

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 193 OF 2008

Tuesday, this the 26th day of May, 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

K. Palaniappan, Retired Senior Goods Driver,
Erode, residing at 4/1, Vinayakar Koil Street,
Vaigai Nagar End, Moolapalayam, Erode-2,
Tamilnadu.

Applicant

(By Advocate Mr. M.A. Shafik)

versus

1. Union of India, represented by the Chairman, Railway Board, New Delhi.
2. The General Manager, Southern Railway, Headquarters Office, Chennai.
3. The Chief Personnel Officer, Southern Railway, Headquarters Office, Chennai.
4. The Senior Divisional Personnel Officer, Southern Railways, Palghat Division, Palghat.

Respondents

(By Advocate Ms. P.K. Nandini)

The application having been heard on 26.05.2009 the Tribunal on 26.05.2009 delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant commenced his service as Loco Khalasi with effect from 09.06.1968. He became Engine Cleaner and thereafter Fireman Grade II with effect from 17.07.1978 and was later promoted as Fireman Grade I with effect from 09.11.1979. The applicant was further promoted as Diesel Assistant in the scale of pay of Rs.290-350/- with effect from

01.06.1981. Consequent to the implementation of the recommendations of the IV Pay Commission, his pay was fixed at Rs.1,250/- in the scale of pay of Rs.950-1,500/-. On restructuring with effect from 01.03.1993, the applicant was afforded the scale of pay of Rs.1,200-2,040/- vide order dated 22.04.1993 (Annexure A3). The applicant was then promoted as Goods Driver vide order dated 20.08.1993. The applicant's pay was thereafter revised to Rs.5,750/- in the scale of pay of Rs.5,000-8,000/- with effect from 01.01.1996 and later he was promoted as Senior Goods Driver in the scale of pay of Rs.5,500-9,000/- when the pay of the applicant was fixed at Rs.6,550/-. The applicant retired from service on 30.06.2006 with his basic pay at Rs.7,775/- in the aforesaid scale of pay of Rs.5,500-9,000/-.

2. It is the case of the applicant that one Shri. V. Doraiswamy happened to be his junior who had also scaled the hierarchy of promotions as aforesaid like the applicant but remained throughout junior to the applicant. However, the applicant could locate that the said Doraiswamy happened to draw higher pay than the applicant with effect from 01.01.1996 when the pay of the said Doraiswamy was Rs.5,900/- while that of the applicant was Rs.5,750/-. The difference axiomatically increased when further promotion took place as Senior Goods Driver in as much as applicant's pay was Rs.7,250/- while that of Shri. V. Doraiswamy was Rs.7,425/-. This difference was maintained subsequently as well.

3. The applicant has preferred a representation to the respondents in regard to the above and requested for stepping up of his pay as admissible under the existing rules. However, by the impugned A1 order

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as well as A2 order, the respondents have rejected his claim. One of the reasons for rejection was that the applicant did not exercise his option at the time of promotion as Senior Diesel Assistant with effect from 01.03.1993 and as Goods Driver with effect from 30.07.1999 whereas Shri V. Doraiswamy exercised his option and thus able to get higher pay.

4. The applicant has preferred this O.A. challenging the rejection of his claim by the respondents on various grounds including that non-exercise of option cannot be a ground to deprive the applicant of his entitlement of stepping up of his pay.

5. Respondents have contested the O.A. As a preliminary objection, they have raised the question of limitation and contented that even a legitimate right may not be entertained by the Tribunal to give life to stale claims. As regards the merits of the matter, the applicant was drawing Rs.1,520/- as on 25.08.1993 as Goods Driver in the scale of 1,350-2,200/- while due to option exercised by Doraiswamy, postponing his higher scale, Shri V. Doraiswamy was drawing Rs.1,500/- in the scale of pay of Rs. 1,200-2,040/-. Shri V. Doraiswamy got his higher pay scale of Rs.1,350-2,200/- only with effect from 30.07.1994 when his pay was fixed in the said scale at Rs.1,600/-. The replacement pay of which was Rs.5,900/- in the scale of pay of Rs.5,000-8,000/- w.e.f. 01.01.1996. The applicant's pay was also Rs.5,900 as on 01.08.1996. The above difference in pay was not brought out by the applicant at the material point of time and the applicant made his request for stepping up only after 3 years of his voluntary retirement on 05.09.2003 and 15 years of arising the course of action.

[Signature]

6. The applicant has filed his rejoinder stating that the applicant has also filed necessary option at the material point of time. As regards limitation, the applicant stated that his challenge is against Annexure A1 and A2 order which are recent and hence this O.A. is within limitation period.

7. The counsel for the applicant re-iterated the submissions made by the applicant in the O.A. and submitted that as regards limitation, since pay fixation is a continuous course of action as per the laws laid down by the Apex Court in the case of M.R. Gupta vs. Union of India, (1995 (5) SCC 528), limitation will not apply.

8. Counsel for the respondents submitted that the O.A. is pathetically and hopelessly time barred. In addition, the applicant who has failed to exercise his option, now cannot claim stepping up of pay.

9. Arguments were heard and documents were perused. There has been no proof to show that the applicant has ever submitted his option though he claims to have exercised the said option (vide rejoinder). In the absence of concrete proof, his mere assertion at the rejoinder level cannot be accepted. Again, it is seen from the records that both the applicant as well as his junior belongs to the same division at Erode and as such, it is inconceivable that the applicant would have come to know about the difference in pay only years after his retirement and not at the material point of time. The respondents are right when they contend that the applicant was keeping silence for over 15 years from the date the alleged cause of

action arose. As such as held by the Apex Court in the case of S.S. Rathore vs. State of M.P. (1989 (4) SCC 582) the limitation has to be properly reckoned. The decision by the Apex Court in the case of Rameshchand Sharma vs. Udhamp Singh Kamal (1999 (8) SCC 304) also acts against the applicant.

10. In view of the above, the O.A. having been filed with inordinate delay, hit by the bar of limitation and consequently the O.A. is dismissed. No costs.

Dated, the 26th May, 2009.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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