

Central Administrative Tribunal
Mumbai Bench

1. OA No. 496/98
2. OA No. 737/98

Mumbai this the 26th day of June, 2002.

Hon'ble Mrs. Shanta Shastry, Member (Admnv)
Hon'ble Mr. Shanker Raju, Member (Judl.)

OA No. 496/98

1. Vijay K. Bandiwadekar,
C/o Shri Y.R. Singh,
Advocate Sneh Sagar,
A1-5, Sector-17,
Airoli, Near Mumbai-400 078.
2. Rajkumar G. Khatri,
C/o Shri Y.R. Singh,
Advocate, Sneh Sagar,
A-1-5, 11/5, Sector-17,
Airoli, Near Mumbai-400 708.

-Applicants

(By Advocate Shri Y.R. Singh)

OA No. 737/98

Ganesh G. Jadha,
C/o Sh. Y.R. Singh,
AI-1,11/5, Sector-17,
Airoli, Near Mumbai 400 708

-Applicant

(By Advocate Shri Y.R. Singh)

-Versus-

1. Union of India through the
General Manager,
Central Railway,
Mumbai, C.S.T. Main.
2. The Divisional Railway Manager,
Central Railway,
Mumbai, C.S.T.
3. The Chief Personnel Officer,
Pay Commission,
Department Mumbai CST Main.
4. The Dy. Chief Personnel Officer,
Headquarters,
Office Personal Branch,
C.S.T.M.

-Respondents

(By Advocate Shri V.S. Masurkar)

O R D E R

Mr. Shanker Raju, Member (J):

As these OAs involve common question of law and facts,
they are being disposed of by this common order.

2. In both these OAs applicants, three in number, have sought quashing of the orders passed by the respondents on 23.2.98 denying them fixation of pay as Sportsman at the maximum of the grade and maintaining the fixation as a replacement scale in pursuance of the recommendations of the Fourth Central Pay Commission. They have sought their fixation at the maximum of the grade at Rs.1500/- w.e.f. 1.1.86, with all consequential benefits.

3. It is not disputed that applicants in OA-496/98 have been appointed as Junior Clerks in the Sports quota on 9.4.83 and 15.7.85 respectively. They have been fixed at the maximum of the grade in Rs.260-400 at Rs.400/- as per the policy of fixing pay of the sports persons to the maximum of the grade in Third Pay Commission. Subsequently, on coming into force ^{of} recommendations of the Fourth Central Pay Commission their pay has been fixed at Rs.1500/- but in view of the Railway Board's circular dated 2.2.88 their pay has been fixed at Rs.1350/- w.e.f. 1.1.86.

4. In OA-737/98 applicant was appointed as a Junior Clerk in the sports quota on 8.8.94 and was accordingly fixed in the maximum of the pay after the recommendations of the Fourth Central Pay Commission but circular of Railway Board dated 2.2.88 was operated upon him with consequent fixation of pay at Rs.1350/- w.e.f. 1.1.86. On preferring representations the same have been turned down on 23.2.98. Learned counsel for the applicants appearing in both the cases Shri Y.R. Singh contended by referring to a decision of the coordinate Bench decided on 16.11.94 in OA-172/94 contended that the similar issue had been dealt with and the impugned action of the respondents on the basis of instructions of Railway Board dated 2.2.88. It is stated that there cannot be a discrimination between the

employees appointed after 1.1.86 unless a rule in this regard is pointed out which the respondents fail to demonstrate before the court. Accordingly the pay of the applicants has been fixed at the maximum of the scale in the pay scale of Rs.950-1500 and the recovery already effected has already been restored but payment of arrears has been restricted to one year prior to the date of filing of the OA. In this view of the matter it is stated that as the case of the applicants in all four^s is covered by the aforesaid decision the action of the respondents in denying them the maximum of the grade is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India. In so far as limitation is concerned, it is stated that having rejected the request of the applicants by a speaking order on merits on 22.3.98 above OAs have been filed within the prescribed period of limitation under Section 21 of the Administrative Tribunals Act, 1985. Further, it is stated that similar objection has been overruled by the coordinate Bench. Placing reliance on a decision of the Apex Court in M.R. Gupta v. Union of India, 1995 (5) SCALE 29 it is stated that as this is a recurring cause of action accruing every month to the employee as far as salary is concerned the OAs are not time barred.

5. Respondents' counsel Shri Masurkar in his reply by referring to a decision of the Apex Court in State of Karnataka v. S.M. Kotrayyappa and also on the Constitutional Bench decision of the Apex Court in L. Chandra Kumar v. Union of India & Ors., 1995 (2) SLJ 27 contended that the cause of action had arisen to the applicants on issuance of the Railway Board's letter of 2.2.88. Applicants have not assailed the same within the stipulated period of limitation and now the challenge to it after 10 years is hopelessly barred by limitation. It is further stated that the coordinate Bench decision cannot give rise to a cause of action for computing the period of limitation period and

each day's delay has to be explained. It is in this backdrop it is stated that applicants have failed to explained the delay from 1988 to 1996 and also filed a representation after 11 months from the date of the judgement and have approached this court beyond the period of limitation, rendering these OAs not maintainable.

