

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A.NO.299/2000

TUESDAY THIS THE 30th DAY OF DECEMBER, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINSTRATIVE MEMBER

T.Saradamma W/o Gopala Pillai
D/o Velayudhan aged 54 years
working presently as Typist (Adhoc)
Office of the Deputy Chief Engineer(CN)
Southern Railway,
Thiruvananthapuram.

(By Advocate Mrs.V.Chancy Gopakumar)

V.

1. Union of India, represented by
General Manager,
Southern Railway,
Madras.3.
2. Chief Engineer,
Southern Railway, Madras.3.
3. Deputy Chief Engineer (CN)
Division Office Compound,
Thycaud, Southern Railway,
Thiruvananthapuram.
4. Divisional Personnel Officer,
Southern Railway,
5. R.Raghunandanan,
Clerk,
Works Branch,
Southern Railway,
Divisional Office,
Thiruvananthapuram. ...Respondents

(By Advocate Mr.P.Haridas for R.1to4)

The application having been heard on 18.12.2003, the
Tribunal on --30--12.2003 delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant commenced service as a casual
labourer under the Engineer-in-Chief, Southern Railway,
Palayamkottai on 11.7.1973. The 5th respondent a Male

Casual Labourer who commenced service on 16.3.1974 was empanelled for regular appointment by order dated 25.12.80. The applicant was discriminated on the ground of sex and not empanelled then. The applicant as also the 5th respondent although were casual labourers being qualified were put to work as Clerks/Typists in the office of the Chief Engineer, Trivandrum from 1980 onwards. When in the case of another female casual labourer the Tribunal in OA 75/87 directed empanelment of women casual labourers also the applicant was empaneled as gangwoman by order dated 19.6.1989. Aggrieved by discriminatory treatment of the applicant vis-a-vis the 5th respondent the applicant on 25.3.1989 submitted Annexure.A2 representation to the 4th respondent claiming parity in treatment with the 5th respondent and retrospective empanelment and promotion on par with him alleging that the 5th respondent had been given adhoc promotion as Typist in the year 1982. She submitted a reminder on 12.7.99. Finding no response the applicant filed this Original Application for a declaration that she was entitled to be treated on par with the 5th respondent if not on preferential basis on the basis of her engagement as casual labourer with effect from 1973 and for a direction to the respondents 1 to 4 to see that the applicant was given retrospective empanelment and other consequential benefits with effect from the respective date assigned to the 5th respondent treating her as senior to the 5th respondent or in the alternative accommodate the applicant in the post occupied by the 5th respondent even reverting him from the post if there be no post for such accommodation. This

o

application was initially dismissed by order dated 24.3.2000 of the Division Bench for default. However, the same was restored to file on a Miscellaneous Application for restoration being allowed. The Original Application again came up for hearing on admission on 14.6.2000. On that date after considering the averments in the application and the annexures appended thereto and on hearing the learned counsel of the applicant as also of the official respondents the Bench rejected the application under Section 19(3) of the Administrative Tribunals Act 1985 on the ground that the grievance of the applicant having arisen in the year 1980 beyond the period of three years from the date of commencement of the Administrative Tribunals Act, the Tribunal did not have jurisdiction to entertain the application.

2. Aggrieved by the rejection of the application, the applicant carried the matter before the Hon'ble High Court of Kerala in OP No. 25863 of 2000. The Hon'ble High Court made the following observations:

"The 5th respondent was empaneled in the year 1980. The grievance of the petitioner arose in the year 1980 and hence the application was dismissed by the Tribunal. But the grievances of the petitioner is a recurring one. The Tribunal did not consider the application properly on merit even though a statement was filed by the department. While considering the cases filed by the lower grade employees for benefits the Tribunal has to consider the reply statement, evidence adduced and finally dispose of the matter. In the above circumstances, we set aside the Ext.P1 and remand the matter for fresh disposal according to law. Since the application was filed in the year 2000 the Tribunal shall dispose of the matter expeditiously".

3. The Original Application is now again before us for fresh disposal according to law in view of the order of the Hon'ble High Court of Kerala.

4. The learned counsel of the respondents stated that the respondents do not wish to file any statement at this stage and would argue the case on admission in the light of the rules and in accordance with law. No additional material was brought on record by the applicant also. We have therefore perused the application as also the annexures A1 to A3 and have heard the learned counsel on either side.

