

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Date of decision: 17th February, 2004

Original application No. 87/2001



1. Gopal Singh s/o Shri Hari Singh, aged 34 years, r/o Opposite New Telion-Ki-Masjid, Fed Bazar, Bikaner, at present employed on the post of Senior Booking Clerk in the office of Station Superintendent Lalgah, Northern Railway.
2. Mohd. Ali Bhati s/o Shri Abdul Shakoor, aged 32 years r/o Mohulla Gersrion, behind Masjid, Bikaner, at present employed on the post of Senior Booking Clerk in the office of Station Superintendent Bikaner, Northern Railway.
3. Ramesh s/o Shri Bishamber Dayal, aged 33 years, r/o Near Railway Phatak, Hissar Railway Station, Northern Railway at present employed on the post of Senior Booking Clerk in the office of Station Superintendent Hissar, Northern Railway.
4. Jaideep Kumar s/o Vijay Singh, aged 34 years r/o 95-C, Old Railway Colony, Lalgah Bikaner, at present employed on the post of Senior Booking Clerk in the office of Station Superintendent Lalgah, Northern Railway.

.. Applicants

Versus

1. Union of India through General Manager, Baroda House, New Delhi, Northern Railway.
2. Divisional Railway Manager, Northern Railway, Bikaner Division, Bikaner.

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3. Senior Divisional Personnel Officer, Bikaner Division,
Bikaner, Northern Railway.

.. Respondents

Mr. B.Khan, counsel for the applicant
Mr. Kamal Dave, counsel for the respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL)
HON'BLE MR. M.K.Misra, Member (ADMN)

ORDER (ORAL)

Applicants, four in number, have filed this Original
Application thereby praying for the following reliefs:-



"(i) That the respondents may be directed to fix the pay of applicants on the alternative post of Commercial Clerk by adding 30% of basic pay as per rules and allow all the consequential benefits including payment of arrears of difference at along with interest at market rate.

(ii) That any other direction, or orders may be passed in favour of the applicants which may be deemed just and proper under the facts and circumstances of this case in the interest of justice."

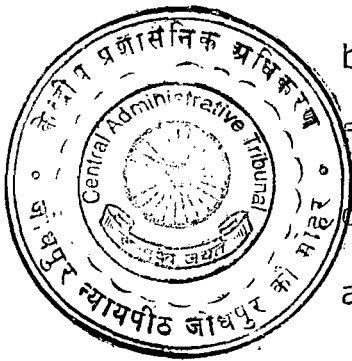
2. Facts of the case are that the applicants were initially appointed as Apprentice Fireman-I on compassionate grounds on different dates in the year 1989/1990, as can be seen from para 4(1) of the application. However, their

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appointments were purely on temporary basis subject to final outcome of Original Application No. 647/88. This Tribunal vide its judgment dated 24.2.93 was pleased to allow the Original Application thereby setting aside appointment of the applicants amongst others; the operative part of which has been reproduced in para 4(3) of this Original Application. This Tribunal further held that since the respondent Nos. 3 to 18 (therein) had admittedly been found by the authorities to be eligible for appointment on compassionate grounds and they were not in anyway at fault in the matter of their appointment, the respondent Nos. 1 and 2 were directed to offer them alternative appointment in the vacancies of other posts to be filled by direct recruitment, for which they may be found suitable. Consequently, the respondents issued order dated 1.9.1993 (Ann. A1) whereby the applicants along with other similarly situated persons were found suitable for the post of Booking Clerk, grade Rs. 975-1540. The name of the applicants found mention at Sl. Nos. 1, 2, 4 and 7 in the aforesaid letter dated 1.9.1993. Perusal of this letter further reveals that the persons named therein were given benefit of pay fixation of new posts by adding 30% of their basic pay of Fireman-I. It is also mentioned that they will also get seniority on the basis of their length

