

Date of order: 9.12.97

O.A.No.392/96

1. Kamla (Smt), W/o Late Chhotelal, Cleaner Muccadam, Loco Shed, Kota, Resident of Sunder Nagar, Loco Colony Ke Pas (Near Loco Colony) Kota Jn.
2. Raju S/o late Chhotelal, aged 17 years (Minor) Through his mother as Guardian, Kamla (Smt) W/o Chhotelal, Sunder Nagar, Near Loco Colony, Kota.
3. Ghanshyam S/o late Chhotelal, aged 15 years (Minor) Through his mother as Guardian, Kamla (Smt) W/o Late Chhotelal, Sunder Nagar, Near Loco Colony, Kota Jn.

: Applicants

Versus

1. Union of India through General Manager, Western Railway, Mumbai - 20.
2. Divisional Railway Manager, Western Railway, Kota Jn.
3. Senior Divisional Mech. Engineer, In the office of Divisional Railway Manager, Western Railway, Kota Jn.

: Respondents.

OA No. 423/1996

Chiman Lal Mishra S/o Kripa Ram, aged 62 years, Retd. Cleaner Muccadam, W. Rly., Kota, H.No.782, Ward No.5, Kherli Phatak, Kota.

: Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai-20.
2. Divisional Railway Manager, W. Railway, Kota.
3. Senior Divisional Mechanical Engineer, In the Office of Divisional Railway Manager, Western Railway, Kota.

: Respondents

O.A. No. 424/1996

Gyan Chand S/o Sh. Surajbali, aged 65 years, Retd. Cleaner Muccadam, W. Rly., Kota, Gandhi Colony, Khari Bavdi, Kota Junction.

: Applicant

Versus

1. Union of India, through General Manager, Western Railway, Churchgate, Mumbai-20.
2. Divisional Railway Manager, W. Railway, Kota.
3. Senior Divisional Mechanical Engineer, In the office of Divisional Railway Manager, Western Railway, Kota.

: Respondents

O.A. No.425/1996

Micheal S/o Bogla, aged 65 years, Retd. Cleaner Muccadam, W. Rly., Kota, H.No.10, Babu Colony, Kota Junction.

: Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai-20.
2. Divisional Railway Manager, W. Railway, Kota.
3. Senior Divisional Mechanical Engineer, In the Office of Divisional Railway Manager, Western Railway, Kota.

: Respondents

O.A. No.426/1996

Kailash Chand, aged 62 years, S/o Shri Vijay Ram, Retd. Cleaner Muccadam, W. Rly., Kota House No.362, Saraswati Bhawan, Near Gurunank Dispensary, Kota Junction.

: Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai-20.
2. Divisional Railway Manager, W. Railway, Kota.
3. Senior Divisional Mechanical Engineer, In the office of Divisional Railway Manager, Western Railway, Kota.

: Respondents

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Mr. V.P.Mishra, counsel for the applicants
Mr. Manish Bhandari, counsel for the respondents

CORAM:

HON' BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)
HON' BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON' BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL))

The aforesaid applications filed by the Legal Representatives of the deceased Railway employee Shri Chhotelal and separately by Chiman Lal, Gyan Chand, Micheal and Kailash Chand respectively under Section 19 of the Administrative Tribunals' Act, 1985 are being disposed of by a common order in view of the facts and the reliefs claimed therein being similar.

2. The applicants; except Smt. Kamla and others in OA No.392/96; have sought the following reliefs:-

- i) That the respondents be directed to assign to the applicants the scale of Rs. 950-1500 (RP) and to re-fix his pay in the aforesaid scale as has been done in the case of Cleaner Muccadams vide order dated 12.1.1995 (Annx.A-1);
- ii) The respondents may further be directed to extend to the applicants all consequential benefits like revision of pension, D.C.R.G., etc., as given to the persons referred in the aforesaid order dated 12.1.1995 alongwith the payment of arrears of pension, pay etc., with interest.

