

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.745/99

Dated this, 13th the day of March, 2003.

CORAM: HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)
HON'BLE SHRI K.V. SACHIDANANDAN, MEMBER (J)

Jahurbeg Rasidbeg
Working Khalasi
Working under CIOW
Dahanu Road.

C/o G.S. Walia
Advocate High Court
16, Maharashtra Bhavan
Bora Masjid Street
Behind Handloom House
Fort, Mumbai 400 001.

[Applicant by Shri G.S. Walia, Advocate)

Applicant

vs.

1. Union of India, through
General Manager
Western Railway
Head Quarters Office
Churchgate
Mumbai 400 020.

2. Divisional Railway Manager,
Mumbai Division,
Western Railway,
DRM's Office,
Mumbai Central,
Mumbai 400 008.

3. Sr. DEN (N)
Bombay Division
Western Railway
DRM's Office,
Mumbai Central,
Mumbai 400 008.

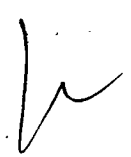
(Respondents by Shri V.S. Masurkar, Advocate)

Respondents

O R D E R

[Per: K.V. Sachidanandan, Member (J)]

The applicant was appointed as Temporary Motor Driver in the scale of Rs.260-400/-. He was being utilised as a Driver in the scale of Rs.950-1500/-. He has passed the Trade Test of Truck Driver and he is in the possession of a Driving Licence. Though the applicant was working as a Driver he is not being paid



the salary of Driver. Being aggrieved by the impugned action of the respondents, the applicant has filed this O.A. seeking the following reliefs.

a) This Hon'ble Tribunal be pleased to direct and order the Respondents to pay the Applicant the pay scale of Rs.950-1500 (IVth Pay Commission Scale) and as revised by the Vth Pay Commission Recommendations for the period for which he has been working as a Driver, with 18% thereupon.

b) Cost of this Original Application be provided for.

c) Any other or further order as to this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case may be passed.

2. The respondents had filed detailed Written Statement contending that the reliefs being claimed by the applicant in the present case is very 1986 and the O.A. is filed on 9.8.1999. And therefore, the application suffers from delay and laches and on this ground alone the O.A. will be dismissed.

3. The respondents further stated and admitted that the applicant was engaged as a casual motor truck driver on Extra Labour Management (ELA for short) against a project work under IOW-DRD with effect from February, 1982 after completion of six months continuous work and is granted scale of pay at the rate of

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1/30th of the scale of pay with effect from 16.8.1982 vide Ex.R.1. He was granted temporary status after completion of 360 days of continuous work against project work and he was paid as Temporary status Truck Driver against sanctioned ELA. He has written letter to the DRM (E) on 4.5.1995 stating that the applicant is temporary status truck driver of IOW-DRD was placed on panel for regular absorption in Class IV i.e. Khalasi. The I.O.W.-DRD is having truck No.GTO 1746 and no post of Truck Driver and on cadre as such. Therefore it is proposed to utilise him as Temporary Driver on ELA against sanctioned works. He was regularised as Khalasi w.e.f. 21.2.95 to 20.11.1995. One ELA for Motor Truck Driver was sanctioned by competent authority and he was paid as Motor Truck Driver w.e.f. 21.11.1995 to 20.12.1996 against various sanctioned ELA. No further ELA was granted by competent authority as there is a ban on sanction of ELA. He was screened and absorbed as permanent employee in the Cadre of Class IV and hence he is entitled for the said pay scales which were duly paid to the applicant. The respondents submitted that the applicant is not eligible for salary as Driver.

4. Shri G.S. Walia, learned counsel appeared for the applicant and Shri V.S.Masurkar, learned counsel appeared for the respondents. The learned counsel took us to the pleadings, materials and evidence on record. The learned counsel for the applicant argued that the applicant is entitled for the pay of the Driver and all consequential benefits during the period he has worked as a Driver. The learned counsel for the applicant further submitted that since the applicant has discharged the duties as a Driver he is entitled for equal pay for equal work.



