

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 145 of 2008

Reserved on 8.7.2014
Pronounced on 15 July, 2014

**Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member -A**

Vinord Uraon, aged about 51 years, S/o late Mangoo Uraon, R/o Q. No. 55-A, Mansa Devi Railway Colony, Rae Bareilly.

.....Applicant
By Advocate : Sri M.A. Siddiqui

Versus.

1. Union of India through the General Manager, N.R. Baroda House, New Delhi.
2. The DRM, NR Hazratganj, Lucknow.
3. The Sr. DPO, N.R., D.R.M. Office, Hazratganj, Lucknow.

.....Respondents.

By Advocate : Sri B.B. Tripathi

O R D E R
By Ms. Jayati Chandra, Member-A

The present Original Application has been filed by the applicant under Section 19 of Administrative Tribunals Act, 1985 seeking following relief(s):-

- (i) *"The Hon'ble Tribunal be graciously pleased to quash the impugned order dated 24.12.2007 as contained in Annexure no. A-1 and the applicant on medical de-categorization be awarded the scale of Rs. 5000-8000/- as given to Sri Misbah Ahmad Khan and Ssharfi Manjhi belonging to the same category to which the applicant belongs.*
- (ii) *The applicant be further granted equivalence grade of Rs. 5500-9000 from running post to stationary post in terms of Railway Board letter dated 10.1.1991 to 1.10.1999 from back date.*
- (iii) *The applicant be further paid arrears of difference of Rs. 300/- per month from the date of fixation, arrived at due to wrong calculation alongwith other allowance together with interest 18% yearly on the amount so arrived after correct calculation.*

J. Chandra

- (iv) The applicant be accorded promotion as due in the category of medically de-categorized stream to which the applicant belongs which he comes due in due course of time.
- (v)
- (vi)"

2. The case of the applicant is that he joined Railway Service as Fitter Khalasi w.e.f. 20.1.1977. He was promoted to the post of Driver (Goods) in the year 1993. He was sent for periodical medical examination in the year 1995 when he was declared medically unfit for the post of Driver (Goods). He was posted on the alternative post of Shedman Gr.I in violation of Rule 1310 and 1311 of Railway Establishment Code, which read as under:

"Rule 1310 : The alternative appointment must be offered in writing stating the scale of pay and the rate of pay at which it is proposed to re-absorbed him in service. On no account should the railway servant be posted to an alternative appointment until he has accepted the post.

Rule 1311: As soon as a railway servant has accepted the alternative employment offered to him and he has been appointed thereto the balance of the leave granted to him will be cancelled and only the leave actually available will be to his leave account."

He was never asked for his consent as required under the above Rules prior to grant of alternative employment.

3. This fact is well established from the letter dated 15.2.1996 (Annexure-2). He continued to work on the post of Shedman Gr.I in the pay scale of Rs. 1400-2300 revised to Rs. 4500-7000 on the recommendations of 5th Pay Commission as implemented w.e.f. 1.1.1996. The earlier pay scale of Driver (Goods) i.e. Rs. 1350-2200 was revised to Rs. 5000-8000, while the pay scale for the post of Shedman Rs. 1400-2300 was revised to Rs. 4500-7000/-. In this way, his pay which he had been drawing as Driver (Goods) from 1.1.1996 to 30.6.1996 was revised to the higher pay scale of Rs. 5000-8000/-. But from 1.7.1997 onwards the pay scale in the revised pay scale of Sheman Gr.I has been paid to him. In this way, he lost the benefit of up-gradation, which was made available to him as Driver (Goods). He had been repeatedly representing against the loss of Rs. 300 per month + DA and praying for further appropriate correction, but all in vain. It is pertinent to note here

J. Chandra

that S/Sri Abdul Ali Khan, Asharfi Manjhi who were also similarly medically de-categorized from the pay scale of Rs. 5000-8000/- were given alternative appointment vide orders dated 6.2.2006 and 6.2.2006 (Annexure nos. 4 & 5). Similarly, S/Sri S.M. Nazim, Ranjit Pandey, S. Kumar, M.H. Yadav and Kishori Lal (Annexure no.6), who have been placed in the equivalent pay scale after medically de-categorization. Feeling aggrieved, he filed O.A. no. 227 of 2007, which was disposed of vide order dated 7.6.2007 with a direction to consider and decide the pending representations of the applicant dated 6.6.2006 and 8.11.2006 by passing a reasoned and speaking order within a period of 3 months. The respondents have passed the impugned order dated 24.12.2007 dismissing his prayer for grant of pay scale of Rs. 5000-8000/- from the date of absorption as Shedman Gr.I, hence this O.A.

