

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 505/98

2-12-99
Date of Decision:

S.B.Khairnar

Applicant.

Shri G.S.Walia

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar for R-1 & 2

Advocate for
Respondent(s)

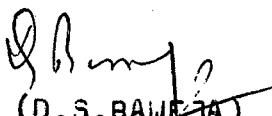
Shri M.I.Sethna with Shri Vadhavkar
R- 3 & 4.

CORAM:

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

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

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


(D.S.BAWEJ)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.505/98

Dated this the 2nd day of December 1999.

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

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

S.B.Khairnar,
Motorman,
Western Railway,
Mumbai Division,
Churchgate,
Mumbai.

...Applicant

By Advocate Shri G.S.Walia

V/S.

1. Union of India through
General Manager,
Western Railway,
Head Quarters Office,
Churchgate,
Mumbai.
2. Divisional Railway Manager,
Mumbai Division,
Western Railway,
DRM's Office,
Mumbai Central, Mumbai.
3. The Director,
Electronics Regional
Test Laboratory (W),
Govt. of India,
Dept. of Electronics,
Plot No. F-7 and 8,
M.I.D.C., Marol,
Andheri (E), Mumbai.
4. Director,
STOC Directorate,
Dept. of Electronics,
Electronics Niketan,
6, CGO Complex, New Delhi.

...Respondents

By Advocate Shri V.S.Masurkar
for R-1 & 2, Shri M.I.Sethna
with Shri V.D.Vadhavkar for
R-3 & 4.

...2/-

ORDER

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

The applicant is at present working as a Motorman on Western Railway. The applicant while working as Technical Assistant Grade-B in the pay scale of Rs.1400-2300 in Electronics Regional Test Laboratory (W) (ERTL(W)), Government of India, Mumbai since 23.1.1988 after completion of one year of probation period applied for the post of Motorman in Western Railway in the scale of Rs.1600-2600 through proper channel. The applicant was selected for the same. However, before his selection as Motorman, the applicant was promoted as Technical Assistant with scale Rs.1640-2900 in ERTL (W). When the applicant submitted his technical resignation for joining as Motorman, the same was not accepted as per the letter dated 22.6.1992 advising him that he is already working in a higher grade. In this situation, the applicant had no option but to submit resignation on 'personal grounds'. The same was accepted as per order dated 21.7.1992 and the applicant ^{was} relieved on the same date. The case of the applicant is that since his earlier service was also under Central Government, he would have been entitled to all the benefits as per rules on tendering technical resignation. Applicant contends that his technical resignation ought to have been accepted and condition put in the order dated 22.6.1992 for non acceptance of the technical resignation is illegal. This action of the respondents is also violative of Article 14 of the Constitution of India. After being confirmed as Motorman in

1996, the applicant made representation dated 7.8.1996. On not getting a response, the applicant has sought legal remedy through OA. filed on 19.6.1998.

2. The respondents No. 1 & 2 in the written statement at the outset have opposed the applicant as being barred by limitation as decision with regard to non acceptance of technical resignation was conveyed on 22.6.1992 and the present application has been filed only on 19.6.1998. On merits, the respondents No. 1 & 2 submit that the applicant is not entitled to the benefits claimed as per rules as the applicant had submitted his resignation on personal grounds before joining on the post of Motorman.

3. The Respondent No. 3 where the applicant was in service before being appointed as Motorman has filed a separate written statement. The Respondent No. 4 who was added subsequently has however not filed any written statement. The Respondent No. 3 admits that the applicant had applied for the post of Motorman through the proper channel. Subsequent to forwarding of his application, the applicant was promoted to the scale of Rs.1640-2900 which is higher than that of Motorman and therefore technical resignation submitted by the applicant could not be accepted as per the extant rules. Thereafter the applicant submitted resignation on personal grounds on his own choice which was accepted by the competent authority. In view of these facts,

the impugned order dated 22.6.1992 is in confirmity with the extant rules and the applicant is not entitled for the service benefits as prayed for counting his past service before being appointed as Motorman.

4. The applicant has filed rejoinder reply for the written statements of Respondents No. 1 & 2 and Respondent No. 3, controverting their submissions. The applicant has contested the plea of the Respondents No. 1 & 2 that the application suffers from delay and laches and bar of limitation. The applicant has submitted that reliefs prayed for cover pay fixation at the time of joining Railway as Motorman and counting of past service as qualifying service for pensionary benefits and therefore this is continuing cause of action in terms of what is held by the Hon'ble Supreme Court in the case of M.R.Gupta vs. Union of India. The applicant has further submitted that based on Railway Board's letter dated 10.1.1992, the post of Motorman in the scale of Rs.1600-2660 which is entitled for running allowance is to be treated as equivalent to the pay scale of Rs.2000-3200 when comparing with stationary posts for the purpose of promotion. Therefore, the appointment of the applicant as Motorman was not a case of appointment from higher to lower scale as contended by respondents. Therefore, even on this count, he is entitled for the benefits.

