

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 20.2.2004

OA 497/2002

Mangal Chand, Gangman under Sr. Section Engineer (Depot), North Western Railway, Phulera.

... Applicant

Versus

1. Union of India through General Manager, North Western Zone, North Western Railway, Jaipur.
2. Divisional Rly Manager, North Western Railway, Jaipur Division, Jaipur.
3. Asstt. Engineer, North Western Railway, Phulera Jn, Phulera.

... Respondents

CORAM:

HON'BLE MR. J. K. KAUSHIK, MEMBER (J)

HON'BLE MR. A. K. BHANDARI, MEMBER (A)

For the Applicant

... Mr. C. B. Sharma

For the Respondents

... Mr. Anupam Agarwal

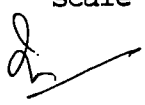
ORDER (ORAL)

Applicant, Mangal Chand, has filed this OA praying for the following relief :

- "i) That the respondents may be directed to consider regularisations of the applicant in Group-C cadre as per rules/ regularisation and as per Railway Board Circular dated 9.4.97 (Ann.A/2) and to allow all consequential benefits.
- ii) That the respondents be further directed to protect the pay of the applicant which was drawn by him on the post of Group-C upto 1997 prior to regularisation in Group-D cadre till the regularisation on Group-C post with all consequential benefits."

2. With the consent of the learned counsel for the parties the case was heard for final disposal at admission stage. We have carefully perused the pleadings and the records of this case.

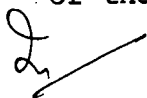
3. The material fact necessitating filing of this OA are that the applicant was initially appointed to the post of Casual Driver in Group-C on 9.11.84 in Survey & Construction Organisation of the Railway in the scale of Rs.260-400. He was granted temporary status on the said post of



Driver w.e.f. 9.11.85 vide letter dated 11.2.87 after passing the requisite trade test as well as the medical examination. He was allowed to enjoy all the benefits admissible to temporary railway servant on the post of Driver and was allowed due fixation of pay in the scale of Rs.260-400/950-1500/3050-4590 as per the recommendations of 3rd, 4th & 5th Pay Commission. Narrations have been made in the pleadings of the applicant giving details of the circulars and the provisions of rules in force regarding regularisation of the casual labours working for more than five years.

4. The further facts are that the applicant was relieved from the post of Driver to join on the post of Gangman on 3.10.97 and was posted under AEN North Jaipur, wherefrom he was posted to work under AEN Phulera at his own request vide letters dated 3.10.97 and 16.10.97 respectively. He was not allowed protection of pay of Group-C which was held by him for more than 13 years and his case was not considered for regularisation on the Group-D post. The OA has been filed on diverse grounds mentioned in para 5 and its sub paras, which we are deliberately not narrating in view of the order we propose to pass in this OA.

5. As regards the variances, the respondents have submitted in their reply that the OA is hopelessly time barred inasmuch as the applicant is challenging the order of his regularisation on Group-D post, which was passed in the year 1997, and no application whatsoever has been preferred for condonation of the delay. It is also averred that even as regards protection of the pay, the same came to be fixed in the year 1997 and the same was remained unchallenged for five years. Thus, the OA is hit by law of limitation and deserves to be dismissed on this ground alone. The applicant has never protested against his regularisation and he joined on Group-D wherein his pay was fixed at the lowest of the pay scale of Khalasi in view of his own request and he failed to challenge the orders of the pay fixation. The grounds raised in the OA have been generally

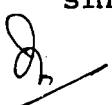


denied.

6. The learned counsel for the applicant has submitted that it is wrong to contend that the applicant was transferred on his own request to Phulera on the post of Khalasi. He has drawn our attention to Ann.A/4, order dated 3.10.97, vide which he was posted after his regularisation on the post of Gangman to work under AEN South and it is only subsequent to joining on the post of Gangman, he was allowed on request transfer vide Ann.A/5. Our attention was also drawn to para-1 of the order dated 16.10.97 (Ann.A/5), wherein he has tried to show the correct factual aspect of the matter. As regards the limitation, the learned counsel for the applicant has endeavoured to project that regularisation of the applicant on the post of Group-D was contrary to their own rules and even they have not protected his pay which at least gives a continue cause of action and he would have no grievance in case the relief is restricted as per the verdict of the Supreme Court in the case of M.R.Gupta v. Union of India & Ors., AIR 1996 SC 669. Thus, the preliminary objection of limitation cannot be sustained.

7. As regards the main relief sought in this OA, the learned counsel for the applicant has submitted that the issue regarding regularisation on Group-D post has been elaborately examined by this very Bench of the Tribunal in its judgement dated 12.12.2003, passed in OA 127/2001, Khushi Ram v. Union of India & Anr. and the same does not remain res integra. He also submitted that the applicant is fully entitled to the relief claimed in the OA.