6. In so far as order dated 23.2.98 impugned in the presents OAs is concerned, it is stated that the same has not been addressed to the applicants which cannot give them a cause of action.

7. As regards merits the learned counsel stated that as a policy decision the powers of General manager with regard to fixation of pay and grant of advance increments and out of turn promotion to the outstanding sports persons has been reviewed and the cut off date has been rightly prescribed. Accordingly the pay of all sportsmen who were appointed after 2.2.88 was fixed at the maximum of the pay at Rs.1500/- in the grade of Rs.950-1500 whereas applicants who were appointed prior to 1.1.86 their pay was fixed as per normal rules of fixation. It is also stated that one S.K. Kataria has represented to fixed the pay at the maximum of the pay at Rs.1500/- the arrears were also paid to him but subsequently the same has been withdrawn on the ground that it was wrongly fixed and the amount was recovered. As the applicants have submitted a representation on the basis of the decision of the coordinate Bench supra their case was referred to the competent authority and after application of mind maintained the normal fixation at Rs.1350/-. It is lastly stated that the OAs are not maintainable.

8. We have carefully considered the rival contentions of the parties and perused the material on record. The contention of the respondents as regards limitation is over-ruled.

Respondents themselves have rejected the representation of the applicants by issuing an order on merits only on 23.2.98, which gives them a cause of action for computing the period of limitation. Moreover, in 1988 the decision of this court was challenged in OA-172/94 and having declared the similar action of the respondents as not sustainable applicants have preferred the representations which have been turned down by a speaking order. Aforesaid ground of limitation was also raised by the respondents in that OA and was over-ruled on the basis of the decision of the Apex Court in M.R. Gupta's case. In our considered view also as the respondents having no criteria fixed the pay of the applicants which is a continuing wrong, depriving the applicants salary every month the action is recurring one and does not attract limitation. Apart from it, as held by the Tribunal in Segaran . U.O.I., 1995 (1) ATJ 343 cause of action arises from the date of grievance and in this case having rejected the representations of the applicants on 20.2.98 limitation starts from that date and the applicants have approached the Tribunal within one year from the date of rejection of the representations the OAs are not barred by limitation under Section 21 of the Administrative Tribunals Act 1985. In this view of the matter it is not necessary for the applicants to have explained each day's delay and the rulings cited by the respondents would have no application in the facts and circumstances of the present cases.

9. In so far as merits are concerned, respondents have not disputed that they have meted out a differential treatment to those who were appointed after 1.1.86 till 2.2.88 on sports basis by according them the maximum of the pay scale. Applicants who have been appointed earlier and have been fixed in the maximum of the pay scale under Third Pay Commission subsequently were fixed in the maximum of grade but after 2.2.88 on review they have been deprived of the maximum of the pay scale and were fixed at the

normal scale as per the recommendations of the 4th Central Pay Commission. The aforesaid issue was meticulously dealt with by the Tribunal in the earlier OA, where the following observations have been made:

"It appears to me that the differential pay fixation done by the department in respect of sports persons appointed prior to announcement of IVth Pay Commission does not have a basis in rules. There can be a differential pay fixation in respect of two employees in accordance with the rules. One appointed prior to 1.1.86, the date of implementation of decisions of pay commission, and one appointed after pay commission but there can be no discrimination as between the employees appointed after 1.1.86 unless a rule in this regard is pointed out but the respondents have not been able to point out a rule beyond making a bare statement. I am, therefore, of the view that the applicant is entitled to succeed on the ground of discrimination and I need not go into further grounds like absence of notice and violation of principles of natural justice which would result in the different type of relief."

10. The aforesaid decision in all four covers the case of the applicants, as they have been deprived of the fixation in the maximum of the pay scale in absence of any rule and justification by the respondents. No reasonable nexus has been shown with the object sought to be achieved by not fixing the applicants in the maximum of the pay scale, which cannot be countenanced being violative of Articles 14 and 16 of the Constitution of India. If the juniors of the applicants are getting more pay and have been discriminated the law of equality would be invoked to set right the action of the respondents.

11. Moreover, the circular of 2.2.88 would not be applicable retrospectively upon the applicants being an administrative order. Furthermore, no reasonable opportunity has been given to the applicants before resorting to such an action by the respondents which is not in consonance with the principles of natural justice.

12. For the reasons recorded above, these OAs are allowed. The respondents order dated 23.2.98 in both the OAs are quashed and set aside. Respondents are directed to accord to the applicants maximum of the grade in the pay scale of Rs.950-1500 and also further revised scale. Further applicants would be entitled for payment of arrears only from one year prior to the date of filing of the applications. The aforesaid directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

13. Let a copy of this order be placed in the case file of OA-737/98.

S. Raju
(Shanker Raju)
Member (J)

Shanta S.
(Smt. Shanta Shastry)
Member (A)

"San."

*& Judgement dtd 26/6/2
despatch on 3/7/2
Given on 7/7/98*

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