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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application nos. 243,244 & 245/2004
&
Misc. Application Nos 116 to 118/2004

Date of Judgement. 30.01.09.

Hon'ble Mr. N.D. Raghavan, Vice chairman.

Hon'ble Dr. R.C. Panda, Administrative Member.

1. Man Singh, S/o Sh Sohan Lal Gurjar, ex-office superintendent II Commercial Branch, Divisional Office North west Railway, Bikaner, resident of front street of Nagar Parishad, near hari Pandey Chakki, Bikaner.

:Applicant in O.A. No. 243/2004

2. Champa Lohia, S/o late Sh Gordhan Dass Lohia, ex-office superintendent North west Railway, Divisional Office Bikaner, resident of Pareek Chowk, Nayashahar, Bikaner.

: Applicant in O.A. No. 244/2004

3. Arjun Singh, S/o Sh Girdhari Singh caste Rajput, ex-Head Clerk Commercial Branch, Divisional Chief Ticket Inspector,Office North west Railway, Bikaner, aged 68 years R/o Village Belasar POO Belasar Via Sinthal, District, Bikaner.

: Applicant in O.A. NO. 245/2004.

Rep.by Mr. H.S. Shrimali proxy Counsel for
Mr. H.K. Shrimali : Counsel for the applicants in all the Three OAs.

Versus

1. Union of India through General Manager, North West Railway Hqrs Office, Old Loco Colony Area, Jaipur.
2. Divisional Railway Manager, Divisional Office, North West Railway, Bikaner. (Raj)
3. Senior Divisional Personnel officer, Divisional office, North West Railway, Bikaner (Raj)
4. Sh Liyakat ali Khan Superintendent Commercial Branch, Divisional office North West Railway, Bikaner. (Raj)

:Respondents in all the three OAs.

Mr. C.S. Kotwani : Counsel for respondents 1 to 3 in O.A. No. 243/2004 & MA Nos. 116/04

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Mr. Vinay Jain : Counsel for respondents 1 to 3 in O.A. No. 244/04
And M.A. No.117/04
None present for R.4 in both the above O.As.

Mr. B.L. Vishnoi : Counsel for R.1 to 4 in O.A. No. 245/2004
& MA No. 118/04.

ORDER

Per Mr. N.D. Raghavan, Vice Chairman.

As the issues involved and the reliefs claimed in all these three applications are one and the same, with the consent of parties these proceedings are consolidated together for the sake of convenience by this common order.

2. All the three applicants retired from Railway service in the years 2003, 1994 and 1993 respectively. They have prayed that since one of their juniors Shri Liyakat Ali Khan was granted special pay of Rs.70/- vide order dated 21.10.2002, the respondents be directed to pay them also the said special pay from the day the said Liyakat Ali Khan was granted and revise their pension by taking into account the said special pay. They have further prayed that the respondents be directed to issue revised PPO respectively by taking into account the above special pay. Thus they have prayed that these O.As may be allowed.

3 The applicants have also filed Misc. Application Nos. 116/04. 117/04 and 118/04 praying for condonation of delay, if any, in filing the O.As.

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4 The respondents have filed separate replies to the O.As on similar lines to each other. They have mainly contended that Special pay is granted to the UDCs who are handling complex and important nature of duties. Though the Railway Board's letter No. PC III/79/SP/1/UPG dated 11.07.1979 specifies that filling up of 10% posts should be on seniority cum suitability basis, the same had been clarified vide Railway Board's letter No.PC/III/79/SP/1/UDC dated 17.04.84 that seniority cum fitness would not be the criteria for filling up such posts and the selection has to be made by the controlling authority on the suitability of a particular individual to handle the work in a post identified as carrying discernible duties and responsibilities of complex nature. The respondents have stated that the applicants were never posted on the posts carrying discernible duties or shouldered the responsibilities of complex nature. Hence they have prayed for the dismissal of the O.As.

