

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 1184/92

Date of Decision: 11-6-99

Kashi Amavasi & Anr. Petitioner/s

Shri D.V.Gangal Advocate for the
Petitioner/s.

v/s.

Union of India & Ors. Respondent/s

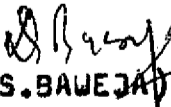
Shri V.S.Masurkar Advocate for the
Respondent/s


CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri D.S.Baweja, Member (A)

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal? ✓


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 1184/92

Dated this the 11/K day of June, 1999.

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

1. Kashi Amavasi
2. Bhojraj Malku
Both R/o.C/o. Rice Girani
Society, R.NO. 2, Post Jhesai,
Tahsil : Panvel,
Dist. Raigad - 410 207.

By Advocate Shri D.V.Gangal ... Applicants

V/S.

1. Union of India
through Chief Engineer (Construction),
Central Railway, Bombay V.T.
2. Permanent Way Inspector,
Central Railway,
Deputy C.E.(C) Office,
P.O. Panvel, Dist. Raigad.
Pin. 410 206.

By Advocate Shri V.S.Masurker ... Respondents

ORDER

(Per: Shri D.S.Baweja, Member (A))

This application has been filed jointly by two applicants. The case of the applicants is that they were appointed as Mate in the scale of Rs.260-400 in 1981 under Respondents No. 1 & 2 on Central Railway. However, suddenly without any notice they have been reduced to the rank of Khalasi in the grade of Rs.200-240. The applicants separately made several representations for giving the status of Mate but did not get any response. Feeling aggrieved, the present application has been filed on 3.11.1992

seeking the following reliefs :- (a) to direct the respondents to restore and regularise the applicants to their original status of Mate and pay them the difference of pay scales from the date of reversion till the date of restoration and the market rate of interest. (b) to direct the respondents to suitably adjust the seniority of the applicants in the seniority list of Mates. (c) to grant all consequential benefits that will accrue on regularisation as Mate.

2. The applicants have advanced the following grounds in support of their claims :- (a) The applicants have been reverted from the post of Mate to that of Khalasi in lower scale without any notice and thereby violating the principles of natural justice. Further, if the reversion is effected by way of punishment, then the disciplinary proceedings have to be taken as per the extant rules. (b) The applicants have been discriminated as juniors to the applicants had been regularised as Mate as will be seen from the seniority list brought on record (Annexure.p.25). (c) The applicants are entitled for regularisation in the category of Mate in terms of what is held by Hon'ble Supreme Court in the case of Inder Pal Yadav vs. Union of India.

3. The respondents had initially filed a brief written statement opposing the admission of the OA. Subsequently, the respondents have filed detailed written statement giving para-wise remarks to the averments made by the applicants in the OA. The respondents submit that the applicants were initially engaged as daily rated employees at the rate of Re.8/- per day in the year 1981. After putting in 180 days

of continuous service, they were brought on monthly rate of pay and w.e.f. 1.1.1984, and both the applicants were granted temporary status in pursuance of the instructions laid down by the Railway Board as per order dated 11.9.1986. On attaining temporary status, they were granted the pay scale of Rs.196-232 which is equivalent to Rs.750-940 as a result of 4th Pay Commission Report. The respondents^{have} strongly denied that the applicants were absorbed as Mate ^{at} any time. The respondents^{have} also denied the receipt of any of the representations alleged to have been made by the applicants. The respondents further add that the applicants along with other casual labourers were screened for regular appointment as Gangmen/Khalasi and as a result of the screening, they have been empanelled for absorption against regular ^{Group 'D'} vacancies. The respondents therefore plead that the applicants have no case and the OA. deserves to be dismissed. The respondents have also opposed the application ^{being} as barred by limitation.

4. The applicants have filed a rejoinder reply to the brief written statement filed by the respondents opposing the admission. However, the applicants have not filed any rejoinder to the detailed written statement filed subsequently. The applicants have contested the averments of the respondents in the written statement and have reiterated their submissions in the OA. The applicants have maintained that they were appointed as Mate and were drawing the pay in the pay scale of Rs.260-400 but were subsequently reverted to the post of Khalasi without any show cause notice.

