

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH : JAIPUR

Date of order : 17.08.2001

O.A. No. 572/94

S.D. Kureel son of Shri Ramashri Das, aged around 62 years, resident of D-15, Vaishali Nagar, Jaipur; Retired Railway Officer, Western Railway, Jaipur.

... Applicant.

v e r s u s

1. Union of India through General Manager, Western Railway, Church Gate, Bombay.
2. The Secretary, Railway Board, Ministry of Railways, Govt. of India, Rail Bhawan, New Delhi - 110 001.

... Respondents.

Mr. P.P. Mathur, Counsel for the applicant.

Mr. Manish Bhandari, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :


(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed by Shri S.D. Kureel, under Section 19 of the Administrative Tribunals Act, 1985, for the following reliefs:-


- (i) That the respondents may be directed to fix the pay of the applicant at Rs. 1120/- per month with effect from 26.04.83 in the post of A.P.O. in the pay scale of Rs. 650-1200 (R)/2000-3500 (RP) and further pay fixation in the senior scale with effect from 16.10.84 in the scale of Rs. 1100-1600 (R)/3000-4500 (RP) and payment of DCRG and monthly pension at enhanced rates;
- (ii) That the respondents may be directed to give/pay all arrears to the applicant which may be calculated on the basis of enhanced pay. The respondents may be directed to pay arrears as indicated above with interest @ 18% per annum.

for the applicant further contended that the applicant should have been allowed to cross EB from 1977 to 1983 without appearing <sup>in</sup> the required test, since he underwent a training in the Railway Staff College, Baroda, as is evident from Annexure A/3 dated 16.10.79. He contended that passing of such training should be considered equivalent to passing the necessary test to cross EB. As such, he contended that the applicant is entitled to all the financial benefits accruing to him from 1977 to 1983 on the ground that he passed the required test for crossing EB in the year 1977 and in the year 1983. His further contention is that the respondents failed to discharge the duty properly in not conducting further tests between the years 1977 to 1983. Therefore, he contended that though he retired as Divisional Personnel Officer with effect from 31.07.97, he may be granted pensionary benefits as if he crossed the EB between 1977 to 1983. The applicant also has filed rejoinder/written arguments highlighting these facts.

3. The respondents by filing reply, have denied the case of the applicant. They have contended that the reliefs prayed for by the applicant, is barred by time. The applicant's grievance pertains regarding crossing EB between 1977 to 1983, but for the first time the applicant made one representation on 19.10.91. With reference to the said representation, a communication was issued to the applicant vide Annexure A/1 dated 10.11.93, intimating that he was not found fit to cross EB in 1977 and has been declared fit to cross EB in 1983. Therefore, this application is liable to be dismissed on the ground of limitation only. They have also denied the allegations of the applicant that his service record was clean, except one adverse entry in the year 1977. They have stated that right from the year 1976, his service records were not good. But they have stated that in the year 1983, the applicant was given one increment, and accordingly, his pay was fixed at Rs. 810/-, <sup>on account</sup> but not passing any test for crossing EB. They have denied

