

In the Central Administrative Tribunal
Calcutta Bench

OA No.1055/97

Present : Hon'ble Mr.Justice G.L. Gupta, Vice Chairman
Hon'ble Mr.S.Biswas, Member(A)

Birendra Kumar Biswas, Son of Late Ekkari Biswas, aged 61 years, Ex Station Master, BDR Railway (Bankurah Damodar River). Bankurah, under the control of the Divisional Railway Manager, South Eastern Railway, Adra Division, residing at Lalbazar, Keranibandh, P.O. Lalbazar, Dist.Bankura

...Applicant

-Vs-

- 1) Union of India, service through General Manager, South Eastern Railway, Garden Reach, Calcutta-43
- 2) Dvl. Railway Manager, South Eastern Railway, Adra Division, P.O. Adra, Dist.Purulia
- 3) Dvl. Personnel Officer, South Eastern Railway, Adra Division, P.O. Adra, Dist.Purulia
- 4) Sr.Dvl. Operating Manager, South Eastern Railway, Adra Division, P.O. Adra, Dt.Purulia

...Respondents

For the applicant : Mr.D.P. Bhattacharjee

For the respondent : Mr.A.K. Dutta

Date of Order : 18.07.02

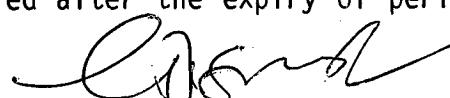
ORDER

Per Mr.Justice G.L. Gupta :

The applicant was Assistant Station Master and was promoted to the post of Station Master in the year 1980. He retired as Station Master on 30th April, 1994 on attaining superannuation. After his retirement the respondents issued an order on 13-9-94 giving the promotion to the applicant of the higher post with effect from 1-3-93.

2. The grievance of the applicant is that on the basis of the said order dated 13-9-94, he was given promotion in the higher scale of Rs1600-2660/- with effect from the date of taking over charge in the higher grade, but as he had retired on superannuation on 30-4-94, he could not join and as a result of which he is getting less pension. It is prayed that the respondents be directed to give him the benefit of promotion with effect from 1-3-93 with all consequential benefits and interest.

3. The respondent's case is that the applicant having retired in the year 1994 cannot succeed in this OA as it has been filed after the expiry of period of limitation. The further case of



the respondents' is that the promotion to the post of Dy.S.S. in the scale of Rs1600-2660/- w.e.f. 1-3-93 was ordered against the vacancy which arose due to restructuring and the applicant is not entitled to get the monetary benefit as he had not joined the post.

4. We have heard learned counsel for the parties and gone through the documents placed on record.

5. It is now the admitted position of the parties that the order Annexure A1 dated 13-9-94, whereby the applicant was promoted to the post of Dy.S.S. in the scale of Rs1600-2660/- was issued after the date of retirement of the applicant. Though the order was made effective from 1-3-93, but as the applicant had retired, he could not take over the charge of the higher post.

6. The question for consideration is whether the applicant can be denied the benefit of the promotion on the ground that he could not take charge of the higher post. It is evident that there was no fault on the part of the applicant when he did not take over the charge of the higher post. Had the Officers of the Administration been vigilant, they would have issued the order before the retirement of the applicant and then the applicant would have certainly joined the higher post and would have been benefitted by the order.

7. However, the applicant has filed this OA in the year 1997 i.e. 3 years after his retirement, many years after the cause of action had arisen.

The cause of action had arisen to the applicant in the year 1994 when he received the copy of the order dated 13-9-1994 and therefore he could have filed the OA within a period of 1 year of that date. It is not the case of the applicant that he was not aware of the orders and that he had come to know about the same within 1 year of the filing of this OA. No application for condonation of delay has also been filed. Keeping in view of the ratio of the cases



of Ramesh Chand Sharma V. Udhamp Singh Kamal and Others (2000 SCC (L&S) 53) and Secretary to Govt. of India and Others V. Shivram Mahadu Gaikwad (1995 Supp (3) SCC 231) wherein it has been held that application before CAT is barred by limitation, unless the application for condonation of delay is made, the same should be dismissed, it has to be held that the claim of the applicant for higher pay scale and its arrears is not sustainable, being barred by limitation.

8. However it has to be accepted that the applicant is loosing pension every day because of non-implementation of the order dated 13-9-1994. As already stated, the applicant was not at fault when he could not take charge of the higher post. Thus, it is a fit case in which the respondents are directed to refix the pension of the applicant after giving him the notional promotion to the higher post with effect from 1-4-93. The applicant is entitled to have enhanced pension from the date one year before the filing of this OA, because that part of the claim is not barred by limitation.

9. Consequently, this OA is allowed in part. The respondents are directed to refix the pay of the applicant on notional basis in terms of order dated 13-9-94 even though he had not taken the charge of the post and thereafter refix his pension. The respondents are further directed to make payment of the enhanced pension to the applicant from 12-9-96. The arrears be paid within a period of 3 months from the date of communication of this order.

10. No order as to costs.

S. Biswas
(S. Biswas)
Member(A)

G.L. Gupta
(G.L. Gupta)
Vice Chairman