5. The learned counsel for the respondents on the other hand, mainly relying on the series of decisions of the judicial pronouncements, such as (1) *P.S. Sadasivaswamy vs. State of Tamil Nadu AIR 1974 SC 2271* (2) *L.Chandrakumar vs. Union of India 1997 (2) SLR (SC) 1* and other decisions cited in the reply statement on page 23 and vehemently argued that the claim belongs to 1986 and the O.A. was filed in 1999 hence the claim is barred by limitation.

6. We have heard the learned counsel on both sides, and gave due consideration to the arguments advanced by them.

7. It is an admitted fact that the applicant was utilised as a Driver and the applicant was engaged as a casual Motor Truck Driver on Extra Labour Arrangement (ELA) against a project work under IOW-DRD with effect from February, 1982. After completion of six months continuous work he was granted scale of pay at the rate of 1/30 of the scale of pay with effect from 16.8.1982. Further on completion of 360 days' continuous work against project work he was paid as Temporary status Truck Driver against sanctioned ELA. He was also placed on panel for regular absorption in Class IV i.e. Khalasi. Hence the fact remains that the IOW.DRD under whom the applicant was working is having a Truck bearing No.GTO 1746 and no post of truck driver and on cadre as such. Therefore, the respondents proposed to utilised the applicant as Temporary Driver on ELA against the sanctioned works. Since he was holding a motor driving licence he was regularised as Khalasi w.e.f. 21.2.1995 to 20.11.1998. He was paid as Motor Truck Driver w.e.f. 21.11.1995 to 20.12.1996 as one post of ELA for Motor Truck Driver was sanctioned by the



competent authority. Therefore, we find good reason to arrive at a conclusion that the applicant was utilised as a Truck Driver from 1982 onwards. The contention that the applicant was absorbed as permanent employee in the cadre of Class IV and is only entitled to that scale of pay and he will not be entitled to the scale of pay of Truck Driver since there is no sanctioned post cannot stand to reason. In a celebrated decision of the Supreme Court in the case of *Dwarka Prasad Tiwari vs. M.P. State Transport Corporation & Anr.* reported in 2002 (1) ATJ 391 the apex court has held that in such circumstances if a person is utilised for certain work, he is entitled to a [✓] ~~post~~ ^{Pay} of higher work for the period [✓] ~~of~~ ^{he has done} the work ~~as such~~. It is made very clear in that judgement that they should be paid emoluments as attached to the higher post. It is also brought to our notice another decision of the Supreme Court in the case of *Jaswant Singh vs. Punjab Poultry Field Staff Association and Ors.* reported in 2002 SCC (L&S) 116 where the apex court had occasion to deal with the parity in employment, equal for equal work and held that persons who are not qualified for promotion to, but discharging duties of promotion post, nonetheless entitled to pay and allowances admissible to the promotion post but limited the claim for three years.

8. In this case also admittedly, the respondent is having a truck which is [✓] ~~being~~ driven by the applicant and he was utilised for the same. Adopting the ratio of the apex court (supra) we are of the view that the applicant is also entitled to get the benefits. It could be seen that the applicant claimed for the first time on 4.5.1995 vide a representation addressed to the DRM

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(E). Therefore, considering the plea on limitation advanced by the respondents, the applicant will be entitled to have this benefit from that day onwards. Considering all the above aspects, we hold that the applicant is entitled for the benefit from 4.5.1995.

9. In the conspectus of the facts we declare that the applicant is entitled to the salary of Driver in the Pay Scale of Rs.950-1500/- (IVth Pay Commission Scale) and as revised by the Vth Pay Commission Recommendations for the period from 4.5.1995 till the date he has actually worked the same. He will not be entitled for any interest. We direct the respondents to work out the benefit as the applicant is entitled to pay of a Driver for the period he has worked on such post from 4.5.1995 deducting any amount which he has received as pay for ELA/Khalasi. This exercise shall be done by the respondents as expeditiously as possible, in any case, within a period of 3 months from the date of receipt of a copy of this Order. No order as to costs.

(K.V. Sachidanandan)
Member (J)

sj*

(Govindan S. Tampi)
Member (A)