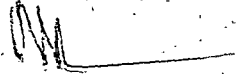


1983, he has again taken the test for crossing EB and his pay was fixed at Rs. 810/- p.m. in the pay scale of Rs. 650-1200. But the department contends that his pay was fixed at Rs. 810/- by giving him one increment, and he did not pass any test for crossing the EB. But the applicant asserted that he passed the required test in 1983, but he has not produced the result of such test or any communication issued to him stating that he has passed the required test. In the absence of such documents, it is to be taken that the applicant's pay was fixed at Rs. 810/- by giving one increment in the pay scale of Rs. 650-1200. Therefore, the Government of India order dated 2.10.22 under F.R. 25 (2021), does not apply to the facts of the case. According to this Rule, the persons who passed the required test meant for EB, would be entitled to the financial benefits on the basis of the EB test held previously, in which he was declared failed. The applicant has not produced any document worth the name to show that he has passed the required test in the year 1977 or in the year 1983. Since the applicant did not pass the required test, he would not be entitled to consequential benefits arising therefor. It is not in dispute that the applicant was promoted as Divisional Personnel Officer on 16.10.84 and thereafter, he retired on 31.07.97. As stated above, since the applicant did not pass the required test, his relief for crossing EB between 1997 to 1983, cannot be accepted. His allegations that the required test held in the year 1977 was by an incompetent authority cannot be considered at this point of time. If any result was published in pursuance of letter dated 01.03.77, by which the applicant was called for interview, he should have challenged the same within prescribed time. That he has not done. He has also not produced the result of subsequent test alleged to have been held in the year 1983. In the absence of such proof, it is to be taken that he never passed the necessary test prescribed for crossing EB. Therefore, the judgement of Punjab and Haryana High Court reported in 1990 (1) SLR 703, and the judgement of C.A.T., Ahmedabad Bench, reported



in (1989) 9 ATC 160, do not apply to the facts of the present case. The applicant's further contention that in view of the fact that he passed one training course as per the result vide Annexure A/3 dated 16.10.79, the applicant was to be exempted from taking further test for crossing EB also, is untenable. It is not known for what purpose the applicant underwent the said training, the result of which is filed at Annexure A/3. He has also not produced any rule or notification treating this training as equivalent to passing of the necessary test prescribed for crossing EB. Therefore, even the later submission of the applicant cannot be accepted.

6. Moreover, as contended by the respondents, the grievance of the applicant arose in between 1976 and 1983. It is during that period, as per the contention of the applicant, that he should be entitled to all financial benefits, as if he passed the required test for crossing EB. If that is so, ~~But~~ in our considered opinion, the alleged grievance/cause arising between 1977 to 1983, would be barred by time, since this application is filed only in the year 1994. On the allegations of the applicant, that he preferred one representation in the year 1977 and thereafter, he also made another representation in 1991 etc., cannot save the limitation. Hon'ble the Supreme Court in more than one judgement ruled that mere filing one representation or the other cannot extend the period of limitation (See judgements in 1994 (2) SLR 359 - Ex. Captain Harish Uppal vs. Union of India & Ors., 1997 SCC (L&S) 943 - Hukam Ra Khinvsara vs. Union of India & Ors., and 1999 SCC (L&S) 251 - Union of India & Anr. vs. S.S. Kothiyal and Others). It is also not known under what provision and against what order, the applicant preferred an appeal or representation to the higher authority. Under Section 21 of the Administrative Tribunals Act, 1985, this Tribunal would not have jurisdiction regarding the cause of action that arose three years prior to the Constitution of this Tribunal. The Section 21(2) of the



Administrative Tribunals Act, 1985, clearly mentions as under:-

"21.2. Notwithstanding anything contained in sub-section (1), where -

- (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
- (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later."

7. From the reading of the above Section, it is clear that if the applicant had any grievance in the year 1977, he should have preferred an application before the appropriate forum. At any rate, the cause of action arose in the year 1977, according to the case of the applicant himself, such a cause is outside the jurisdiction of this Tribunal under Section 21(2) of the Administrative Tribunals Act, 1985. To the same effect is the judgement of this Tribunal dated 12.07.2000 passed in O.A. No. 67/91 (Mahmood Ansari vs. Union of India & Ors.). The applicant has also not filed any application for condonation of delay. However, he contends that this application is within time in view of rejection of his representation vide Annexure A/1 dated 10.11.93. The impugned order Annexure A/1 refers to the representation made by the applicant on 19.10.91. But making one representation does not save the limitation prescribed under Section 21 of the Administrative Tribunals Act. In case he did not receive any response from the authority within six months of filing any such earlier representations, he should have approached the appropriate forum within the prescribed time, as stated above. As per the applicant, he filed one representation in the year 1977, which the respondents denied. But all those representations do not save the limitation regarding the cause of action that arose in between 1977 and