In the O.A. filed by Smt. Kamla and others; a direction has been sought against the respondents to confer the benefits of scale of Rs. 950-1500 (RP) and to re-fix the pay of the deceased Chhotelal in the aforesaid scale

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as has been done in the case of Cleaner Muccadams vide order dated 12.1.1995 (Annx.A/1) with a further prayer for revision of pay as well as pension/family pension together with other benefits as extended to the persons in Annexure A/1. These applicants have also claimed the arrears of pay, pension, family pension, D.C.R.G., etc., alongwith interest on the arrears.

3. Facts which are not largely in dispute are that the deceased employee Chhotelal in O.A. No.392/96 and the applicants in the other OAs i.e. filed by Chiman Lal, Gyan Chand, Micheal and Kailash Chand; were serving as Cleaner Muccadam in Locoshed, Kota of the respondent department. The employee in O.A. No.392/96 i.e. Chhotelal expired while in service on 27.11.1987. Other employees S/Shri Chiman Lal, Gyan Chand, Micheal and Kailash Chand retired on 30.11.1992, 30.6.1990, 30.7.1987 and 29.2.1992 respectively. The applicant Smt. Kamla in OA No.392/96 being the wife of the deceased employee Chhotelal is getting family pension as determined at the time of death of her husband every month subject to revision from time to time. Rest of the applicants in other OAs have been getting pension every month as determined on the basis of the average emoluments during the preceding 10 months of retirement plus dearness relief as admissible from time to time.

4. The case of the applicants is that respondent No.3, the Senior Divisional Mechanical Engineer, Kota by his order dated 12.1.1995 conferred the scale of Rs. 260-400(RS)/950-



1500 (RP) upon six Cleaner Muccadams (similar to the applicants) and re-fixed them in revised scale retrospectively w.e.f. 27.9.1986 who retired from Loco Shed Gangapur City in the same Railway Division. This order, according to the applicants, has been issued in pursuance of a common judgment of this Tribunal dated 30.9.1993 in O.A. No. 1059/92 and 452/87, titled Ramji Lal and others Vs. Union of India and others. It is the grievance of the applicants that consequent upon the order dated 12.1.1995 (Annx.A/1); persons named therein have been conferred the scale of Rs. 260-400/950-1500(RP); and their pay has also been re-fixed with all consequential benefits of upward revision of their pension etc. These persons, according to the applicants, are being treated as Group 'C' employees and have become entitled to 2 sets of post-retirement passes as admissible to Group 'C' employees. No sooner the applicants came to know that the Cleaner Muccadams of Gangapur City Loco Shed have been assigned the aforesaid scale of Rs. 950-1500(RP) and their pay has also been re-fixed followed by a revision in pension and other postretiral benefits, each of them submitted representation on 15.11.1995 (Annx.A/2) to respondent No.2 claiming similar benefits, they being similarly placed as the Cleaner Muccadams of Gangapur City Loco Shed. They also submitted reminders to the respondents dated 10.2.1996 and 14.6.1996. A reply dated 3.7.1996 (Annx,A/6) having been received in the negative, they have now approached this Tribunal to claim the aforesaid reliefs.

5. The respondents have opposed these applications by filing written replies to which rejoinders have also been filed by the applicants. The respondents have raised a preliminary objection regarding limitation and have also contested the applications on merits. The stand of the respondents has been that the applicants belong to a different category of Cleaner Muccadams as they are

working in Loco Shed, whereas, the other Cleaner Muccadams who have been given benefits; were working in the Carriage & Traffic Department where the duties are quite different than the Cleaner Muccadams in the Loco Shed. The Cleaner Muccadams of Carriage and Traffic Departments have been given the pay scale of Rs. 260-400 (950-1500) only in pursuance of Railway Board's letter dated 29.7.1983 by which the applicants in these applications are not covered. It has also been averred that the benefits were given to the applicants in OA No.1059/92 and 452/87; relied upon by the present applicants; only from the period one year prior to the filing of the OAs and there was no question of giving any benefit of promotion etc. It has also been denied that the benefits were allowed to those who were discharging the same duties as was discharged by the applicants herein. The respondents have, therefore, urged that these applications deserve rejection.