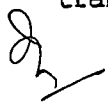
8. On the contrary, the learned counsel for the respondents has strongly opposed the contentions raised on behalf of the applicant and has submitted that the pay of the applicant was fixed in the year 1997 and by now more than five years have elapsed. The OA is hit by law of limitation since as per Section-21 of the Administrative Tribunals Act, 1985, the



limitation of one year is only provided. Once the pay is fixed, it does not give a recurring cause of action. As regards regularisation of the applicant on Group-C post, it has been submitted that once the applicant has been regularised on Group-D post, there would be no question of considering his candidature for regularisation on Group-C post. Once the applicant has accepted regularisation on Group-D post, no cause of action arises in respect of the applicant. As regards judgement in Khushi Ram's case (supra) is concerned, the law laid down therein would not apply in his case since the applicant has been regularised on Group-D post and has not made any complaint against his regularisation. He has also submitted that he was posted as per his own request and that is why he has been fixed at the minimum of the pay scale as indicated in Ann.R/2.

9. We have considered the rival submissions raised on behalf of both the parties. At the very outset, we would like to dispose of the preliminary objection regarding limitation. The applicant, inter-alia, has prayed for the pay protection in the instant case. The matters regarding pay fixation undisputedly give rise to recurring cause of action and this preposition of law is well settled by the Supreme Court in the case of M.R.Gupta (supra), on which reliance has been placed by the learned counsel for the applicant, and thus no further debate is required on this point. Therefore, the preliminary objection stands repelled and cannot be sustained. As per Article 104 of the Limitation Act, in case of wages, the wages are to be paid for a period of three years and in this view the relief can be restricted to a period of three years.

10. Now advertng to the merit of the case, the admitted position of the facts is that the applicant was initially engaged as a casual Driver and the post of Driver is in Group-C. He continued to work on the said post and was granted temporary status till 1997. The applicant was regularised on Group-D post in the year 1997. The contention of the learned counsel for the respondents that the applicant was absorbed on Group-D post at his own request is contrary to the orders Ann.A/4 & A/5. Vide Ann.A/5 he was transferred to Phulera on request and this was done only when first he has



been absorbed under AEN South at Jaipur. Thus, it is wrong to contend that on his own request he has gone on the post of Gangman. As regards the next contention of the learned counsel for the respondents that his pay has been fixed at the minimum of the scale meant for the post of Gangman, we are very clear in our mind that even in case of transfer there is a concept of bottom seniority but no concept of reduction in pay or fixing at the minimum of the scale in case one goes on transfer under own request, his pay cannot be reduced. Otherwise also, on regularisation one has to be given fixation taking into account the increments earned by him even in Group-D post and the concept of minimum of the pay scale can have no application and this proposition of law has been settled by the Full Bench of Patna Bench of this Tribunal in Yogendra Mehta v. Union of India, FB 1997-2001. Thus, the action of the respondents in fixing the pay of the applicant in the minimum of the scale cannot be justified on any ground. However, in the instant case, the action of the respondents is also otherwise not sustainable in view of our discussion in subsequent paras of this order.

11. Now we advert to the main controversy involved in the instant case. As regards the very regularisation of the applicant on the post of Group-C i.e. Driver, we have gone through the order passed by this Bench of the Tribunal in Khushi Ram's case (supra) and the said judgement is based on a very recent judgement of Rajasthan High Court Jodhpur in the case of Kalu & Ors. v. Union of India & Ors., reported in 2003 (2) WLC 8. We find that the controversy is squarely covered on all fours and is a complete answer to the basic question involved in the instant case. However, instead of repeating the discussions made therein and over-burdening this judgement, we treat contents of the said judgement as part of this order and place a copy of the same on the records of this file. We only reproduce para-13 of the same as under :

"(13) Therefore, in view of the subsequent judgement of the larger Bench of the Supreme Court given in Ram Kumar's case reported in

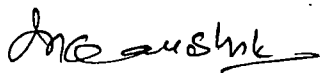


1996 (1) SLJ 116 (SC), writ petitions filed by the petitioners deserve to be allowed, hence allowed. The impugned judgements of the Tribunal rejecting the claim of the petitioners for regularisation of their services in Group-C are set aside. It is held that as per the circulars dated 11/15.2.91, 13.2.97 and 9.4.97, the petitioners are entitled to be considered for regularisation of their services in Group-C posts. It is further made clear that any order of regularisation of the petitioner's services on lower post i.e., in Group-D, if passed after issuance of above referred circulars by the Railway Administration, will not come in way of the petitioners for consideration of their case for regularisation in accordance with the circulars referred above. The respondents are directed to consider the cases of each individual petitioner, on merits strictly in accordance with circulars mentioned above, and if the petitioners are found entitled for the relief, it may be accorded to them as early as possible. No order as to costs."

12. The upshot of the aforesaid discussion is that the OA has merit and substance and the same stands allowed. The respondents are directed to consider the case of the applicant for regularisation on the post of Driver in Group-C in the light of the aforesaid observation of Rajasthan High Court in their Lordships' judgement in Kalu's case (supra) within a period of four months from the date of receipt of a copy of this order. However, financial effects shall be admissible only for a period from three years prior to filing of the OA. The parties are left to bear their own costs.


(A.K. BHANDARI)

MEMBER (A)


(J.K. KAUSHIK)

MEMBER (J)