

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 178 of 2001.

Dated this Tuesday, the 17th day of February, 2004.

Shri V. K. Vishwanathan,

Applicant.

Shri K. B. Talreja,

Advocate for
Applicant.

VERSUS

Union of India & Another,

Respondents.

Shri V. D. Vadhavkar,

Advocate for
Respondents.

CORAM : Hon'ble Shri Anand Kumar Bhatt, Member (A).

Hon'ble Shri S. G. Deshmukh, Member (J).

(i) To be referred to the Reporter or not ? 7

(ii) Whether it needs to be circulated to other
Benches of the Tribunal ? ✓

(iii) Library. ✓


(S.G. DESHMUKH).
MEMBER (J).

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 178 of 2001.

Dated this Thursday the 17th day of Feb, 2004.

CORAM : Hon'ble Shri Anand Kumar Bhatt, Member (A).

Hon'ble Shri S. G. Deshmukh, Member (J).

Shri V. K. Vishwanathan,
Divisional Signal & Telecommunication
Engineer, Central Railway,
S & T Workshops/Byculla.

... Applicant.

(By Advocate Shri K. B. Talreja)

VERSUS

1. Union of India through
The General Manager,
Central Railway,
Mumbai C.S.T.

2. The Chief Signal & Telecommunication
Engineer, Central Railway,
Mumbai C.S.T.

... Respondents.

(By Advocate Shri V. D. Vadhavkar)

O R D E R

PER : Shri S. G. Deshmukh, Member (J).

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought for a direction to Respondents to refix his pay in the various scales as under:

(i) Fix his scale & pay in the grade of Rs. 205-280 instead of in the grade of Rs. 175-240 w.e.f. 6/7/72 and pay him the arrears alongwith interest.

(ii) Fix his pay in the scale of Rs. 425-700 instead of Rs. 380-560 w.e.f. 1.1.73 and pay him arrears alongwith interest.

hmv

...2.

- (iii) Fix his pay in the scale of Rs. 550-750 instead of Rs. 380-700 w.e.f. 24.10.74 and pay him the arrears alongwith interest.
- (iv) Fix his scale and pay in the grade of Rs. 650-1040 instead of in the grade of Rs. 425-700 w.e.f. 1.11.75 and pay him the arrears alongwith interest.
- (v) Fix his scale and pay in the grade of Rs. 900-1400 instead of in the scale of Rs. 550-750 w.e.f. 24.10.1979 and pay him the arrears alongwith interest.
- (vi) Fix his pay in the scale of Rs. 1100-1600 instead of Rs. 700-900 w.e.f. 22.7.83 and pay him the arrears and interest thereon.
- (vii) Fix his pay in the scale of Rs. 3000-4500 instead of in the scale of Rs. 2000-3200 w.e.f. 1.1.86 and pay him the arrears alongwith interest.
- (viii) Fix him in the scale of Rs. 3700-5000 instead of in the scale of Rs. 2375-3500 w.e.f. 1.7.87 and pay him the arrears alongwith interest.
- (ix) Fix his pay in the scale of Rs. 4500-5700 instead of in the scale of Rs. 2000-3500 w.e.f. 1.8.88 and pay him the arrears alongwith interest.
- (x) Fix him in the scale of Rs. 5900-6700 instead of in the scale of Rs. 2000-3500 w.e.f. 10.8.92 and pay him the arrears alongwith interest.
- (xi) Fix him in the scale of Rs. 7300-7600 instead of in the scale of Rs. 2000-3500 w.e.f. 10.8.95 and pay him the arrears alongwith interest.
- (xii) Fix him in the scale of Rs. 22,400-24,600 instead of in the scale of Rs. 7500-12000 w.e.f. 1.1.1996 and pay him the arrears alongwith interest."

2. The applicant was recruited through Railway Service Commission for the post of Apprentice Electrical Signal Maintenance 'A' with stipend of Rs. 175/- and after passing the training course of 9 months, he was posted as Electrical Signal Maintainer 'A' in the grade of Rs. 175-240 w.e.f. 06.04.1971.

h/v The applicant was an Engineering Diploma Holder at the time of

appointment in the Railways and thereafter he cleared AMIE Part 'A' and 'B' courses, which is equivalent to Degree. The applicant was selected for the post of Apprentice Assistant Signal Inspector Trainee vide order dated 05.08.1974. On his completion of training, he was posted under Chief Signal Inspector, Bhusawal as Signal Inspector-III in the grade of Rs. 425-700 and resumed his duties on 16.11.197.