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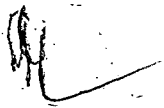
- (i) That the respondents may be directed to fix the pay of the applicant at Rs. 1120/- per month with effect from 26.04.83 in the post of A.P.O. in the pay scale of Rs. 650-1200 (R)/2000-3500 (RP) and further pay fixation in the senior scale with effect from 16.10.84 in the scale of Rs. 1100-1600 (R)/3000-4500 (RP) and payment of DCRG and monthly pension at enhanced rates;
- (ii) That the respondents may be directed to give/pay all arrears to the applicant which may be calculated on the basis of enhanced pay. The respondents may be directed to pay arrears as indicated above with interest @ 18% per annum.



(iii) That a declaration may be made to the effect that applicant is deemed to have crossed the Efficiency Bar, which were provided in the pay scale of 650-1200 (R);


(iv) Any other appropriate order or direction which the Hon'ble Court feel proper in the facts and circumstances of the case and which has not been specifically prayed for but which is necessary to secure ends of justice may kindly also be issued."

2. The applicant contended that he was appointed in the Railways as Chief Clerk (Works) in the year 1963. Thereafter, he was promoted as Office Superintendent (Works) in the pay scale of Rs. 700-900 (R). Vide letter dated 01.10.75 the applicant was empanelled for the post of Assistant Personnel Officer Group 'B' (APO, for short), and accordingly, promotion was given to him on the said post in the pay scale of Rs. 650-1200 (R) on 15.03.76. He stated that in the year 1977, the applicant was directed to appear before the ACPO at Bombay on 21.04.77 for the purpose of prescribed test for crossing Efficiency Bar (EB, for short) alongwith one Bhiku Bhai, and the result of Shri Bhiku Bhai was declared, and the applicant's result was not declared. He contended that in the year 1983, the applicant has passed the test for crossing EB, and in terms of F.R.25 (2021) of Government of India order dt. 02.10.22, the applicant was entitled to the benefits of EB with effect from 1977. However, in the year 1983, the applicant was fixed at Rs. 810/- in the pay scale of Rs. 650-1200. But this is incorrect. But the pay of the applicant should be fixed at Rs. 1120/- per month with effect from 26.04.83 in the post of APO in the pay scale of Rs. 650-1200 (pre-revised), and on that basis, the applicant's financial benefits should be determined in that scale, and even in the pay scale prescribed for the next promotional post of Divisional Personnel Officer etc. In support of his contention, the learned counsel for the applicant relied upon the judgement of Punjab and Haryana, reported in 1990 (1) SLR 703 (Dr. R.N. Arora, H.C.M.S.I (Retd.) vs. State of Haryana and others) and also the judgement of the Central Administrative Tribunal, Ahmedabad Bench, reported in (1989) 9 ATC 160 (D.H. Sarasparaa vs. Union of India & Ors.). The learned counsel



for the applicant further contended that the applicant should have been allowed to cross EB from 1977 to 1983 without appearing <sup>in</sup> the required test, since he underwent a training in the Railway Staff College, Baroda, as is evident from Annexure A/3 dated 16.10.79. He contended that passing of such training should be considered equivalent to passing the necessary test to cross EB. As such, he contended that the applicant is entitled to all the financial benefits accruing to him from 1977 to 1983 on the ground that he passed the required test for crossing EB in the year 1977 and in the year 1983. His further contention is that the respondents failed to discharge the duty properly in not conducting further tests between the years 1977 to 1983. Therefore, he contended that though he retired as Divisional Personnel Officer with effect from 31.07.97, he may be granted pensionary benefits as if he crossed the EB between 1977 to 1983. The applicant also has filed rejoinder/written arguments highlighting these facts.