4. The respondent have denied the claim of the applicant stating that the applicant was medically de-categorized from the post of Driver (Goods) in the pay scale of Rs. 1350-2200 in May year 1995 and was screened by the department for absorption in the alternative category and he was found suitable for the post of Shedman Gr.I in the pay scale of Rs. 1400-2300. This pay scale, at the time of passing of posting order dated 15.2.1996 was higher than the scale of Driver (Goods), therefore, the applicant had joined therein and has been working as Shedman Gr. I. However, as per recommendations of 5th Pay Commission, the pay scale of Shedman was revised to Rs. 4500-7000/-. As he was already working on the post of Shedman Gr.I, he is entitled to salary in the pay scale for the post of Shedman Gr.-I and not on the revised pay scale of Driver (Goods). He had applied for the post of Crew Controller under PS No. 11951 and after screening the competent authority, he was posted as Crew Controller by letter dated 19.9.2003 in the pay scale of Rs. 5500-9000/-. The basic contention of the respondents is that as the applicant was medically de-categorized prior to implementation of 5th Pay Commission report on 8.10.1997, he had accepted the post of Shedman Gr.I and had assumed his duties on 30.6.1996, therefore, he can be only awarded pay revision as was made applicable to Shed man Gr.I.

J. Chandra

5. Rejoinder Reply has been filed by the applicant denying the contentions of the respondents made in the Counter Reply and reiterating the stand taken in the Original Application.

6. Supplementary Counter Reply has also been filed to which Supplementary Rejoinder Reply has been filed by the applicant.

7. We have heard the learned counsel for the parties and have perused the pleadings on record.

8. In this case the crux of the matter is that the applicant was working as Driver (Goods) in the pre-revised pay scale of Rs. 1350-2200/- . By his own admission, he was medically de-categorized in the year 1995. He was given alternative post of Shedman Gr.I in the pay scale of Rs. 1400-2300/- by order dated 15.2.1996 (Annexure no.2). Although, the applicant had been medically de-categorized in May, 1995, he was given alternative posting only in February, 1996 and he joined the same in July, 1996, as seen from his representation dated 6.6.2006. Thus, his salary as Driver (Goods) from 1.1.1996 to 30.6.1996 was revised in accordance with the revised pay scale and thereafter as Shedman Gr.I. The applicant has raised objection in this O.A. that prior to give issuance of order of alternative appointment, his consent as per rule 1310 and 1311 of Railway Establishment Code is mandatory, which were not obtained. This plea is not sustainable at this belated stage after he had accepted the said posting order and continued to work as such for a considerable period of time. The applicant has not produced any copy of any letter written by him to the appropriate authority protesting against such alleged arbitrariness, possibly because at the time of passing the order i.e. February, 1996 the pay scale of Shedman was higher than the pay scale of Driver (Goods).

9. The recommendations of 5th Pay Commission were notified for implementation in the month of October, 1997 and the recommendations were made effective from 1.1.1996. The applicant had put in more than one year on the post of Shedman Gr.I having higher pay scale than the pay scale meant for the post of Driver (Goods) by the time the Vth Pay Commission report was

J. Chandra

notified. The applicant has stated that he gave many representations, but he has filed a copy of representation made by him only on 6.6.2006 (Annexure no.9) in which he fairly conceded that he was medically de-categorized in May, 1995 and had been working on the post of Shedman Gr.I in the pay scale of Rs. 1400-2300 from 30.6.1996 till 6.6.2006. The applicant had not been given the pay scale of Driver (Goods), which had been revised subsequently with retrospective effect in a higher pay scale than meant for the post of Shedman Gr.I, this appears to be more in the nature of anomaly due to certain benefits given with retrospective effect.

10. The applicant had every right to approach his senior officers and failing to get any relief, it was open to him to seek adequately legal intervention from the date of implementation of 5th Pay Commission's report i.e. any time in 1997/1998. But it appears that the applicant has slept over his right till filing of O.A. in the year 2007. Section 21 of Administrative Tribunals Act, 1985 lays down a period of one year as the period within which an O.A. may be filed. The Hon'ble Supreme Court in the case of **Union of India Vs. A. Durairaj reported in JT 2011 (3) SC 254** has held as under:-

"14. This is a typical case where an employee gives a representation in a matter which is stale and old, after two decades and gets a direction of the Tribunal to consider and dispose of the same; and thereafter again approaches the Tribunal alleging that there is delay in disposal of the representation (or if there is an order rejecting the representation, then file an application to challenge the rejection, treating the date of rejection of the representation as the date of cause of action). This Court had occasion to examine such situations in Union of India v. M.K. Sarkar [2010 (2) SCC 58] and held as follows:

"The order of the Tribunal allowing the first 11 application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. x x x x x"

When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered

J. Choudhury

with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the Court does not expressly say so, that would be the legal position and effect."

10. In this case, the applicant has sought to bypass the question of limitation by way of fixing his cause of action from the date of passing the impugned order dated 24.12.2007, which has been passed in compliance of the directions of this Tribunal in O.A. no. 227 of 2007. It is settled preposition of law that the benefit of condonation of delay cannot be extended to such person who slept over his right for considerable long time and thereafter obtained simple direction from the Court for disposing of his representation and order passed thereon to meet out the limitation period. The Hon'ble Supreme Court has held in catena of decisions that stale claim cannot be entertained on merits and it should be dismissed on the point of limitation itself.

11. In view of the above, the O.A. fails and is accordingly dismissed. No costs.

J. Chandra
 (Ms. Jayati Chandra)
 Member-A

VR. Agarwal
 (Navneet Kumar)
 Member-J

Girish/-