5. We have heard the arguments of Shri G.S.Walia, learned counsel of the applicant, Shri V.s.Masurkar, learned counsel for the Respondents No. 1 & 2 and Shri M.I.Sethna along with Shri V.D.Vadhavkar for Respondents No. 3 & 4.

6. We will first take up the plea of delay and laches and bar of limitation raised by the respondents before going into merits of the reliefs prayed for. The respondents have opposed the application on these counts advancing the reasons namely :-
(a) applicant is aggrieved by the impugned order dated 22.6.1992 but the OA. is filed only on 16.6.1998 to challenge this order.
(b) the applicant has not explained for delay and has not brought out as to whether he represented against this order at any time before June,1996. The applicant in the rejoinder reply however has contested this stand of the respondents stating that he was confirmed as Motorman in 1996 and thereafter only he could take up this matter and accordingly made representation on 7.8.1996. On not getting any reply, the applicant filed the present OA. Further, the issue concerns pay fixation and counting of past service for the purpose of fixation of pension and other pensionary benefits and therefore the cause of action is recurring in terms of the law laid down by the Apex Court in the case of M.R.Gupta vs. Union of India, 1995 SCC (L&S) 1273. In view of these submissions, the applicant pleads that OA. is not hit by delay and laches or bar of limitation as contended by the respondents. We have carefully considered the rival contentions

and also gone through the judgement in the case of M.R.Gupta. In view of the law laid down in this judgement, We are inclined to endorse the contention of the applicant. The applicant seeks counting of his past service which will entitle him fixation of his pay as Motorman and also this period will qualify for fixation of pension and other retiral benefits and therefore constitute continuing cause of action which accrues every month. As held by the Hon'ble Supreme Court, the matter seeking such reliefs can be agitated at any time, However, the consequential reliefs may be barred by laches and the bar of limitation. With these observations, we hold that the present OA. does not suffer from delay and laches and the bar of limitation and therefore will consider the matter under challenge on merits.

7. Now coming to merits, it is noted that it is admitted fact that the application of the applicant for the post of Motorman on Western Railway was forwarded through the proper channel. The grade of post of Motorman was Rs.1600-2600 and higher than the grade of Rs.1400-2300 of the post of Technical Assistant Grade 'B' held by the applicant at the time applied for the post of Motorman. During the process of selection, the applicant was promoted as Technical Assistant Grade 'A' in the scale of Rs.1640-2900, i.e. in a higher scale than that of Motorman. On being appointed as Motorman, the applicant's claim is that as per the extant rules, he was required to submit only a technical resignation which would entitle him to get benefits

arising out of counting past service but respondents refused for the same. The applicant therefore was compelled by the respondents to seek resignation on personal grounds. The respondents on the other hand have taken the stand that since the applicant was working in a higher scale than the scale of the post for which he wanted to seek technical resignation, the same was not admissible as per the extant rules and accordingly his request was rejected as per the impugned order. In the background of these facts, the short question which calls for determination is whether the stand of the respondents that technical resignation for joining on a post with lower scale of pay in another Government Department is not admissible as per the extant rules is legally sustainable.

8. We have carefully gone through the written statements of both the Respondents No. 1 & 2 as well as that of Respondent No. 3 and note that except stating that extant rules do not permit technical resignation, no rules have been cited to support this. Since the applicant was in employment under Respondents No. 3 & 4, they are the main party required to explain as to on what basis the impugned order has been issued. Respondent No. 3 has filed first a detailed written statement and then two additional written statements in reply to the rejoinder reply of the applicant. Though in all the replies the stand taken in the impugned order dated 22.6.1992 has been reiterated, but are silent with regard to citing of the relevant rules which prohibit

accepting of technical resignation for joining on lower scale post in another organisation. The only contention made is that while forwarding application through the proper channel, it is to be seen that post applied for offers to the employee, the chance of an honourable career with respect to pay and allowances and promotion etc. In the absence of any rules cited by the respondents, we will now look at the rules cited by the applicant. The applicant has drawn an attention to rule 26(2) of CCS (Pension) Rules and Government of India's decision No. 1 based on O.Ms. dated 21.9.1960, 17.6.1965 and 19.12.1969. Rule 26 (2) reads as under :-

" A resignation shall not entail forfeiture
of past service if it has been submitted
to take up with proper permission, another
appointment whether temporary or permanent,
under the Government where service qualifies."