5 We have heard the learned counsel for the applicants and also for the respondents cited above underneath the cause title reiterating the averments made in their respective pleadings. After hearing the learned counsel on both sides besides going through the records available on hand in this regard, we are of the view that the said Liyakat Ali Khan (R.4) would have been posted UDC on the post carrying arduous nature of duties with effect from 01.04.87, as per Ann.A/6 in O.A. No. 243 & 244/2004 and A/5 in O.A. No. 245/04. If the applicants have got any grievance, they

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ought to have moved the respondents within the time prescribed under the Rules. Having failed to do so but coming up before this Tribunal that too in the year 2004 is not at all permissible under the service jurisprudence. Thus there is no sufficient cause or convincing reasons for condoning such inordinate delay.

6 The learned counsel for the respondents, while reiterating the averments made in the reply, draws our attention to Annex. A/8 at page 24 of the paper book in O.A. No.245/2004 wherein it has been stated as under:

> "Sub: Grant of Special pay of Rs. 35 per month to UDCs in the Non-Secretariat Administrative Offices- stepping up of pay.
>
> 1. ....
>
> 2..... In pursuance of the agreed conclusions it has been decided in consultation with the Ministry of Finance to step up the pay fixed on promotion of senior UDCs not in receipt of this special pay equal to the pay fixed on promotion of junior UDC in receipt of this special in the following cases only:
>
> a) Where a senior UDC promoted before 05.05.79 started drawing less pay than a junior UDC promoted after 05.05.79.
> b) Where the senior UDC was in receipt of special pay of Rs. 35/ but this special pay was denied to him on appointment to the non functional selection grade in UDC
> c) Where the UDCs even though senior were not considered for appointment to the identified posts on the grounds that/they were already holding some other posts carrying special pay of Rs. 35 or more.
>
> The stepping up of pay in these cases will be subject to the fulfillment of the conditions of natural principles viz (i) both senior and junior employees belonged to the same cadres in the lower and higher posts and their scales in the two posts were also identical; (ii) the senior employee was drawing equal or more pay than junior in the lower post (of course without taking into account the element of the special pay) (iii) the senior employee was promoted earlier than his junior.

7 We find that the official respondents have the right to select employees [UDCs] who would carry on certain additional responsibilities for which special pay is to be granted. As indicated

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by the learned counsel for the official respondents, other employees were more responsive, efficient and shouldering additional responsibilities, for which those employees were granted special pay as per the scheme indicated in para 6 supra. Admittedly, the applicants herein have not shouldered any additional responsibilities and therefore they were not eligible/entitled to special pay as per the scheme indicated above. In view of the above, we come to the conclusion that the applicants have not made out any case in their favour and the official respondents very rightly decided to grant special pay to respondent No. 4.

8. Before we part with the above case, we would like to make it clear that this is a matter which arose as far back as in 1984 or in 1994. The applicants are agitating the same after a very long period, which attracts the provisions of delay and laches. As such the applications are liable to be dismissed on the principles of limitation. If they chose to sleep over their rights and remedies for an inordinately long time, this Tribunal is entitled to decline to interfere in the matter now. In this context, we would like to quote the following decisions of the Apex Court (i) **Kuldip Chand vs. Union of India and others** [(1996 (1) SLJ (SC) 113] and (ii) **Ex. Capt. Harish Uppal vs. Union of India and others** [JT 1994 (3) SC 126]

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9. In view of the total facts and circumstances of the case, though we have come to the conclusion that limitation would be attracted in the instant cases, in the interest of justice, we have also considered the case on merits and come to the considered view that the present Original Applications and Miscellaneous Applications do not have any merit and in the result these OAs and MAs are hereby dismissed with no order as to costs.

[R.C. PANDA]
Administrative Member.

[N D RAGHAVAN]
Vice Chairman.

Jsv.

NO. 25 to 26

Dt. - 18.3.09