3. The respondents by filing reply, have denied the case of the applicant. They have contended that the reliefs prayed for by the applicant, is barred by time. The applicant's grievance pertains regarding crossing EB between 1977 to 1983, but for the first time the applicant made one representation on 19.10.91. With reference to the said representation, a communication was issued to the applicant vide Annexure A/1 dated 10.11.93, intimating that he was not found fit to cross EB in 1977 and has been declared fit to cross EB in 1983. Therefore, this application is liable to be dismissed on the ground of limitation only. They have also denied the allegations of the applicant that his service record was clean, except one adverse entry in the year 1977. They have stated that right from the year 1976, his service records were not good. But they have stated that in the year 1983, the applicant was given one increment, and accordingly, his pay was fixed at Rs. 810/-, <sup>on account</sup> but not passing any test for crossing EB. They have denied







the case of the applicant that he appeared for the test for crossing EB in the year 1983 and passed the same. Since the applicant did not pass any EB test in the year 1977 or in the year 1983, he was not allowed to cross EB, except that he was granted one increment in the year 1983 in usual course. They have also contended that passing of some training cannot be taken as equivalent to passing of the prescribed test for crossing the EB. Since the applicant has not passed any test to cross the EB after 1977, the question of giving the benefit of crossing EB does not arise. Therefore, F.R.25 (2021) does not apply to the facts of the case. They have also stated that the applicant would not be entitled to the benefit of Para 807 of the Western Railway Establishment Manual published in the year 1954, nor the Para 808 of the same applies to the facts of the case. They have also stated that the applicant's relying certain internal office correspondence would not help his case, since he did not pass the required test for crossing EB, and the applicant has been misrepresenting the facts to the department. Therefore, the application is liable to be dismissed both on the grounds of limitation as well as on merits.

4. Heard and perused the records.

5. The fact that the applicant appeared for the required test and interview as per the letter of ACPO Headquarters Office dated 21.04.77 alongwith one Shri Bhiku Bhai, is not disputed. It is the case of the department that the applicant failed in the said test and Shri Bhiku Bhai passed the same. The applicant simply contended that the result of the same was not communicated to him. But the department denies this statement stating that the result was communicated to the applicant in the year 1977 itself. In these circumstances, the applicant has, in fact, failed in the test conducted in the year 1977, and he suppressed the same. The further contention of the applicant is that in the year




1983, he has again taken the test for crossing EB and his pay was fixed at Rs. 810/- p.m. in the pay scale of Rs. 650-1200. But the department contends that his pay was fixed at Rs. 810/- by giving him one increment, and he did not pass any test for crossing the EB. But the applicant asserted that he passed the required test in 1983, but he has not produced the result of such test or any communication issued to him stating that he has passed the required test. In the absence of such documents, it is to be taken that the applicant's pay was fixed at Rs. 810/- by giving one increment in the pay scale of Rs. 650-1200. Therefore, the Government of India order dated 2.10.22 under F.R. 25 (2021), does not apply to the facts of the case. According to this Rule, the persons who passed the required test meant for EB, would be entitled to the financial benefits on the basis of the EB test held previously, in which he was declared failed. The applicant has not produced any document worth the name to show that he has passed the required test in the year 1977 or in the year 1983. Since the applicant did not pass the required test, he would not be entitled to consequential benefits arising therefor. It is not in dispute that the applicant was promoted as Divisional Personnel Officer on 16.10.84 and thereafter, he retired on 31.07.97. As stated above, since the applicant did not pass the required test, his relief for crossing EB between 1997 to 1983, cannot be accepted. His allegations that the required test held in the year 1977 was by an incompetent authority cannot be considered at this point of time. If any result was published in pursuance of letter dated 01.03.77, by which the applicant was called for interview, he should have challenged the same within prescribed time. That he has not done. He has also not produced the result of subsequent test alleged to have been held in the year 1983. In the absence of such proof, it is to be taken that he never passed the necessary test prescribed for crossing EB. Therefore, the judgement of Punjab and Haryana High Court reported in 1990 (1) SLR 703, and the judgement of C.A.T., Ahmedabad Bench, reported