This rule only envisages 'proper permission' and does not make any distinction with regard to the pay scales i.e. whether the appointment is from higher scale to lower scale or lower scale to higher scale. This is also clear from the Government O.Ms. referred to ⁱⁿ decision No. 1 (at pages 54 & 55, Swamy's Publication Pension Compilation Fifth Edition). Thus for counting the past service under Rule 26 (2) for pensionary benefits, the only compliance required is that the application should have been forwarded through proper channel. In the present case, it is admitted fact that the application was forwarded through proper

channel and the condition laid down is met with. We are therefore unable to comprehend as to how the respondents have taken the stand as indicated in the impugned order. It appears that provisions of F.R. 22 are at the back of mind of the respondents that the appointment should be from lower to higher scale post. For counting of the past service as qualifying service for pensionary benefits, scale of the post is irrelevant as the main consideration is that employee does not loose the past service on joining another Government organisation if he could be allowed to join in the public interest. Rule 26 (2) only envisages not forfeiture of past service if the appointment is taken with proper permission without any rider with regard to the pay scale of the post in the two departments. In the light of these facts, we are inclined to conclude that the applicant was entitled for tendering technical resignation and the rejection of this request as per the impugned order is not legally sustainable. In view of this conclusion, it is not necessary to go into the contention of the equivalence of the pay scale of Motorman being Rs.2000-3200 for the purpose of promotion and the orders cited by the applicant in OA.NO.528/97 & connected OAs. and OA.NO.771/90.

9. The second relief is with regard to the benefit of past service for fixation of the pay on the post of Motorman. Once it is held that the applicant was entitled for acceptance of technical resignation, then the fixation of pay counting past

service is also admissible as per extant rules. Referring to decision 1 below Rule 26 (2) of CCS (Pension) Rules (Swamy's Pension Compilation - pages 54-55 5th Edition) and decision No. 4 under F.R. 22 (Swamy's Compilation FRSR page 46, 4th Edition) based on O.M. dated 17.6.1965, in such cases pay is to be fixed under F.R. 27.

10. Since the applicant has approached the Tribunal only in 1998, keeping in view the law laid down by the Hon'ble Supreme Court in the case of M.R.Gupta (supra) applicant will be entitled for benefits of arrears if any arising on fixation of pay counting the past service as per rules only from the date of filing of the present OA., i.e. 19.6.1998.

11. In the result of the above, we allow the OA. with the following directions :-

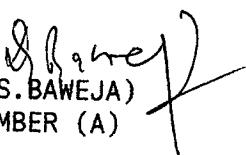
(a) Impugned order dated 22.6.1992 is set aside.

The resignation of the applicant accepted as per order dated 21.7.1992 shall be treated as technical resignation.

(b) The applicant shall be entitled for benefits arising out of counting his past service as per the extant rules.

(c) Arrears of pay any arising on fixation of pay
counting past service will be allowed only
from the date of filing of the OA. and for
the earlier period the pay will be notionally
fixed as per the extant rules.

(d) No order as to costs.


(D.S. BAWEJA)
MEMBER (A)


R.G. Vaidyanatha
21/1/99
(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

CONTEMPT PETITION NO: : 19/2000 in
ORIGINAL APPLICATION NO: 505/98

TRIBUNAL'S ORDER

DATED: 10.11.2000

Shri G.S. Walia counsel for the applicant. Shri V.S. Masurkar counsel for respondent No.1 and 2. Shri Vadhavkar counsel for respondent No.3.

This sentence encircled in red is deleted vide Roznama Order dt 15/12/2000 on Bahadur

Shri Walia states that order dated 2.12.1999 has been implemented except for the fact that the benefit regarding carry forward of leave has not been allowed to him. In this connection he produced copy of the letter from DRM, Central Railway, Mumbai addressed to the applicant dated 13.9.2000. Order dated 13.9.2000 is taken on record.

The applicant may well be aggrieved by this and therefore he has a fresh cause of action as per law. However this is not a matter to be considered in the Contempt Petition. The Contempt Petition is therefore rejected. Notice issued ~~was~~ withdrawn.

S.L.Jain
(S.L.Jain)
Member(J)

NS

At 10/11/00
order/Judgement despatched
to Applicant/Respondent(s)
on 11/12/00

B.N. Bahadur
(B.N. Bahadur)
Member(A)

8
4/12/00