①

of continuous service, they were brought on monthly rate of pay and u.o.f. 1.1.1984, both of the applicants were granted temporary status in pursuance of the instructions laid down by the Railway Board as per order dated 11.0.1986. On attaining temporary status, they were granted the pay scale of Rs.196-232 which is equivalent to Rs.750-940 as a result of 4th Pay Commission Report. The respondents ^{have} strongly denied that the applicants were absorbed as Mates any time. The respondents ^{have} also denied the receipt of any of the representations alleged to have been made by the applicants. The respondents further add that the applicants along with other casual labourers were screened for regular appointment as Gangman/Khalasi and as a result of the screening, they have been employed for absorption against regular vacancies. The respondents therefore plead that the applicants have no case and the DA deserves to be dismissed. The respondents have also opposed the application ^{being} as barred by limitation.

4. The applicants have filed a rejoinder reply to the brief written statement filed by the respondents opposing the admission. However, the applicants have not filed any rejoinder to the detailed written statement filed subsequently. The applicants have contested the averments of the respondents in the written statement and have reiterated their submissions in the DA. The applicants have maintained that they were appointed as Mates and were drawing the pay in the pay scale of Rs.260-400 but were subsequently reverted to the post of Khalasi without any show cause notice.

5. The respondents have filed a supplementary written statement in reply to the rejoinder reply of the applicants as detailed above. The contentions made in the brief written statement have been reiterated in the supplementary written statement.

6. We have heard the arguments of Shri D.V. Gangal, learned counsel for the applicants and Shri V.S.Masurkar, learned counsel for the respondents.

7. Before going ⁱⁿ to merits of the reliefs prayed for, we will consider the technical objection of application being barred by limitation taken ^{up} by the respondents. The respondents have contended that the applicants are challenging their alleged reversion from the post of Mate to that of Khalasi in 1984 by filing the present OA. in 1992. It is also further stated that the applicants have not made any attempt to explain the long delay in filing the OA. The applicants, however, have subsequently filed an application making a prayer for condoning the delay in filing the present OA. On careful consideration of the facts and circumstances of the case and the reasons advanced for delay in filing the present OA. by the applicants, we are inclined to subscribe to the contention of the respondents that the present OA. is barred by limitation. The applicants have claimed that they were engaged as Mate in the grade of Rs.260-400 (Group-C) but subsequently were reverted as Khalasi in Group-D during the year 1984. The applicants have not given any date of reversion except mentioning the year. The respondents have totally denied that the

applicants were engaged as Mate at any time. The applicants have furnished some documentary evidence to support their contention that they were engaged as Mate. The respondents have however not brought any documentary evidence on record to support their version. In any way, for going into the issue of limitation, we need not deliberate on this controversy at this stage. Even if the contention of the applicants is accepted that they were initially engaged as Mate in 1981 and were reverted subsequently in 1984 as Khalasi, ^{then} the cause of action arose in 1984. The applicants have submitted that they had separately made several representations and some of the representations have also been brought on record. The applicants in the application filed for condonation of delay have stated that they have been approaching the respondents for redressal of their grievance and they were given assurance that their case will be considered. The applicants further add that in view of the assurance given, they kept quiet.

Thereafter started making representations in writing but did not get any response. The reasons advanced for the delay in filing the present OA, are not very convincing. It is noted that the applicants had been repeatedly making representations to the various authorities including the Prime Minister's Office. This clearly shows that the applicants were well aware of their grievance and the authorities to whom they could approach for redressal of their grievance. If the administration failed to respond to their grievance, the applicants could have sought legal remedy for redressal of their grievance.