Thereafter, the applicant was selected in the post of Apprentice Signal Inspector-II on stipend of Rs. 550/- per month. On completion of the training as Signal Inspector-II, he was posted as Signal Inspector-II in the scale of Rs. 550-750/- w.e.f. 17.06.1980. He was selected by a duly constituted Selection Board for the post of Signal Inspector-I in the grade of Rs. 700-900/- and was posted as Signal Inspector-I under CSI(C), Bhusawal w.e.f. 22.07.1983. He was selected by the Railway Board for deputation to Zimbabwe through RITES for the period 19.02.1985 to 23.02.1987. Thereafter, he was posted at Mathura after completion of deputation. Then he was promoted to the post of Chief Signal Inspector in the scale of Rs. 2375-3500/- w.e.f. 01.07.1987. He was transferred to Nagpur. He appeared for the selection of Group 'B' Officers' Services and was selected by a duly constituted Selection Board and was posted as an Assistant Signal and Telecommunication Engineer(C) at Nagpur. It is his contention that administration could not maintain his Service Records correctly and could not fix his pay in various grades due to non follow up of the statutory provisions/ revisions recommended by the various pay commissions. The

WV applicant has contended that his appointment in the S & T

Department is through Railway Service Commission and was appointed as per para 160 (B)(2) IREM, 1968, Rule 133 (3)(F) of IREC 1971. His pay should have been fixed in the scale of Rs. 205-280 after completion of two years in the scale of Rs. 175-181, which has not been done. The nine months training has not been counted as duty, which has resulted in wrong fixation of his pay. According to the applicant, he should have been fixed as on 06.07.1972 in the scale of Rs. 208-280. After the Third Pay Commission Recommendations, his scale w.e.f. 1.1.1973 should have been Rs. 425-700 and not Rs. 385-560. When he was selected by the R.S.C. for the post of Appriser Assistant Signal Inspector, he should have been fixed in the grade of Rs. 550-750 but was fixed in the grade of Rs. 380-404. He also contended that he had passed AMIE Examination and as per Railway Ministry's decision in Rule 109 of I.R.E.C. 1985, he is eligible for the pay scale of Rs. 650-1040 and not Rs. 425-700/-. According to Rule 136 (2) of I.R.E.C. 1971 and para 611 of I.R.E.M. 1989, when he was posted as Signal Inspector Grade-I he was eligible for pay scale of Rs. 900-1400 and not Rs. 550-750/- and when he was selected for the post of Signal Inspector Grade-I he was eligible for the scale of Rs. 1100-1600 and not Rs. 700-900/-. After the Fourth Pay Commission, he should have been fixed at Rs. 3000-4500/- and not Rs. 2000-3200/-. When he was elevated to the post of Chief Signal Inspector he should have been given the scale of Rs. 3700-5000 and not Rs. 2375-3500/-. When he was posted as an Assistant Signal and Telecommunication Engineer his pay ought to have been fixed in the scale of Rs. 4500-5700 and not Rs. 2000-3500/- and after completion of four years he should

have been given the scale of Rs. 5900-6700 and not Rs. 2000-3500/- and thereafter he should have been given the scale of Rs. 7300-7600 and not Rs. 2000-3500/- and on introduction of revised scales with effect from 1.1.1996 as per recommendations of the Fifth Pay Commission, he was due to be fixed in the scale of Rs. 22,400-24,600/- instead of Rs. 7500-12000/-. Hence this O.A.

3. The respondents filed the counter affidavit for limitation purpose opposing the admission. It is contended that the refixation of pay has been claimed from 06.07.1972 onwards i.e. more than 28 years backwards. The O.A. is time barred and suffers from delay and laches.