5. The grievance of the applicant is that while she was inducted as a casual labourer initially on 11.7.1973 the 5th respondent who was initially engaged as a Casual Labourer only on 16.3.1974 and was therefore junior to her as a casual labourer was empaneled for absorption in the year 1980 while the applicant was discriminated on the ground of gender and was empaneled only with effect from 19.6.1989 as a Gang Woman with the result the 5th respondent was promoted as a Clerk in the year 1982 while the applicant was not given promotion with effect from that date. The applicant, therefore, has prayed for a declaration that the applicant was entitled to be treated on par with the 5th respondent and for a direction to the respondents 1 to 4 to give her retrospective empanelment and to accommodate the applicant in the post occupied by the 5th respondent even reverting him from the post. Referring to this fact situation the

w

learned counsel of the respondents argued that the grievance of the applicant namely empanelling the 5th respondent who is junior to the applicant as a casual labourer for regular absorption in the year 1980 leaving out the applicant as alleged by the applicant arose in the year 1980 and therefore, the Tribunal has no jurisdiction to entertain the application in view of the provisions contained in Section 21 of the Administrative Tribunals Act, 1985. The learned counsel of the applicant meeting this argument submitted that as the grievance of the applicant in this case is a recurring grievance that it has been held so by the Hon'ble High Court and therefore the tribunal has jurisdiction to entertain the application.

6. On a careful consideration of the facts discernible from the material on record and keeping in view the direction of the Hon'ble High Court of Kerala to dispose of the application in accordance with law, we find that this application cannot be entertained by the Tribunal at this distance of time in accordance with law in terms of the provisions of Section 21 of the Administrative Tribunals Act. For an easy reference Section 21 of the A.T. Act is reproduced below:

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 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) of 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."

7. The genesis of the grievance of the applicant is the order made in the year 1980 empanelling the 5th respondent and leaving out the applicant allegedly on the ground of sex. The adhoc promotion of the applicant in the year 1982 as a Clerk/Typist was the result of empanelment in the year 1980 as a regular Railway employee. The grievance therefore arose on the basis of a one time order of empanelment of the 5th respondent which cannot be said to be a continuing or recurring cause of action. The learned counsel of the

applicant referred to the ruling of the Apex Court in M.R.Gupta Vs. Union of India and others, 1995(5) SCC 628 in support of his contention that the denial of the benefit of equal treatment for service benefits an employee is a continuing cause of action so long as he continues in service. We have very carefully gone through the decision cited above. Shri M.R.Gupta, the appellant before the Hon'ble Supreme Court who joined the service of the Railways in the year 1978 after serving the State of Punjab as Demonstrator in Government Polytechnic from 1967 onwards was aggrieved that his pay was not fixed properly in accordance with the provisions of Rule 2018 equivalent to Rule 22(c) of the Fundamental Rules. His representation regarding that was rejected before commencement of the Administrative Tribunals Act. The application filed by him before the Tribunal on 4.9.89 was rejected on the ground of limitation. The Tribunal held that Shri Gupta having been told that he was not entitled to fixation of pay as claimed by communication dated 12.8.85 and 7.3.87 he was not entitled to again approach the Tribunal at that distance of time and that his claim was hopelessly barred by limitation. The Hon'ble Apex Court found that the Tribunal did not approach the issue in the right perspective and that the employee gets a cause of action every month he was paid pay and allowances which was short of what was due to him and therefore the application for proper fixation of pay would be a continuing cause of action although the arrears beyond the period of limitation would have been barred by limitation. It is profitable to extract the observation of the Hon'ble Supreme Court contained in paragraphs 5 to 8 of this celebrated judgment.

✓

"5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellants claim is found correct on merits, he would be entitled to be paid according to properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

6. The tribunal misdirected itself when it treated the appellant's claim as "one time action" meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correct in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind (see Thota China Subba Rao Vs. Mattpalli Raju (AIR 1950 FC 1)).

7. The learned counsel for the respondents placed strong reliance on the decision of this court in S.S.Rathore V.State of MP (1989) 4 SCC 582. That decision has no application in the present case. That was a case of termination of service and therefore, a case of one time action, unlike the claim for payment of correct salary according to the rules throughout the service giving rise to a fresh cause of action each time the salary was incorrectly computed and paid. No further consideration of that decision is required to indicate its inapplicability in the present case.

8. For the aforesaid reasons, this appeal has to be allowed. We make it clear that the merits of the appellant's claim have to be examined and the only point concluded by this decision is the one decided above. The question of limitation with regard to the consequential and other reliefs including the arrears, if any, has to be considered and decided in accordance with law in due course by the Tribunal. The matter is remitted to the Tribunal for consideration of the application and its decision afresh on merits in accordance with law. No costs."

(emphasis supplied)

8. Hon'ble Apex Court has very clearly held that the wrong fixation of pay is a recurring cause of action while non-promotion etc. ~~being one time action~~ can be challenged only subject to the law of limitation. In this case the applicant is not aggrieved by a wrong fixation of her pay to claim that she would get a fresh cause of action every month. ~~The discrimination allegedly made in not empanelling~~ the applicant in the year 1980 when the 5th respondent was empaneled was based on an order made in the year 1980 which ~~is a one time order and not a recurring or a continuing one.~~ Further the applicant has sought appointment to the post occupied by the 5th respondent who having been absorbed as a regular employee in the year 1980, and promoted as Clerk in the year 1982 has acquired a vested right to hold the post

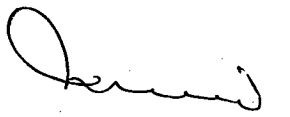
2

.10.

as the appointment and promotion were not challenged within the period of limitation. Therefore, we are of the considered view that the application is not legally entertainable as the cause of action having arisen in the year 1980 is barred in view of Section 21 of the Administrative Tribunals Act.