Successive representations do not extend the period of limitation as held by the Hon'ble Supreme Court in the case of Administrator of Union Territory of Daman & Diu & Ors. vs. R.D. Valand, 1996 SCC (L&S) 205. The applicants have been waiting for a period of 8 years before the present OA was filed for seeking the relief. If the applicants were aggrieved and were not getting the pay of the post on which the applicants were working as per their version. they should have agitated the matter at appropriate time. As held by the Hon'ble Supreme Court in the case of Ramchendran Samatha & Ors. vs. Union of India, 1993(2) SLR 811(SC), the delay deprives a person of the remedy available in law. A person who has lost the remedy by loss of time loses his right also. Similarly, in the case of Union of India vs. Kantilal Himatram Pandya, 1995(29) ATC 522, the Hon'ble Supreme Court has held that the law of limitation may cause hardship but it has to be applied with all its vigour and Courts and Tribunals ^{can} not come to the aid of those who sleep over their rights and allow the period to expire. In the present case, except giving an explanation that the applicants have been repeatedly representing various authorities, the applicants have not given any reasons as to why the matter was not agitated for seeking legal remedy particularly so when they had been reverted to a lower grade and were getting much less pay than what they were getting earlier. Keeping in view the facts and circumstances of the present OA, and what is held by the Hon'ble Supreme Court in the judgements cited above, we have no hesitation to hold that the present OA. is barred by limitation.

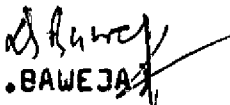
8. Even on merits, we find that the applicants have no case. As indicated earlier, the respondents have totally denied that the applicants were engaged as Mate at any time. The applicants have furnished some documentary evidence in support of their contention that they were working as Mate. The material furnished by the either party, is the sketchy and ^{inadequate} to go into the merits of the rival claims. In any way, the Mates who have been working on casual basis are not entitled for regularisation against the regular vacancies in view of what has been held by the Hon'ble Supreme Court in the case of Union of India & Anr. vs. Moti Lal & Ors., 1996 SCC (L&S) 613. In this judgement, the Hon'ble Supreme Court has gone into the issue of claim of regularisation by the petitioners who had been appointed as ^{Mate on} casual basis ^{also} and continued so for considerable period and ^{also} acquired temporary status. The matter with regard to regularisation was agitated before the Tribunal. The Tribunal had allowed the plea of the petitioners and direction was given to the respondents to regularise them against the vacancies. The Hon'ble Supreme Court in this Judgement has held that the post of Mate is to be filled up exclusively through promotion and therefore the Mates who have been working on casual basis are not entitled for regularisation against the regular vacancies. In this connection, extract from Para 11 is reproduced below :-

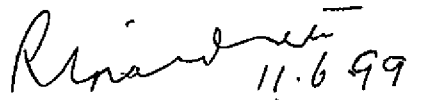
"11. Thus it is apparent that a daily-wage or casual worker against a particular post when acquires a temporary status having worked against the said post for specified number of days does not acquire a right to be regularised against the said post. He can be considered for regularisation in accordance with the rules and, therefore, so far as the post of mate under Railways is concerned, the same has to be filled up by a promotion from the post of gangman and keyman in Class IV subject to employees passing the trade test."

In view of what is held by the Hon'ble Supreme Court, the applicants are not entitled for regularisation as Mate even if the claim of the applicants is accepted that they had been appointed as Mate in 1981 and had been reverted to the post of Khalasi. Further, the judgement in the case of Inder Paul Yadav does not apply to the case of applicants in view of what is held in the case of Moti Lal & Ors. above.

9. The applicants have also raised a plea of discrimination that those who are juniors to the applicants have been regularised as Mate while the applicants were denied of the same benefit. The applicants have also brought on record a copy of the seniority list at page 25 of the OA, to support their contention. The respondents have, however, denied the existence of any such seniority list. On going through the seniority list at page 25, it is noted that this seniority list does not indicate as to when it was issued and who has issued the same. Further, in the seniority list the applicants have also shown as working as Mate and does not show that the juniors had been regularised as Mate. We find that the averments of discrimination are very vague and do not lend substance to their contention. In any way, in view of what is held by Hon'ble Supreme Court in its judgement in the case of Union of India vs. Moti Lal, this issue need not be gone into.

10. In the light of the above, the OA is not only barred by limitation but also is devoid of any merit. The OA is accordingly dismissed with no order as to costs.


(D.S. BAWEJA)
MEMBER (A)


11.6.99
(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.