6. We heard the learned counsel for the applicants Shri V.P. Mishra and Shri Manish Bhandari for the respondents at great length and have examined the record in great detail.

7. The only points for determination in these applications are:-

- "i) Whether the applicants herein are also entitled to get re-fixation of their pay in the higher scale and consequential revision of retiral benefits which has been conferred upon the applicants in OA No.1059/92 and 452/87 by the issuance of the order dated 12.1.1995 (Annx.A/1) ?
- ii) Whether the applications filed by the applicants are barred by limitation ?"

8. It has been vehemently argued on behalf of the applicants

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that being similarly situated employees as were the Cleaner Muccadams of Gangapur City Loco Shed; they are also entitled to similar treatment in regard to scale of pay, pension and other consequential benefits. Denial of the same treatment and the pay scale etc., amounts to hostile discrimination between persons belonging to the same class since the Cleaner Muccadams of Gangapur City have been treated as 'C' Group employees getting two sets of post-retiral passes in a calander year alongwith the benefits flowing from higher scale of pay of Rs. 950-1500(RP); whereas the applicants are being treated as 'D' Group employees getting only one set of post-retiral passes in two years with a lower scale of pay etc. It has also been urged that in the judgment pronounced in OAs Nos. 1059/92 and 452/87 referred to above, this Tribunal while relying upon on an earlier judgment of the Central Administrative Tribunal , Ahmedabad Bench, titled Jetha-Bhai-Dhan-Bhai-and others-Vs.-Union-of-India-and-others, ATR-1988-(2)-CAT-278 and having held that the two categories of employees had since been performing the same type of duties were entitled to equal pay for equal work; the applicants being similarly placed Cleaner Muccadams in the same division of the respondent Railways could not be discriminated. It has been also strenuously argued that the judgments of the Tribunal referred to above being declaratory in nature; are judgments in rem and as such the applicants are also entitled to the same benefits. Denial of it would be unjust, unfair, unreasonable, without any rationale and violative of Article 39 of the Constitution of India.

9. On the point of limitation, it has been argued by the learned counsel that no sooner they came to know of the order dated 12.1.1995 (Annx.A/1), they made representations to the

respondents and the respondents having rejected their representations vide letter dated 3.7.1996 (Annx.A/6), they have filed these applications within time and that the applications cannot be held as barred by limitation. In support of his arguments, the learned counsel for the applicants has cited a number of authorities.

10. On the contrary, it has been argued by the learned counsel for the respondents that these applicants though Cleaner Muccadams working in the Locoshed at Kota and stand on the same footing to the Cleaner Muccadams who were given benefits of higher pay fixation by this Tribunal in earlier OAs on the basis of the judgment of Ahmedabad Bench of the Central Administrative Tribunal in the case of Jetha Bai Dhan Bai and others (supra), yet they were given this benefit on the finding of the Ahmedabad Bench to the effect that they cannot be discriminated with Cleaner Muccadams working in the Carriage and Traffic Department. The argument is that while disposing the OA in the case of Jetha Bai Dhan Bai and others, Ahmedabad Bench of the Tribunal finding that the respondent (i.e. Railways) having failed to place the relevant and complete material on the controversy of equating Cleaner Muccadams working in the Locoshed with others working in Carriage and Traffic Department, it was held that the Cleaner Muccadams working in the Locoshed and discharging their duties accordingly cannot be denied similar benefits as were made available to Cleaner Muccadams of the Carriage and Traffic Department. It has, therefore, been urged by the learned counsel for the respondents that the direction given by the Ahmedabad Bench of the Tribunal to the respondents therein was simply to consider the petitioners' claim by treating the plaint in their case as their representations and examine the requirement of




seniority and passing of the prescribed Trade Test, if necessary. It has, therefore, been urged by the learned counsel that there has been a mistake of fact in the decision given by this bench of the Tribunal in OAs Nos. 1059/92 and 452/87 because of the reliance on decision of the Ahmedabad Bench and that the applicants in the present OAs cannot stake their claim on the basis of the aforesaid decisions. Another argument of the learned counsel for the respondents has been that the judgments of this Tribunal and the Ahmedabad Bench of the Tribunal in the cases relied upon by the applicants are not judgments in rem and are judgments in personam and that they cannot get any benefit on their basis.

