

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
(CAMP OFFICE AT INDORE)

original Application No. 58/2001

Indore, this the 14th day of June 2004

HON'BLE SHRI M.P.SINGH, VICE CHAIRMAN
HON'BLE SHRI MADAN MOHAN, MEMBER (J)

Bhagwan Swaroop Sharma
S/o Shri Chidha Lal Sharma,
Age 62 years,
R/o 154, Mahavir Nagar,
Jawra Road, Ratlam.

...Applicant

(By Advocate: Shri K.C.Raikwar)

-versus-

1. Union of India through
General Manager,
Western Railway,
Churchgate, Mumbai.

2. D.R.M., Divisional Office,
Western Railway,
Do Batti, Ratlam.

...Respondents.

(By Advocate: Shri Y.I.Mehta)

O R D E R

By Madan Mohan, Member (Judicial):

By filing this Original Application, the applicant has sought the following main reliefs:-

"प्रार्थी स/। को निरस्त किया जाये।

"प्रार्थी को रिस्ट्रॉक्यूरिंग के पश्चात दिनांक 1.1.1991 से नये वेतनमान स्पष्ट 2000-3200 दिलाये जाये।"

2. Brief facts of the case are that the applicant is retired Railway employee and he has served on the post of Asstt. Loco Foreman till 30.6.1996. The applicant has challenged the action of the respondents in not granting him the pay scale of Rs2000-3200/- vide order dated 11.3.1996 of the respondent no. 2. The applicant was working on ad hoc basis against vacancy on the post of Asstt. Loco Foreman in the pay scale of Rs.1600-2660/- and retired as such. It is further submitted that after coming force of the 5th Pay Commission, the pay scale of Rs. 1600-2660/- was revised to Rs. 2000-3200/- but the said scale was not given to the applicant on the ground that he was not promoted/appointed ~~on~~ regular basis. Since the Western Rly. did not conduct the selection procedure after

1986 for regularisation, the applicant retired as such,

3. Heard the learned counsel for the parties and perused the record carefully.

4. It is argued on behalf of the applicant that according to para 4(1) of Annexure A-3, all the staff who were designated as ALFs should be placed in the grade of Rs. 2000-3200/- from 1.1.1986 regardless of whether the particular individual came from running side or maintenance side, who were erroneously continuing in Grade Rs. 1600-2660/-. The applicant retired vide order dated 30.6.1996. It is further argued as the applicant was promoted on ad hoc basis as Assistant Loco Foreman vide order dated 10.1.1991 and continued to work as such till his retirement, he is entitled to the grade of Rs. 2000-3200/-from the date of his ad-hoc appointment with all consequential benefits.

5. In reply learned counsel for the respondents argued that the applicant was promoted as Assistant Loco Foreman on ad hoc basis and not on regular basis and stood retired as such. He further argued that perusal of Annexure A-3 as a whole and para 4(1) in particular clearly reveals that the merger of pay scale is applicable to the permanent A.L.F. and not to those who have been appointed on ad hoc basis, who have yet to clear a selection. The said fact is also clear from the letter dated 24.2.1999 (Annexure R-2) . He further argued that vide letter dated 14.7.1998 (Annexure R-1) the applicant was informed that S/Shri Saligram (SC) and Shri Ram Prakash who were senior to him, were promoted as ALF on ad hoc basis and they were retired on 31.5.1997. Shri Ram Prakash has filed a court case for grant of the benefit of upgradation. Hence, before giving any benefit of upgradation to the applicant, the cases of the above two employees are to be considered. It is further argued that the case of the applicant is pending in the head office. Moreover,

as per Annexure R/2 dated 24.2.1999 the alleged benefit of upgradation from 1.1.1986 was to be given to only those persons who were promoted on regular basis and not on ad hoc basis. Therefore, the applicant is not entitled for the relief claimed as he was appointed as A.L.F. on ad hoc basis and retired as such. Learned counsel for the respondent also raised an objection that the applicant has come before this Tribunal very belately, therefore, he is not entitled for the relief as claimed by him in the present application and the O.A. is liable to be dismissed on this ground alone.

