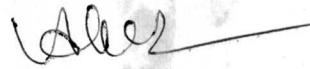
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3. On the other hand, Mr. Rath vehemently opposed the very maintainability of this OA on the ground that the applicants are working in different grades/posts and that their entitlement of the benefits, if at all they succeed, will be different and stepping up of pay is personal to each of the applicants and, therefore, this OA filed jointly is not maintainable. Secondly, it was pointed out that the applicants have not sought to quash the order dated 03.02.2010 in which their prayer have been considered and rejected by the competent authority. Delay and laches was taken as one of the ground by Mr.Rath for dismissal of this OA.

4. We find from the record that the representation (Annexure-A/2, at page 27) which is stated to have been submitted to the Financial Commissioner (Railways) Railway Board, New Delhi is dated 26.4.2011 which is three years before filing this OA. It also appears that the second representation (at page 30) is addressed to General Secretary, NFIR. They have not been made as Respondents in this OA. Further we find that the prayer of the applicants in the representation was to step up their pay whereas in this OA they have prayed for grant of GP of Rs.5400/- under MACP scheme. Section 20 & 21 of the A.T. Act, 1985 provides as under:

“20. Application not to be admitted unless other remedies exhausted –

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.



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(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, -

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

"21. Limitation - (1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately

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preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates ; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or , as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.”

5. On being confronted, by filing Memo dated 08.05.2014,

Mr.Das has submitted as under:

“The applicants jointly filed this case for grant of higher grade pay of Rs.5400/- to them as the said benefits has already extended to their immediate juniors.

The issue in question has already been settled by the Hon’ble Madras and Calcutta Bench of this Hon’ble Tribunal in OA No.96 and 967 of 2009 and OA No.274/12 respectively. The judgment of the Hon’ble Madras Bench in another batch of cases have also confirmed or affirmed by the Hon’ble Madras High Court in writ petitions No.1078, 10046 to 10049 and 18262 of 2012. Copies of the judgments filed in court.

In view of the settled position of law as aforesaid the Hon’ble Tribunal be pleased to allow the applicants to approach the appropriate authority of the railways preferably to the Dy. Director Pay Commission-V, Railway Board or any other appropriate authority by filing individual representations within two weeks from today. Further the authorities of the Railways be directed to dispose of such representation in light of the aforesaid judgments within a stipulated period as deems fit and proper by this Hon’ble

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Tribunal. The OA be disposed of in the aforesaid observation and direction."

6. Be that as it may, in view of the Memo filed, without expressing any opinion on the merit of this matter this OA is disposed of *Rat* at this admission stage with direction to the Dy. Director Pay Commission-V, Railway Board that if any such representation as undertaken in the Memo is made by the applicants individually within a period of seven days (enclosing thereto copy of this order and the order of the Calcutta and Madras Bench of the Tribunal) then the same be considered/ disposed keeping in mind the orders of the Madras and Calcutta Bench of the Tribunal and intimate the result thereof to the applicant in a well-reasoned order within a period of sixty days from the date of receipt of the same. In view of the above MA No. 343 of 2014 is also disposed of. There shall be no order as to costs.

7. As prayed for by Learned Counsel for both sides, copy of this order along with OA be sent to Respondent Nos. 1 to 4 by speed post at the cost of the applicants for which Mr.Das, Learned Counsel for the Applicants undertakes to furnish the postal requisite by 12.5.2014.

(R.C.Misra)
Member (Admn.)

Patnaik
(A.K.Patnaik)
Member (Judicial)