

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

DATE OF ORDER: 21.7.2004

1. ORIGINAL APPLICATION NO. 312/2003

Laxman son of Shri Sohan Lal aged about 45 years, resident of Railway quarter No. IE, RE/TRD Colony, Sawaimadhopur at present employed on the post of Helper Khallasi under CTCI, Sawaimadhopur, Kota Division, Western Railway, Kota.

2. ORIGINAL APPLICATION No. 313/2003

Shiv Kumar son of Shri Shankar Lal aged about 44 years, resident of Railway Quarter No. 681/B, 40 Quarters, Railway Colony, Gangapur City, Sawaimadhopur, at present employed on the post of Helper Khallasi under CTCI, Sawaimadhopur, Kota Division, Western Railway, Kota.

3. ORIGINAL APPLICATION No. 314/2003

Mahabir Singh son of Shri Nanak Singh, aged about 52 years, resident of Railway Quarter No. H4 RE/TRD Colony, Sawaimadhopur at present employed on the post of Helper Khallasi under CTCI, Sawaimadhopur, Kota Division, Western Railway, Kota.

....Applicants

VERSUS

1. Union of India through General Manager, Central Western Railway, Jabalpur.

2. Divisional Railway Manager, Western Railway, Kota Division, Kota.

3. Sr. Divisional Signal and Telecom Engineer (Estt.) Kota Division, Central Western Railway, Kota.

Respondents

Mr. Shiv Kumar, Counsel for the applicant.

Mr. Anupam Agrawal, Counsel for the respondents.

CORAM:

Hon'ble Mr. S.K. Agrawal, Member (Administrative)

Hon'ble Mr. M.L. Chauhan, Member (Judicial)

ORDER (ORAL)

By this common order, we want to dispose of these OAs nos. 312/2003, 313/2003 and 314/2003 as common question of facts and laws is involved.

2. The facts of the cases are that applicants in these OAs were initially engaged as Casual Labour in Group 'C' post. However, subsequently, they were regularised in Group 'D' post on different dates between the year 1987 to 1990. While regularising their services, the pay which the applicants were drawing in Group 'C' post was not protected. Thereafter, the applicants made representation to the authorities that they are entitled for the protection of their pay of Group 'C' post when their services were regularised in Group 'D' post. Subsequently vide impugned order dated 19.2.2003 (Annexure A/1) annexed in OA No. 312/2003 and 314/2003, the applicants were informed that the benefit of the judgement is not available to them. However, no rejection order was conveyed by the respondents in respect of the applicant of OA No. 313/2003. It is against this order that the applicants have filed this OA whereby praying that the order (Annexure A/1) may be declared illegal and the same be quashed and that respondents be directed to protect the pay of the applicant which they were drawing in Group 'C' post at the time of regularisation of their services in Group 'D' with all consequential benefits. It may be stated here that though in the pleadings the applicants have also made averment that regularisation of the applicants in Group 'D' post is illegal and they are entitled for regularisation for Group 'C' post, however, during the course of arguments, the learned counsel for the applicant submits that in any case he is not pressing this arguments at this stage.

3. Notice of these applications were given to the

respondents. The respondents have filed reply and by way of preliminary objections, it has been stated that these OAs are hopelessly barred by limitation. On merits, it has been stated that the regularisation of the applicants in Group 'D' post is fully covered by the judgement of the Full Bench on which reliance has also been placed by the applicants. However, the case of the applicants that on their absorption in Group 'D' post, their pay ought to have been fixed after taking into account the pay which they were drawing while working as Casual labour in Group 'C' post has not been specifically denied. However, it has been stated that a person who was never recruited to the post cannot be given protection of that post.

4. We have heard the learned counsel for the parties and have gone through the material placed on record.

5. According to us, the matter is no longer res-integra. The same is fully covered by the decision of this Tribunal Full Bench at Jaipur in OA No. 57/1996 ASLAM Khan vs. Union of India & Others (1997-2001) ATFAJ Page 157 whereby this Full Bench in para No. 9 of the judgement while answering the reference has held as under:-

"A person directly engaged on Group C post (promotional) on casual basis and has been subsequently granted temporary status would not be entitled to be regularised on Group 'C' post directly but would be liable to be regularised in the feeder cadre in Group 'D' post only. His pay which he drew in the Group 'C' post, will however be liable to protected." (emphasis supplied to the underline).

6. As regards to the contention of the respondents that the present application is time barred and cannot be entertained and also that the applicants are not entitled to arrears of salary, suffice to say that matter is fully covered on both aspects and the present applications cannot be said to be barred by limitations in view of the law laid down by the Apex Court in the case of M.R. Gupta vs. Union of India & Others 1995 SCC(L&S) 1273 whereby the Apex Court in Para No. 5 of the judgement has held as follows:-

".....The appellant's grievance that his pay fixation was not in accordance with the rules, was the

assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the applicant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period....."


7. Similarly, the Full Bench of this Tribunal in the case of G. Narayana & Others vs. Union of India decided on 18.6.1993 F.B. Judgement Vol. III Page 216 in para 5 has made the following observations.

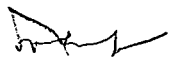
"If we take a view different from the one taken by the Hyderabad Bench it would result in two different principles operating in the matter of upgradation of similarly situated personnel. If the respondents contention is accepted it would lead to a very awkward situation of one set of employee of the DRDO being governed by one set of principles and another set of employees being governed by different set of principles even though they are all similarly situated and governed by the same Recruitment Rules and common seniority lists. The Tribunal should not bring about a situation where it gives conflicting directions to the same party. Certainly and consistency are certainly great values cherished in the administration of justice. As acceptance of the contention of the respondents would lead to conflict of directions to the same organisation it would not be in consonance with justice to take a different view from the one taken by the Hyderabad Bench of the Tribunal."

8. In view of the law laid down by the Hon'ble Supreme Court in the MR Gupta and also drawing assistance from the decision of the Full Bench as referred to above, we are also of the view that where delay can be a factor for considering arrears, the claim of the applicants deserves to be granted regarding proper fixation of ^{their} pay. We direct the respondents that the pay of the applicants which they drew in Group 'C' will be protected from the date their services were regularised in Group D post(s). However, such fixation will be notional till 3.7.2003. The actual financial benefits would however be payable to the applicants only w.e.f. 4.7.2002 which is one year from the date of filing of the OA(s)

i.e. 4.7.2003. The arrears of back wages is restricted to one year as the limitation prescribed for filing the OA(s) under Section 21 of the Administrative Tribunal Act, 1985 is one year and applicants have approached this Tribunal after so many years. The respondents shall carry out the direction of this Tribunal as soon as possible and in any case not later than three months from the date of receipt of a copy of this order.

9. With these observations the OA shall stand disposed of accordingly. No costs.


(M.L. CHAKHAN)
MEMBER (J)


(S.K.AGRawal)
MEMBER (A)

AHQ