4. It is also contended that applicant had filed O.A. No. 361 of 2000 which was allowed to be withdrawn and the Tribunal allowed the period from 31.05.2000 to 12.03.2001 to be excluded for the purpose of limitation if a fresh O.A. is filed on or before 12.03.2001. It is also contended that the Tribunal had directed to indicate clearly as to what fixation of pay had been made by the Department and what fixation he claims on various dates with supporting documentary evidence. The present O.A. also suffers from the same deficiency. It is also contended that the claim is not supported by documentary evidence. It is contended that applicant is actually claiming promotion and allotment of higher scale of pay on various dates ranging from 06.07.1972 to 01.01.1996. The applicant has claimed the scale for the post which were never held by him in his entire service.

W! It is also contended that if the higher scale of pay are allotted

to him, as claimed by the applicant, which are partly in Group 'C', Group 'B' and Group 'A', he will supercede several railway employees both Gazetted as well as non-gazetted, who will be affected parties. The applicant has failed to make any one of such employees as party-respondents, thus, it is bad for non-joinder of necessary parties. The O.A. suffers from laches claiming plural relief of fixation of several pay without supporting material, thus, barred by Rule 10 of C.A.T. (procedure) Rules. The reliefs claimed are from 06.07.1972. The first representation made by the applicant is dated 14.03.1996. There is no application for condonation of delay. The O.A. deserves to be dismissed.

5. Applicant has filed the rejoinder. He has also filed a M.P. for condonation of delay.

6. Heard Shri K. B. Talreja, Learned Counsel for the applicant and Shri V. D. Vadhvkar, Learned Counsel for the Respondents.

7. It is apparent from the pleadings of the applicant that he is using the word 'fixation of pay' in various scales. He is actually claiming promotion and allotment of higher scale of pay on various dates ranging from 06.07.1972 to 01.01.1996. Thus, the reliefs claimed by the applicant pertains to the year 1972 onwards.

8. The applicant has filed a miscellaneous petition seeking
WV condonation of delay on 10.08.2001. The first question that

....7.

arises is whether the application is within limit and if it is beyond limit, whether the delay in approaching the Tribunal deserves to be condoned? The delay involved in claiming the reliefs is beyond the jurisdiction of this Tribunal. In J. Guruswamy V/s. Council of Scientific & Industrial Research, New Delhi [1988 (6) ATC 24] the Head Note reads as under :


"Administrative Tribunal Act, 1985 - Section 21 (2) & (3) - Limitation - Condonation of delay - Held, Tribunal can condone delay only in those cases in which cause of action arose either after establishment of the Tribunal or within three years immediately preceding it - However, where cause of action arose before three years, Tribunal has no authority to condone the delay."


In the instant case, the cause of action arose in 1972 i.e. much before three years of establishment of Tribunals, hence, this Tribunal has no authority to condone delay. Section 21 of the Administrative Tribunals Act, 1985, provides that Tribunal shall not admit an application where an appeal or representation 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. The representation is filed on 14.03.1996 and the O.A. is filed on 26.02.2001. Even then it is barred by limitation. There is no sufficient cause for condoning delay. The party has to approach well within time. Applicant should have pursued his rights and remedies promptly and not sleep over his rights. Inordinate and unexplained delay or laches by itself is a ground to refuse relief irrespective of the merit of the case.

9. The applicant has claimed higher scales. If the applicant is allowed the reliefs claimed, it will result in the applicant's superceding several officers, even Group 'A'. Those Group 'A' officers are not party-respondents in this O.A. It will also result to re-opening the seniority list in different grades.

10. In B.S. Bajwa & Another V/s. State of Punjab & others [1998 (1) SLR 461] their Lordships of High Court has held that "grievance made in 1984 regarding fixation of seniority long after they had entered the department in 1972 - Rights inter-se had crystalised which ought not to have been re-opened after the lapse of such long period - In service matters the questions of seniority should not be re-opened in such situations after the lapse of reasonable period because that results in disturbing the settled position which is not justifiable - This was sufficient to decline interference under Article 226 of the Constitution of India and to reject the Writ Petition.

11. In view of the above discussions, the O.A. is required to be dismissed. O.A. dismissed. No costs.


(S. G. DESHMUKH)
MEMBER (J).


(ANAND KUMAR BHATT)
MEMBER (A).