

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 564/98

Date of Decision: 15.3.1999

Shri Laxman Shankar Deshingkar

Applicant.

Shri K.R. Yelwe.

Advocate for
Applicant.

Versus

Union of India and others

Respondent(s)

Shri V.S. Masurkar.

Advocate for
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? *Yes*

(2) Whether it needs to be circulated to other Benches of the Tribunal? *No*

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman.

NS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI:1

Original Application No. 564/98

Monday the 15th day of March 1999.

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

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

Laxman Shankar Deshingkar
350 Shiva colony
Near Eagle Agro Farm
Telegaon Dabhade
Dist. Pune

... Applicant.

By Advocate Shri K.R. Yelwe.

V/s.

Union of India through
General Manager,
Central Railway
Chatrapati Shivaji Terminus
Mumbai.

The Chief Personnel Officer
Central Railways
Chatrapati Shivaji Terminus
Mumbai.

The Chief Yard Foreman
Central Railways
Kalyan.

... Respondents.

By Advocate Shri V.S. Masurkar.

ORDER (ORAL)

Per Shri Justice R.G. Vaidyanatha, Vice Chairman

This is an application filed by the applicant claiming that ⁱⁿ his promotional post as Head Clerk from 1985 and onwards his pay should be fixed after taking into consideration the special pay of Rs. 35/- which ^{was} ~~were~~ granted to similar employees. Respondents have filed reply opposing the application. We have heard both sides regarding admission.

2. Even agreeing ^{with} to the applicant, the cause of action arose in 1985 when he ^{was} ~~had~~ promoted as Head Clerk, but his pay was not fixed properly by taking into consideration his special pay of Rs. 35/-

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attached to the post of Senior Clerk. The applicant retired in 1990 and now in 1998 he has come up with the present case. On the face of it the application is belated one and suffers ^{from} delay and laches ^{being} besides ⁿ barred by limitation.

3. Even on merits we find that the applicant who was working in Dehu Road was posted to Kurla as Senior Clerk which post had special pay of Rs. 35/- only. Certain posts of Senior Clerk ^{was} attached ^{to} with special pay of Rs. 35/- p.m. The applicant declined to go to the said post which had special pay of Rs.35/-. In our view when the applicant declined for the posting to Kurla to which post there ^{was} ~~is no~~ special pay, he cannot now complain that special pay has not been taken into consideration while fixing the pay after ^{his} ~~the~~ promotion as Head Clerk.


4. The applicant's another grievance is that some of his juniors are getting special pay of Rs.35/-; therefore on the principle of stepping of pay of senior with the pay of junior, the applicant wants that he should get the benefit of special pay of Rs.35/-. Those juniors got special pay of Rs. 35/- since they have accepted the order on posting to certain posts which had greater responsibility. As a result juniors were getting special pay of Rs. 35/- because of promotion or because of responsible duties. The Seniors who were not dis-charging the responsible duty cannot claim special pay, in view of the law declared by the Apex Court in the case of Union of India V/s. Swaminathan 1997(2)SC SLJ 384.




5. After considering the facts of the case both on merits and on limitation, the application has to fail.

Another contention of the applicant is that two officials who were similarly placed like applicant were getting special pay as alleged in para 4.11 and 4.12 of the O.A. The respondents have denied this allegation in the reply. No documents are produced to show that those two officials are getting the benefit of special pay and ^{that} their case is similar to the case of the applicant. The applicant cannot get the benefit of special pay unless he shows that under rules he is entitled to the benefit of special pay even though he ^{has} ~~is~~ not accepted the order of transfer.

6. In the result the O.A. is rejected at the admission stage. No costs.


(D.S. Baweja)
Member (A)


(R.G. Vaidyanatha)
Vice Chairman

NS

THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO.31/2000
IN
ORIGINAL APPLICATION NO.564/98.

Tuesday, this the 4th day of July, 2000.

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

L.S.Deshingkar,
350, Shiva Colony,
Varale,
Near Eagle Agro Farm,
Talegaon Dabhade,
Dist : Pune.

... Applicant.

Vs.

Central Railway & Ors.

... Respondents.

: ORDER ON REVIEW PETITION BY CIRCULATION :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is a Review Petition filed by the applicant seeking review of an order dt. 15.3.1999 in O.A. 564/98. I have perused the contents of the Review Petition and the entire case papers.

2. The applicant had filed the OA making a grievance that on his promotion as Head Clerk in 1985 and even subsequently, his pay in the promotional post was not properly fixed by taking into consideration the special pay of Rs.35/- which had been granted to similar employees in the feeder cadre of Senior Clerks.

After hearing the applicant's counsel and on the basis of the available materials we found that the claim is hopelessly barred by limitation, delay and laches. The applicant has approached this Tribunal in 1998 making grievance about fixation of pay of the year 1985. He had retired from service in 1990. Therefore, we found that the application has to be rejected on the ground of delay, laches and limitation. In the entire review

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petition, no ground is taken to meet this point of limitation.

3. Even on merits, I find that applicant has no better case. He has again reiterated his earlier stand in the OA. He was not getting special pay of Rs.35/- since he declined the order of transfer to a particular post which carried the special pay. If he did not get special pay in the feeder post, the question of taking special pay into consideration while fixing his pay on promotion as Head Clerk does not arise. If he was getting special pay of Rs.35/- in the feeder cadre, then only it will have to be taken into consideration while fixing the pay on promotion. No new ground is made out in the Review Petition.

There is no apparent error on record in the order passed by us. There is no discovery of new material. A review petition is not meant to be a petition seeking re-hearing of the matter. There must be a finality to orders of Tribunals and Courts. The scope of review jurisdiction under Order 47 CPC is very limited. None of the grounds provided in section 47 CPC are made out in the present Review Petition. Therefore, both on merits and also on the ground of limitation, the OA has been rejected and no sufficient grounds are made out for reviewing our order.

4. In addition to the above reasoning, I also notice that the present review petition itself is barred by limitation. On applicant's own admission, there is a delay of 8 months in filing the review petition. He has filed an M.P. viz. M.P.No.436/2000 for condonation of delay. The only ground stated is that the applicant was suffering from Low Blood Pressure and hence could not file the Review Petition in time. It is not a case where the applicant is bed-ridden or is hospitalised. Therefore, I find that there is no satisfactory explanation for condonation of

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delay of eight months in filing the Review Petition. Hence, M.P. No.436/2000 is liable to be rejected and consequently review petition is liable to be rejected on the ground of limitation. In addition, I have pointed out that even on merits no grounds are made out in the Review Petition.

5. In the result, the Review Petition and M.P. No.436/2000 for condonation of delay are ordered to be rejected by this order on circulation.

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN
4/7/2000

B.

: ORDER ON REVIEW PETITION BY CIRCULATION :

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

I am in respectful agreement with the conclusion arrived at by the Hon'ble Vice-Chairman. The Review Petition and M.P. No.436/2000 deserve to be rejected.

D. S. Baweja
(D. S. BAWEJA)
MEMBER (A)
16/7/2000

Order of Agreement despatched
to AP/Respondent (s)
on 20/7/00
24/7/00