

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT SITTING AT INDORE

Original Application No. 271 of 2002

Indore, this the 1<sup>st</sup> day of October, 2004 ✓

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri A.S. Sanghvi, Judicial Member

1. Smt. Pooja Pandey, W/o. Late Shri A.K. Pandey, aged about 43 years.
2. Vikrant Pandey, S/o. Late Shri A.K. Pandey, aged about 20 years.
3. Rajandini Pandey, D/o. Late Shri A.K. Pandey, Aged about 10 years,

Applicant No. 1-3 are residents of R/o. C-44/32, Rishi Nagar Extension, In front of Income Tax Colony, Ujjain, (MP). ... Applicants

(By Advocate - Shri M.K. Verma)

V e r s u s

1. Union of India, through Chairman, Railway Board, Rail Bhawan, New Delhi.
2. General Manager, Western Railways, Church Gate, Mumbai.
3. Divisional Railway Manager, Western Railway, Ratlam. ... Respondents

(By Advocate - None)

O R D E R

By A.S. Sanghvi, Judicial Member -

None is present for the respondents. Since it is an old case of 2002, we proceed to dispose of this Original Application by invoking the provisions of Rule 16 of CAT (Procedure) Rules, 1987.

2. The applicant A.K. Pandey who was serving as Goods Driver was ~~placed~~ <sup>visited</sup> with a penalty of removal from service and ultimately by the order of the revisional authority he was reinstated in service. Thereafter, he approached this Tribunal for proper fixation of his salary and also for direction to the respondents to treat the period from 13.8.1990 to 11.6.1993 as spent on duty. Unfortunately

during the pendency of this OA the applicant has expired and this OA is continued by his legal representatives. According to the case of the applicant while he was serving as Goods Guard, <sup>the</sup> goods train had met with an accident because of defective brakes but still he was served with a charge sheet and in the enquiry held in the charges against him he was found guilty of the charges levelled against him. The disciplinary authority had inflicted the penalty of removal from service on him and he was removed from service vide order dated 14.8.1990. After an unsuccessful appeal, he has preferred a revision and the revisional authority in his order dated 1st February, 1993 had reduced the penalty of removal against him by replacing the same to reduction to the post of Commercial Clerk. The applicant was thereafter reinstated in service as a Commercial Clerk in the pay scale of Rs. 975-1540/- fixing his pay at Rs. 1150/- per month vide order dated 11.6.1993. The applicant had represented against the fixation of his pay at Rs. 1150/- per month and in pursuance to his representation the respondents promoted him to the post of Goods Guard in the scale of Rs. 1200-2040/- and posted him at Chitod Junction vide order dated 7.3.1995. Not satisfied with this order the applicant had represented for restoring his pay scale with effect from the date he was reinstated in the service. He also demanded that the period from 14.8.1990 to 11.6.1993 i.e. the period from the date of his removal to the date of his reinstatement in service be treated as spent on duty and he be paid the difference of salary etc. According to him his claim is not yet been decided by the respondents and therefore, he has approached this Tribunal.

3. The respondents in their written reply while admitting

that the revising authority has modified the punishment of removal from service to the reduction to the stage of Commercial Clerk vide order dated 1.02.1993, have contended that the competent authority had rejected the claim of the applicant for treating the intervening period from 13.8.1990 to 11.6.1993 as period under suspension and for making payment of subsistence allowance for this period. According to them the competent authority had treated this intervening period as period not spent on duty and now after almost 8 years the applicant has filed the present OA praying for relief of proper fixation of his pay as on 1993 and also as on 7.3.1995 which is clearly not maintainable and barred by delay and laches. According to them the cause of action for filing such an Original Application arose in the year 1993 but this OA is filed in time 2002 which is clearly hopelessly barred. According to them the claim for subsistence allowance for the intervening period cannot be allowed as the period was never treated as suspension period. They have prayed that the OA be dismissed with costs.

4. We have heard the learned counsel for the applicant and duly considered the rival contentions.

5. There can hardly be any doubt that the claim of fixation of pay in the grade of Rs. 1200-2040/- with effect from the year 1993 made by the applicant in this OA is barred by limitation. It is an admitted position that the applicant was reinstated in service in view of the orders passed by the revisional authority on dated 1.2.1993. His punishment of removal from service was reduced to that of reduction to the post of Commercial Clerk i.e. reversion from the post of Goods Clerk to that of the Commercial Clerk. The order of the revisional authority was never

challenged by the applicant and when he was reinstated in service as a Commercial Clerk he had accepted the reinstatement as well as the punishment imposed on him. It is also an undisputed position that the post of Commercial Clerk carried a pay scale of Rs. 975-1540/- and as such his demand of placing him in the scale of Rs. 1200-2040/- is clearly, illogical and unreasonable. The scale of Rs. 1200-2040/- was that of the Goods Guard and since he had been inflicted with the penalty of reversion to the post of Commercial Clerk and that penalty was accepted by him, it is really difficult to understand how he can claim that he ought to have <sup>been</sup> reinstated in the pay scale of Rs. 1200-2040/-. The prayer therefore, deserves to be rejected. It is not only barred by limitation but also not acceptable on merit.

6. So far the prayer of treating the period from 13.8.90 to 11.6.1993 as the period under suspension and claim made for subsistence allowance is concerned, we are unable to appreciate the demand made by the applicant. This is a period between his removal from service to reinstatement in service and apparently cannot be <sup>in</sup> any sense be considered to be a period spent by him under suspension. He, therefore, cannot claim any subsistence allowance for this period. He cannot also be deemed to have been suspended so far this period is concerned. Since he had been found guilty of the charges levelled against him and he has not been exonerated, even by the revisional authority, he cannot claim that this period be treated as period spent on duty. It is <sup>now</sup> <sup>no</sup> doubt true that it was for the disciplinary authority to pass appropriate orders regulating this period. The respondents in their reply have contended that the representation of the applicant treating this period as

period spent on duty is already rejected but there is no order rejecting the representation of the applicant nor any order of the disciplinary authority regularising this period. The revisional authority has rightly not passed any order so far this period was concerned. It was for the disciplinary authority to pass appropriate orders while reinstating the applicant in service but unfortunately it appears that the disciplinary authority has not passed any orders regularising this period. Since there is no order passed by the disciplinary authority to regularise the period between 13.8.1990 to 11/6/1993, we while disposing of this OA direct the disciplinary authority to pass appropriate orders in this regard and communicate the same to the applicants herein. This exercise shall be carried out within three months from the date of receipt of copy of this order. Rest of the prayers of the applicant stand rejected.

7. Original Application stands disposed of with no order as to costs.

*A.S. Sanghvi*  
(A.S. Sanghvi)  
Judicial Member

*M.P. Singh*  
(M.P. Singh)  
Vice Chairman

प्रठांकन सं. ओ/न्या.....जवलपुर, दि.....  
प्रतिलिपि आवेदितः—  
"SA" (1) संभित, उपा. नगा. एवं दारा एवं शिराशन, जवलपुर  
(2) आदेक श्री/श्रीमती/द्वा. .... के काउंसल  
(3) प्रभासी श्री/श्रीमती/द्वा. .... के काउंसल  
(4) क्रपाल, देहपाल, जवलपुर न्यायाधीश  
सूचना एवं आवश्यक कार्यकारी ढंग  
M K Verma  
MN Banerjee

Issued  
9.10.04  
B3  
ग्रन्थी

*उपर रजिस्ट्रर*