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of service as Fireman-I. It is further averred that the applicant Nos. 1 to 3 were further promoted to the post of Senior Booking Clerk w.e.f. 1.1.1996 and applicant No. 4 was promoted from 16.1.1996 and they have also completed CP-2 training course. The grievance of the applicants is that they were not allowed their due fixation by adding 30% of their basic pay as per order of absorption issued by the competent authority and has filed this Original Application thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have filed reply. The respondents have not disputed the facts as stated above. By way of preliminary objections, it has been pleaded that this application is hopelessly time barred as the decision not allowing the benefit of pay fixation on new post by addition 30% of their basic pay was taken and communicated way back vide order dated 4.9.95 (Ann. R1) and the applicants failed to agitate their grievance within the prescribed limited period of one year. In fact, the applicants knowingly ignored to agitate their grievance under the Administrative Tribunals Act, 1985 as they themselves decided to ventilate their grievance through



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the PNM. The applicants were also accorded further promotion to the post of Senior Booking Clerk in the year 1996 which clearly establish that the applicants were not having grievance and whatever claim is raised is an after thought.

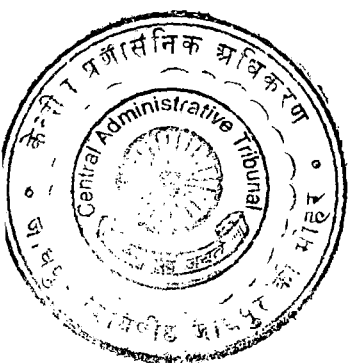
4. The applicants have not filed any rejoinder.

5. We have heard the learned counsel for the parties and have perused the pleadings of the case.

5.1 According to us, the present application is totally misconceived and deserves out right rejection. At the outset, it may be stated that the applicants are basing their claim on the basis of order dated 1st September, 1993 (Ann. A1) issued pursuant to the directions issued by this Tribunal in Original Application No. 647/88, whereby in operative portion of the judgment which has been reproduced in para 4(3) of the Original Application, this Tribunal held as under :-

"7. In view of the above, we allow the application and set aside the appointment of the respondents No. 3 to 18 to the post of Fireman-1. However, since the respondents No. 3 to 18 had admittedly been

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found by the authority to be eligible for appointment on compassionate grounds and they were not in anyway at fault in the matter of their appointment, the respondent No. 1 and 2 are directed to offer them alternative appointment in the vacancies of other posts to be filled by direct recruitment, for which they may be eligible and found suitable. Parties to bear their own costs."

5.2 In compliance to this order, the applicants were given alternative appointment as Booking Clerks in the grade Rs. 975-1540. It was further stated in the appointment order dated 1st September, 1993 that the persons named in the said order be given benefit of pay fixation on new posts by adding 30% of their basic pay of Fireman-I. It was also stated that they would also get seniority on the basis of their length of service as Fireman-I. This order was superseded and modified vide order dated 4.9.1995 (Ann. R1), the relevant part of which is reproduced in extenso and thus reads as under:-



"Sub:- Alternative offer of appointment on compassionate grounds in lieu of the previous appointment as Apprentice Fireman-I Grade Rs. 950-1500/RPS.

Ref: This office letter of even number dated 1.9.1993.

In part supersession of this office letter under reference, the staff mentioned in the letter referred

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to above are not allowed benefit of pay fixation on new post by adding 30% of their basic pay.

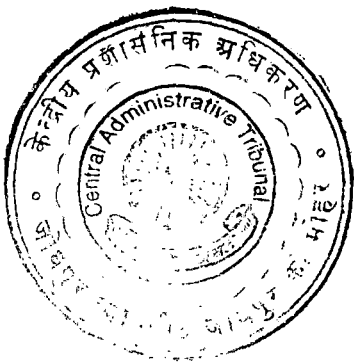
This issues with the approval of the competent authority."

Thus, from the order dated 4.9.1995 (Ann. R1) it is clear that the benefit of pay fixation on new post by adding 30% of their basic pay, which was granted vide order dated 1.9.1993 (Ann. A1) ,was withdrawn. The applicants have not challenged this order till date, as such the validity of this order cannot be gone into.

