

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH; JAIPUR

**Eleventh day of December, two thousand three
(11.12.2003)**

O.A. No.4/2003.

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

Kolanchi,
S/o Arumugam
Gangman, temporary Huts
Loco Colony,
Jaipur. : Applicant.

Mr. Nand Kishore : Counsel for the applicant.

VERSUS

1. Union of India through its
General Manager, North Western Railway,
Opp. To Railway Hospital, JAIPUR.
2. The Chief Administrative Officer (Construction)
North Western Railway,
Opp to Railway Hospital, JAIPUR.

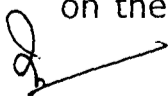
: Respondents.

Mr. S.S. Hassan : Counsel for the respondents.

ORDER

Per Mr. J.K. Kaushik, Judicial Member.

Shri Kolanchi has filed this OA under Sec. 19 of the
Administrative Tribunals Act, 1985, seeking for a direction to the
respondents to fix his pay in the scale of pay of Rs. 3050-4590
on the post of Mate in accordance with the recommendations of



the 5th Pay Commission and due arrears there of may be paid with interest at the rate of 13% per annum.

2. The factual matrix of this case is at a very narrow compass. The applicant was engaged as a Mate on 07.04.79 in the pay scale of Rs. 225-308. He was granted temporary status on 01.01.83 and was drawing his annual increments upto 01.01.86. Thereafter, he was enjoying revision of pay in the pay scale of Rs. 950-1500/- as per the recommendations of the 4th Pay Commission. He continues to work on this post and was drawing his due annual increments upto to 09.01.97 and his basic pay was reckoned at Rs. 1175/-

3. He was regularised under Section Engineer P.W. (Construction) on the post of Gangman in the scale of pay of Rs. 2610-3540/- with effect from 06.12.97. The name of five persons have been indicated who have been said to be juniors to the applicant and are working on the post of Mate. The applicant is still working on the post of Mate, but his pay has been reduced from Rs. 3650/- as on 01.01.96 to Rs. 2910/- as on 01.01.96 and Rs. 2970/- as on 09.01.97. He ought to have been given the pay fixation in the pay scale of Rs. 3050-4590/- He represented to the authorities vide Annex. A.2. The O.A has been filed on a number of grounds mentioned in para 5 and its sub-paras, which are inter-mixed with the facts of this case. Violation of Articles 14,16 and 21 of the Constitution has been complained of.



4. The respondents have resisted the claim of the applicant and have countered the facts and grounds mentioned in the O.A by filing exhaustive reply. They have taken preliminary objection of limitation and have averred that the O.A has been filed after a lapse of 5 years and therefore, the O.A is barred by limitation. The further defence of the respondents is that the applicant was regularised on a Group "D" post on 06.12.97 i.e. on the post of Gangman in the scale of pay of Rs. 2610-3540/- and that order has not been challenged. It is also averred that no document relating to four juniors have been furnished. The applicant has not protested at the time of regularisation and he cannot take a plea that he was not informed about the same. The grounds have been generally denied.

5. The applicant has also filed a rejoinder, wherein certain communications have been filed at Annex. A.3, to indicate that the applicant is still working on the post of Mate . A reference has been given to the judgement of the Apex Court in the cases of **Union of India and others vs. Basant Lal & others** [SLJ 1992 SC 190] ; **Ram Kumar vs. Union of India** [1996 (1) SLJ 116] (Three Judges Bench)

6. We have heard the learned counsel for the parties and have considered the submissions, pleadings and records of this case. As far as the material facts are concerned, there is hardly any dispute. The learned counsel for the applicant has categorically submitted that the despite the issuance of the

regularisation order, the applicant continues to working on the post of Mate and he was never informed to join on the post of Gangman. He has made us to travel through the Annexure A.3 containing a number of letters which indicate that the applicant's designation is Mate and he continues to discharge his duties of Mate. He has therefore submitted that the applicant is entitled to the pay of the post on which he continues to work and his pay has been reduced without any reason. He has also submitted that the matter relates to pay fixation, which is recurring cause of action and thus law of limitation is not attracted.

7. Per contra, the learned counsel for the respondents has stressed the objection of limitation very seriously and has strenuously submitted that once the applicant has been regularised in Group "D" post and has gladly accepted the post of Gangman, he cannot now raise a new plea and is now estopped from challenging the same in the garb of pay fixation. When the learned counsel for the respondents was confronted with a specific query from the Court regarding the present status of the applicant, he tried hard to justify that the applicant is presently working as Gangman. However, he could not refute the documents which are placed on record in support of contentions of applicant that the applicant is physically working on the post of Mate. He, however, reiterated the defence of the respondents mentioned in the reply.

8. We have considered the rival submissions made on behalf
of both the parties. At the very out set we would like to deal


with the peripheral issue regarding the preliminary objection of limitation. There is no dispute that the subject matter of the OA is regarding pay fixation and the question of application of limitation to pay fixation has been already settled by the Apex Court in the case of **M.R. Gupta vs Union of India and others** [AIP. 1996 SC 669] , wherein their Lordships have held that the matter relating to pay fixation gives rise to continuous cause of action, thus the preliminary objection stands repelled and is hereby overruled.

9. Now advertng to the factual position of this case, the applicant has been issued a letter of absorption in Group "D" post as Gangman in the year 1997. But he is physically discharging the duties of the post of Mate, which is a Group "C" post in the pay scale of Rs.3050-4590/- whereas the post of Gangman carries a pay scale of Ps. 2610-3540/-. We also find that ever since the appointment, the applicant has been working on the post of Mate and upto 1997, he was drawing the pay in the scale of pay applicable to the post of Mate and the only change is that the applicant has been regularised on a Group "D" post. Since the applicant is still working on the post of Mate, we do not find any justification to deny him his due wages and we are not impressed with the contention of the learned counsel for the respondents that since the applicant has been regularised on the post of Group "D" , he cannot be granted the scale of pay of the post of Group "C", despite the fact that he is physically working on the latter.



10. M.A. No. 395/2003 has been filed for production of documents. M.A does not specify as to which document is sought to be produced. Otherwise also, we do not find that any necessity to examine records of the case of any of the juniors, as no relief has been claimed against them. The applicant should desist from filing such frivolous Misc. Applications. We are taking a very serious view that such frivolous Misc. Applications are being filed in this court which are likely to delay the adjudication of the cases filed before this Tribunal.

11. In the result, the inescapable conclusion of the aforesaid discussion is that the Original Application has ample force and merits acceptance. The same stands allowed to the extent that the applicant would be entitled to the due pay fixation in the pay scale of Rs. 3050-4590/- meant for the post of Mate, so long as he is employed on this post. However, the payment of arrears on account of the pay fixation, directed above, shall be restricted to the period of one year prior to the date of filing of this OA. No costs.


(A.K. Bhandari)
Administrative Member.


(J.K. Kaushik)
Judicial Member.

Jsv.