

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH.

O.A.No.453/2003

Decided on : March 29, 2005.

CORAM : **HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN &
HON'BLE MR.A.K.BHANDARI, MEMBER (ADM.).**

Mari Algan S/o Shri Algan, Ex-Mate Now Peon in the office of FA & CAO
(Construction) North Western Railway, Aged about 55 years, Resident
of Temporary Huts, Near Ghoom-Chakar, Loco Colony, Jaipur.

....

Applicant

By : Mr.Nand Kishore, Advocate.

Versus

- 1.Union of India through General Manager, North Western Railway,
Opposite Railway Hospital, Jaipur.
2. Chief Administrative Officer (Construction), North Western Railway,
Opposite Railway Hospital, Jaipur.
3. Divisional Railway Manager, North Western Railway, Power House
Road, Ajmer.

Respondents

By : Mr. V.S.Gurjar, Advocate.

ORDER (ORAL)

KULDIP SINGH, VC

The relevant facts for disposal of the controversy are that applicant was engaged as Mate in the Railways on 5.2.1979 in the pay scale of Rs.225-308. He was granted temporary status on 1.1.1984, which date was later on changed to 1.1.1983 by order dated 28.10.1986. Consequent upon the revision in the pay scale by recommendations of IVth Pay Commission, his pay was fixed in the scale of Rs.950-1400, at the stage of Rs.970/- as on 1.1.1987. He was drawing annual increment in the revised scale and has drawn his last pay in this scale on 1.1.1997, at Rs.1175/-. On further revision of pay scales, the applicant was fixed at Rs.3650/- as on 1.1.1997, in the

revised scale of Rs.3050-5490. He submits that he should have been regularized in the year 1986-87, when similarly situated persons were regularized.

The applicant was screened vide letter dated 16.12.1997 and his lien was shown in Jaipur Division, in the pay scale of Rs.2610-3540 (Annexure A-1). Respondents have reduced the pay of the applicant from Rs.3650/- to Rs.3090/- in the new scale vide letter dated 23.4.1998 (Annexure A-2). His grievance is that while fixing the pay of the applicant in the revised scale after regularization, his last pay drawn has not been protected. He was not even issued any show cause notice before reduction in his pay. The applicant has represented to the respondents against reduction of pay (Annexure A-3) but nothing has been done by the respondents. By way of the present O.A he seeks a direction to the respondents to protect his pay at Rs.3650/-. He places reliance on a decision of the C.A.T (Full Bench), Jaipur, in the case of Aslam Khan Vs. Union of India & Others, 1997-2001 A.T.Full Bench judgments, page 157.

The respondents are contesting the O.A. they plead that the O.A is barred under the law of limitation as his pay was reduced on 23.4.1998 (Annexure A-2), and this O.A has been filed in 2003. The applicant was regularized in Group D on the post of Gangman and his pay was fixed at Rs.3090/- keeping in view the Railway Board's communication dated 5.11.1976 (Annexure R-1), under which pay of casual labour with temporary status when absorbed in regular class IV post will be fixed by granting increments in the new scale grade with reference to their earlier service as casual labour in higher or equivalent grades. Thus, the pay of the applicant was fixed @ Rs.3090/- at the time of regular appointment. The applicant has filed a rejoinder.

We have heard learned counsel for the applicant and perused the

3

material on the file.

At the very outset, learned counsel for the respondents submitted that the O.A. is barred under the law of limitation and cannot be entertained on merits by this Tribunal. To this, learned counsel for the applicant has submitted that in view of the decision of the Hon'ble Supreme Court in the case of M. R. Gupta Vs. Union of India & Others, 1995(5)SCC,628, the O.A is maintainable. We find that in the case of M. R. Gupta (supra), Apex Court has held that fixation of pay gives a recurring cause of action inasmuch as cause of action arises to an employee every month when he receives the salary. Considering the law on the subject, we find no force in the objection taken by the respondents. Thus, the O.A is found to be within the period of limitation and can be considered and disposed of on merits. In any case, the arrears can be restricted for a period which falls within the period of limitation.

Now, we proceed to consider the O.A. On merits. The issue as to whether pay of a casual class III employee upon his regularization against Group-D post is required to be protected or not, came to be decided by a Full Bench of this Tribunal in the case of Aslam Khan Vs. Union of India & others (supra). In that it was held that a person directly engaged on Group C post 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 and his pay which he drew in the Group C post, will however, be liable to be protected. Thus, it is clear that the pay of a person who is appointed against a Group C post and regularized against Group D post, is to be protected. Once that is so, we do not find anything which may be used against protection of pay of the applicant who has been regularized as Group-D, even though she was earlier in the pay scale of Group C. . The case

Kor

- 4 -

of the applicant is found to be fully covered by the decision in the case of Aslam Khan (supra).

In view of this, the O.A is allowed in the same terms as in the case of Aslam Khan (supra), operative portion of which is reproduced 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 regularized on Group-C post directly but would be liable to be regularized in the feeder cadre in Group-D post only. His pay which he drew in the Group-C post, will however be liable to be protected".

The respondents are directed to consider and pass necessary orders on the claim of the applicant within a period of three months from the date of receipt of copy of this order. However, it is made clear that applicant shall be entitled to the actual benefits of the arrears of pay and allowances for a period of 18 months only, to be counted backwards from the date of filing of the O.A which is 26.9.2003. The parties are left to bear their own costs.


(A.K.BHANDARI)
MEMBER (ADM.)


(KULDIP SINGH)
VICE CHAIRMAN

March 29,2005.

HC*