11. On the point of limitation, it has been urged by the learned counsel for the respondents that these applications are barred by limitation as the applicants herein are claiming higher pay from the year 1986, whereas, the limitation for filing the application is one year from the date of accrual of cause of action. A refusal by the respondents in 1996 would not give the applicants a fresh cause of action and that the applications deserve rejection on this ground also.

12. We have given anxious thought to the above arguments addressed by learned counsel for both the sides and have carefully gone through the judgment of Ahmedabad Bench of the Tribunal in Jetha Bai Dhan Bhai and others (supra) and the decisions delivered by this Tribunal in OAs Nos. 1059/92 and 452/87.

13. In the judgment of this Tribunal in OA No.1059/92 and OA No.452/87 Ramji Lal and others Vs. UOI & Ors., decided on



30.9.1993 it is observed that the respondents did not put in appearance and that the order has been passed by the Tribunal relying upon Para 7 of the judgment of the Ahmedabad Bench of the Tribunal in the case of Shri Jetha Bai Dhan Bai and others (supra). In the decision given in Jetha Bai Dhan Bai's case; Ahmedabad Bench of the Tribunal relying upon the Memorandum dated 29.3.1979 and finding that the respondents did not produce any documents to show that the petitioners therein or any one of them were offered Trade Test as required by the Memorandum dated 29.3.1979 and also that they had expressed unwillingness thereto; the Bench held that there being inconsistency in the pleadings of the respondent-Railways as also of the attitude of the respondents deliberately or otherwise failing to place the relevant and material evidence before it and also observing as to how the duties of the Cleaner Muccadams working in the Locoshed and Carriage and Traffic Department materially differ; gave a direction to the respondents to consider the claim of the petitioners in the plaint therein as representations and after examining the requirement of the seniority and passing of the prescribed Trade Test accorded² them the benefit of Revised Pay Scale by offering them the said Trade Test as envisaged in Memorandum dated 29.3.1979; if necessary. It is, thus, evident that the decision of Ahmedabad Bench of the Tribunal has been given in the absence of relevant material and evidence in the matter regarding the distinction between the duties and responsibilities of the Cleaner Muccadams of the Locoshed and those working in Carriage and Traffic Department as has been pointed out by the respondents in the present OAs. It is the clear stand of the respondents in the present OAs that it was only in accordance with Board's letter dated 29.7.1983 that the Cleaner Muccadams of Carriage and Traffic Department were given

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the Pay Scale of Rs. 260-400 (950-1500), the duties of the two categories of the Cleaner Muccadams being quite different. Even from the order dated 12.1.1995 (Annx.A/1) relied upon by the respondents; it does not appear that the Cleaner Muccadams working in the Locoshed were given the benefit of higher pay scale equating them with Cleaner Muccadams of Carriage and Traffic Department. Instead; the order dated 12.1.1995 has simply allotted the higher pay scale in compliance of the judgment delivered by this Tribunal on 30.9.1993 in O.A. No.452/87 in the case of Shri Ramji Lal and others (supra). It is thus apparent that a mistake has crept in the order dated 12.1.1995 (Annx.A/1) because of the decision of this Tribunal in OAs No. 1059/92 and 452/87 (supra) which in turn has relied upon the judgment of Ahmedabad Bench of the Tribunal in Jetha Bai Dhan Bai's case. As stated above, even in the direction given by the Ahmedabad Bench of the Tribunal it has been made clear that the respondents Railways would examine the requirement of seniority and passing of the prescribed Trade Test required under the Memorandum dated 29.3.1979 before allotting them the higher pay scale to Cleaner Muccadams working in the Carriage and Traffic Department. No relief has been granted straightaway. We, therefore, are of the opinion that the stand taken by the respondents in the present OAs carries great weight. In the absence of any comparative details of the nature of work and duties discharged by the Cleaner Muccadams in the Locoshed and those working in the Carriage and Traffic Department and in view of Railway Board letter dated 29.7.1983, it cannot be held that both the categories of Cleaner Muccadams performed same work and discharged similar duties. They cannot stake a claim of higher pay fixation which has been made available to the Cleaner Muccadams working in the Carriage and Traffic Department on the basis of Railway Board's letter dated 29.7.1983.