6. In reply to the arguments advanced by the learned counsel for the respondent, the learned counsel for the applicant again argued that para 4.1 of Annexure A-3 does not speak about any condition of 'regular appointment/promotion on regular basis' as argued by the learned counsel for the respondents. It only speaks that all the staff who were designated as A.L.Fs should be placed in the grade of Rs. 2000-3200/- from 1.1.1986 regardless of whether the particular individual came from running side or maintenance side, who erroneously continued in the grade of Rs. 1600-2660/-. In regard to the question of limitation, the learned counsel for the applicant has relied upon the decision of the Hon'ble Supreme Court rendered in the matter of M.R. Gupta vs. Union of India & Ors., reported in (1995) 5 SCC 628 wherein their Lordships have held that such grievance is a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment. Hence, such application cannot be treated to be time barred. However, consequential benefits / arrears would be subject to law of limitation.

7. After hearing the learned counsel for the parties and perusal of record and citations relied upon, we find that the applicant was promoted as ALF though on ad hoc basis w.e.f. 10th January, 1991 and retired as such. It is also seen that the

respondents have rejected the claim of the applicant only in the year 2000 and the applicant has approached this Tribunal within the prescribed period of one year. Moreover, we find that the claim of the applicant is a continuing cause of action hence the question of limitation does not arise. Our view is also supported by the decision of the Hon'ble Supreme Court in the matter of M.R. Gupta vs. UOI & Ors. (Supra). We also find that a similar and identical matter i.e. OA No. 620/1996 has already been decided by this Tribunal holding that the applicants therein are entitled to be paid the pay scale of Rs. 2000-3200/-. We also find that the applicant was similarly placed as that of the applicants in OA No. 620/1996 who were granted the benefit of higher scale of pay of Rs. 2000-3200/-. It is an admitted ~~fact~~ fact that the applicant was working as A.L.F. on ad-hoc basis till the date of his retirement. The respondents have stated that he was not entitled for the benefit of upgradation because such benefit was not given to the ad hoc employees. We do not find any force in this contention of the respondents. When the applicant was holding the post of A.L.F. and was performing the duties of the said post and other similarly placed persons who were working as A.L.F. have been granted the higher scale of pay of Rs. 2000-3200/-, there is no justification for denying such benefit of higher grade to the applicant just because that he was performing his duties on ad hoc basis. Respondents vide their letter dated 14.7.1998 have stated that before granting the benefit of upgradation to the applicant in the scale of Rs. 2000-3200/-, this benefit is to be given to S/Shri Saligram and Ram Prakash Goyal. Since these two persons have/come before us, we cannot comment upon them. Therefore, explanation given by the respondents for denying the higher scale of Rs. 2000-3200/- to the applicant before the so-called seniors is not acceptable.

(Signature)

8. In view of the discussion made above and in the light of the decision of the Tribunal rendered in O.A. No. 620/96, we allow the O.A. and quash the impugned order Annexure A-1. The respondents are directed to grant the pay scale of Rs. 2000-3200/- to the applicant from the date of his promotion as Assistant Loco Foreman as has been granted to the similarly placed employees in accordance with the Tribunal's order passed in O.A. No. 620/96 and fix his retiral benefits and also grant the arrears thereof one year before filing of the O.A. in view of the decision of the Hon'ble Supreme Court in the case of M.R. Guta (supra).

9. In the result, the O.A. is allowed. No costs.


(Madan Mohan)
Member (Judicial)


(M.P. Singh)
Vice Chairman

पृष्ठांकन सं ओ/ला.....जवलपुर, दि.....
प्रतिलिपि आच्छेधित:—
(1) संसिद्ध, उच्च न्यायालय वार एसोसिएशन, जवलपुर
(2) अलेक्स ली/श्रीमती/कु.....के कानूनसल *K.C. Rakha*
(3) प्रत्यक्षी श्री/श्रीमती/कु.....के कानूनसल *YI Mehta*
(4) दंर्यपाल, लेला, जवलपुर न्यायालय
सूचना एवं आवश्यक कार्यवाही हेतु *Parimal*
प्रत्यक्षी कानूनसल *Parimal*

Expend
19/6/96