5.3 That apart, even otherwise also, the decision rendered by this Tribunal in Original Application No. 647/88, operative part of which has been reproduced in the earlier part of the judgment, the applicants and persons similarly situated were granted protection only to the extent that the respondent Nos. 1 and 2 were directed to offer them alternative appointment in the vacancies of other posts to be filled by direct recruitment, for which they may be eligible and found suitable, while setting aside their appointment. Thus, the benefit of pay fixation on new post by adding 30% of their basic pay of Fireman-I was contrary to the directions issued by this Tribunal whereby the appointment of the applicants and persons similarly



situated were quashed and they were given only limited benefit of alternative appointment against the posts to be filled by direct recruitment for which they may be eligible and found suitable. Thus, when the respondents have withdrawn the benefit of pay fixation on new posts by adding 30% of their basic pay, no infirmity can be found on that count. As already submitted above, since the validity of the order dated 4.9.1995 (Ann. R1) whereby the benefit, as extended vide order dated 1.9.1993 (Ann. A1), was withdrawn ~~was~~ not under challenge, as such no findings on merit is warranted. However, this passing reference has been made only to justify the action of the respondents that even on merit, the applicants have got no case.



5.4 Further, the order dated 1.9.1993 has been partly superseded vide order dated 4.9.1995 (Ann. R1), as such no direction can be given to the respondents to allow the benefit of pay fixation on new post by adding 30% of their basic pay in the category of Booking Clerk as prayed by the applicants on the basis of non-existent order, which has already been superseded. On this count also, the applicants are not entitled for any relief. There is yet another hurdle in the way of the applicants in granting the

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benefit. The order vide which the benefit of pay fixation on the new post by adding 30% of their basic pay, granted on 1.9.1993, was superseded vide order dated 4.9.95 (Ann. R1) and as per provisions contained in Section 21 of the Administrative Tribunals Act, 1985, limitation for making application for redressal of grievance is one year from the date the final order has been made and outer limit of six months. In case where an appeal or representation such as mentioned under sub-section 2(b) of Section 20 has been made and a period of six months has expired thereafter, without such final order having been made, within a period of one year from the date of expiry of said period of six months. Admittedly, the applicants have not made any representation against the order dated 4.9.1995 (Ann. R1). As per provisions contained in Section 21 of the Administrative Tribunals Act, 1985, he should have filed this Original Application in the first week of September, 1996. The applicants have filed this Original Application in the year 2001. As such, the application is barred by limitation. The applicants have not even filed an application for condonation of delay thereby showing sufficient cause for not making the application within the prescribed period. Thus, in terms of the law laid down by the Apex Court in the case of Ramesh Chand



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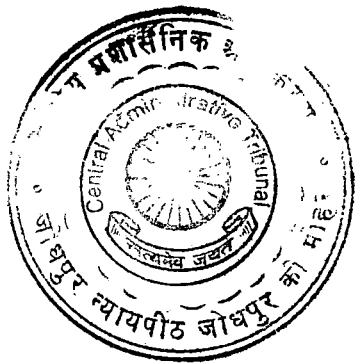
1999 (5) 654, such an application cannot be admitted and decided on merit. Viewing the matter from this angle also, the present application cannot be heard on merit and deserves dismissal being hopelessly time barred. I

5.5 For the reason stated above, the Original Application is devoid of merit and is accordingly dismissed with no order as to costs.

5.6 Before parting with the matter, it may be noted that the applicants did not come before this Tribunal with clean hands as they have suppressed the material fact that the order dated 1.9.1993 on which the whole case of the applicants is founded stands superseded vide order dated 4.9.1995 (Ann. R1). As such, the applicants are guilty of suppressing the material fact and such conduct of the applicants cannot be appreciated. In ordinary course, we would have imposed heavy cost on the applicants, but we leave the matter here as the learned counsel for the applicant has orally argued that this order was not communicated to the applicants which version of the applicants cannot be accepted in view of the categorical submission of the respondents in para 2 of preliminary



objections wherein it has been stated that the order dated 4.9.1995 was communicated way back vide order dated 4.9.1995 which version remains uncontroverted.




(M.K. MISRA)
Member (Admn.)


(M.L. CHAUHAN)
Member (Judl.)

R/C
Farsi/Kumar (R-Mr)
18/2/04

For Kamal Dake,
ADM.

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on 25/2/04