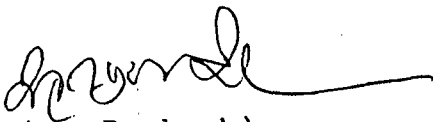
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14. On the reliance placed by the learned counsel for the applicants on the decisions of A.K. - Khanna and others - Vs. - Union of India and others, -ATR-1988-(2)-CAT-518 and Jai Pal and others Vs. - State of Haryana and others, (1988) 7 -ATC-771, in support of the argument that the applicants being similarly placed employees as those covered under the decisions of this Tribunal and Ahmedabad Bench of the Tribunal; it is suffice to mention that the applicants in the present OAs have not placed any data whatsoever as to exhibit that the work and nature of duties of Cleaner Muccadams in the Locoshed and the Cleaner Muccadams in the Carriage and Traffic Department are similar and that on that basis the applicants are entitled to claim the reliefs asked for in these applications. The respondents stand has been consistent as observed above, that the nature of work and duties of two categories of employees are entirely distinct and their avenues of further benefits are guided by different sets of rules, regulations and statutory orders. The applicants, therefore, cannot take any advantage of the aforesaid decisions. Moreover, it is also the settled position that any mistake which creeps into an administrative order can always be rectified by the competent authority and need not be followed necessarily as a precedent. Similar is the position of law with regard to the decisions which are rendered on the basis of insufficient evidence or incorrect facts . Even Hon'ble the Supreme Court in the case of State of M.P. - Vs. - Ramesh Kumar, (1994) 28 -ATC-707 (SC) has held that a mistake committed in an earlier case cannot be a ground for repeating the same mistake. In the case of C.V.K. Naidu - Vs. - Union of India, (1990) 12 -ATC-566, a Full Bench of the Tribunal has held that if an earlier case is decided wrongly, its benefit cannot be extended to other similarly situated employees. In the instant applications also; what the applicants here are claiming is that they want to perpetuate the mistake which has

crept into the order dated 12.1.1995 (Annx.A/1) on the basis of decisions of Ahmedabad Bench of the Tribunal and of this Tribunal.

15. Although respondents have raised the plea of bar of limitation of the applications filed by these applicants, but in the facts and circumstances of these cases and finding that the OAs were admitted on 10.12.1996 and the respondents have finally rejected their representations vide order dated 3.7.1996 (Annx.A/5), we are of the opinion that these applications cannot be summarily rejected on the plea of limitation raised by the respondents. The judgments relied upon by the learned counsel for the applicants in support of his argument that the applications are not barred by limitation, therefore, need no detailed discussion. We hold that the applications filed by the applicants are within time and they cannot be rejected primarily on the basis of they being barred by limitation. The issue in this regard is, therefore, answered accordingly.

16. For all the aforesaid reasons and in view of our conclusions that the applicants herein are not entitled to get re-fixation of their pay in the higher scale on the basis of the order dated 12.1.1995 (Annx.A/1); the oAs filed by the applicants herein are without any substance and are hereby rejected with no order as to costs. A copy of this order be placed in each of the OAs.


(Ratan Prakash)
Judicial Member


(O.P.Sharma)
Administrative Member