in (1989) 9 ATC 160, do not apply to the facts of the present case. The applicant's further contention that in view of the fact that he passed one training course as per the result vide Annexure A/3 dated 16.10.79, the applicant was to be exempted from taking further test for crossing EB also, is untenable. It is not known for what purpose the applicant underwent the said training, the result of which is filed at Annexure A/3. He has also not produced any rule or notification treating this training as equivalent to passing of the necessary test prescribed for crossing EB. Therefore, even the later submission of the applicant cannot be accepted.

6. Moreover, as contended by the respondents, the grievance of the applicant arose in between 1976 and 1983. It is during that period, as per the contention of the applicant, that he should be entitled to all financial benefits, as if he passed the required test for crossing EB. If that is so, ~~But~~ in our considered opinion, the alleged grievance/cause arising between 1977 to 1983, would be barred by time, since this application is filed only in the year 1994. On the allegations of the applicant, that he preferred one representation in the year 1977 and thereafter, he also made another representation in 1991 etc., cannot save the limitation. Hon'ble the Supreme Court in more than one judgement ruled that mere filing one representation or the other cannot extend the period of limitation (See judgements in 1994 (2) SLR 359 - Ex. Captair Harish Uppal vs. Union of India & Ors., 1997 SCC (L&S) 943 - Hukam Ra Khinvsara vs. Union of India & Ors., and 1999 SCC (L&S) 251 - Union of India & Anr. vs. S.S. Kothiyal and Others). It is also not known under what provision and against what order, the applicant preferred an appeal or representation to the higher authority. Under Section 21 of the Administrative Tribunals Act, 1985, this Tribunal would not have jurisdiction regarding the cause of action that arose three years prior to the Constitution of this Tribunal. The Section 21(2) of the



Administrative Tribunals Act, 1985, clearly mentions as under:-

"21.2. Notwithstanding anything contained in sub-section (1), where -

- (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
- (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

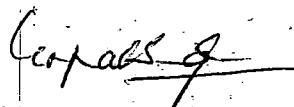
the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later."


7. From the reading of the above Section, it is clear that if the applicant had any grievance in the year 1977, he should have preferred an application before the appropriate forum. At any rate, the cause of action arose in the year 1977, according to the case of the applicant himself, such a cause is outside the jurisdiction of this Tribunal under Section 21(2) of the Administrative Tribunals Act, 1985. To the same effect is the judgement of this Tribunal dated 12.07.2000 passed in O.A. No. 67/91 (Mahmood Ansari vs. Union of India & Ors.). The applicant has also not filed any application for condonation of delay. However, he contends that this application is within time in view of rejection of his representation vide Annexure A/1 dated 10.11.93. The impugned order Annexure A/1 refers to the representation made by the applicant on 19.10.91. But making one representation does not save the limitation prescribed under Section 21 of the Administrative Tribunals Act. In case he did not receive any response from the authority within six months of filing any such earlier representations, he should have approached the appropriate forum within the prescribed time, as stated above. As per the applicant, he filed one representation in the year 1977, which the respondents denied. But all those representations do not save the limitation regarding the cause of action that arose in between 1977 and



1983. If the applicant was really aggrieved regarding the cause of action in the year 1977 to 1983, he should have filed a writ petition before Hon'ble the High Court under Articles 226 and 227 of the Constitution. But filing one belated representation in 1991 and getting an order on that, would not change the law regarding limitation. Thus, both on merits and on the ground of limitation, we do not find any merit in this application. Accordingly, we pass the order as under:-

"The application is dismissed both on the ground of merit as well as on the point of limitation. Parties shall bear their own costs."

  
(GOPAL SINGH)  
Adm. Member

  
(JUSTICE B.S. RAIKOTE)  
Vice Chairman

cvr.