9. In the result the application which is barred by limitation is dismissed leaving the parties to bear their own costs.

Dated this the 30th day of December, 2003



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

(s)

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.299/2000

Wednesday this the 14th day of June, 2000

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE
MEMBER

T. SaradammaW/o Gopala pillai
D/o Velayudhan aged 54 years
working presently as Typist (Adhoc)
Office of the Deputy Chief Engineer (CN)
Southern Railway,
Thiruvananthapuram.

...Applicant

(By Advocate Mr. Varghese Prem)

Vs.

1. Union of India, represented by
General Manager,
Southern Railway,
Madras.3.
2. Chief Engineer,
Southern Railway, Madras.3.
3. Deputy Chief Engineer (CN)
Division Office compound,
Thycaud, Southern Railway,
Thiruvananthapuram.
4. Divisional Personnel Officer,
Southern Railway,
Thiruvananthapuram.
5. R.Raghunandanan,
Clerk, Works Bench,

Southern Railway,
Divisional Office, Thiruvananthapuram...Respondents

(By Advocate Mr. KV Sachidanandan (rep.)

The application having been heard on 14.6.2000, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant who commenced service as a Casual
Labourer but allowed to work as a Typist in the office

...2

a✓

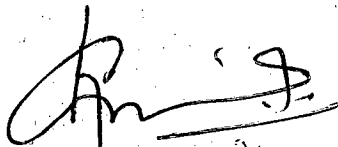
of the Engineer-in-Chief, Southern Railway, Pulayankottai was empanelled in a Group D post in 1989 while the 5th respondent who was initially engaged as a casual labourer from 16.3.74 was empanelled in the year 1980. On the basis of the earlier empanelment, it is alleged that, the 5th respondent has been regularised as a Clerk. Alleging that the applicant could not complain about the earlier empanelment of the 5th respondent as she was not aware of the discriminatory treatment, it appears that she made a representation on 25.3.99 to the 4th respondent. Finding that there is no reply to this, the applicant has filed this application for a declaration that she is liable to be treated on par with the 5th respondent, if not on a preferential basis on the ground of her engagement as a Casual Labourer with effect from 11.7.73 and for a direction to the respondents 1 to 4 to see that the applicant is given retrospective empanelment and other consequential benefits with effect from the respective dates assigned to the 5th respondent, treating her as senior to the 5th respondent or in the alternative to accommodate the applicant in the post occupied by the 5th respondent even reverting him from the post if there is no post for such accommodation.

2. We have perused the application and annexures appended thereto and have heard Shri Varghese Prem, learned counsel of the applicant and Shri P.N.Santhosh appearing on behalf of Shri KV Sachidanandan, learned counsel for the respondents 1 to 4. The grievance of the applicant is that while she was senior as casual labourer having past service with effect from 11.7.73, the 5th respondent who was commenced service as casual labourer only with effect from 16.3.74 was regularised as a Clerk overlooking her seniority. The grievance of the

.3.

applicant, therefore, arose in the year 1980. The Tribunal does not have jurisdiction to entertain the grievances in respect of matters which arose prior to November, 1982. Therefore, the application is rejected under Section 19(3) of the Administrative Tribunals Act. No order as to costs.

Dated the 14th day of June, 2000



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

S.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 299 of 2000

Friday, this the 24th day of March, 2000

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. T. Saradamma, W/o Gopalapillai,
D/o Velayudhan, working presently as Typist (ad hoc),
Office of the Deputy Chief Engineer (CN),
Southern Railway, Thiruvananthapuram. ... Applicant

By Advocate Mr. Varghese Prem (represented)

Versus

1. Union of India represented by
General Manager, Southern Railway, Madras-3
2. Chief Engineer, Southern Railway, Madras-8
3. Deputy Chief Engineer (CN),
Division Office Compound, Thycaud,
Southern Railway, Thiruvananthapuram.
4. Divisional Personnel Officer,
Southern Railway, Thiruvananthapuram.
5. R. Raghunandanan, Clerk, Works Bench,
Southern Railway, Divisional Office,
Thiruvananthapuram. ... Respondents

By Advocate Mr. KV Sachidanandan (R1-4)

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

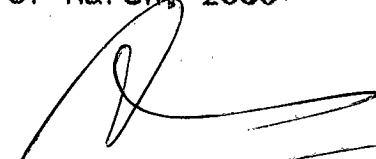
When the OA was taken up today, on behalf of the learned counsel for the applicant an adjournment is sought. This OA was adjourned twice earlier at the request of the counsel for the applicant. Hence, the original application is dismissed for default. No costs.

Friday, this the 24th day of March, 2000



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

ak.



A.M. SIVADAS
JUDICIAL MEMBER