

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 822 of 1999

Jabalpur, this the 20<sup>th</sup> day of April, 2004

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri Madan Mohan, Judicial Member

S.K. Malawar, S/o. Late Shri G.N. Malewar,  
aged about 38 years, Guard S.E. Rly.,  
resident of Deorikhurd, Bilaspur (MP).

and 6 others.

... Applicants

(By Advocate - Shri L.S. Rajput)

Versus

Union of India, through,

1. The General Manager,  
South Eastern Railway,  
Garden-Reach, Calcutta-43.

2. The Divisional Railway Manager,  
South Eastern Railway,  
Bilaspur (MP).

... Respondents

(By Advocate - Shri M.N. Banerjee)

ORDER

By Madan Mohan, Judicial Member -

By filing this Original Application the applicants  
have sought the following main reliefs :

"(a) declare the action of the respondents denying  
the benefit of higher fixation of pay in spite of the  
existing rules and reducing the pay of the applicants  
by several stages below on their promotion as Guards  
in the identical grade as unlawful and illegal,

(b) hold that, in pursuance thereof, the  
applicants be allowed the benefits of pay fixation  
under R.R.-22(C) on their promotion as Guards Grade  
Rs. 1200-2040 (RPS) from the date, each of them had  
been promoted in 1989,

(c) direct the respondents to refix the pay under  
R.R.-22(C) by protecting their existing pay as Sr.  
TNC and arrange payment of arrears of pay, increments  
& allowances etc that may become due & admissible on  
such refixation, with interest at market rate,  
within the stipulated period,

(e) to direct the respondents to notionally  
promote the applicants as regular Sr. TNC w.e.f.  
21.8.89 (from the date juniors were given regular  
promotion by Ann. A-9) & allow the applicants an  
option for fixation of their pay as Guards w.e.f.  
22.8.89 as per Ann. A-1 & make payment of arrears  
flowing from such option/fixation as Guards."

2. The brief facts of the case are that the applicants before joining as Guards were working as Senior Trains Clerk in the grade of Rs. 1330--560/- in Bilaspur Division under the respondent No. 2. Vide order dated 30.7.1986 they were promoted as Sr. Trains Clerk and was regularised vide order dated 19.6.1989. The applicants were promoted as Goods Guard in the grade of Rs. 1200-2040/-, <sup>vide order dated 7.4.1989</sup> against departmental quota by respondent No. 2, after regular selection by the competent selection Board. The applicants joined as Guards in the month of April 1989 on different dates as per promotion order at Annexure A-4. The basic pay of the applicants on joining as Guards was reduced to the minimum of the grade of Goods Guard against the rules. The applicants are put to a loss of 3 to 5 increments/stages below. After joining as Goods Guards when they were paid at the reduced rate of Rs. 1200/- as basic pay, the applicants represented against the wrong fixation. The respondent No. 2 always advised the applicants that the issue were pending in the office of respondent No. 1 and any decision would be taken only after hearing from respondent No. 1. The applicants were helpless because they had no intention to go back to the parent cadre. The applicants again sent joint representation to respondent No. 1 on 24.2.1999 giving references of their earlier representations. In the meantime the Railway Board vide their letter dated 24.5.1999 sent clear instructions to the respondents to fix the pay of the employees on appointment from one post to another carrying identical scales of pay under FR-22(C) & make payment of arrears wherever due. These instructions are applicable in cases of promotions made between 1.1.1986 to 31.12.1995 and are issued with the sanction of the President. In response to the above orders dated 24.5.1999 the applicants submitted their options on 27.7.1999. After waiting for another two months, the applicants sent a

legal notice dated 30.9.1999 to the respondents for implementing the orders. The applicants tried their best to see that their pay is correctly refixed & arrears paid but there is no fruitful result till date. Aggrieved by this the applicants have filed this Original Application claiming the aforesaid reliefs.

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

4. It is argued on behalf of the respondents that in their reply they have specifically mentioned that no representation has been received by the office of the respondents. Hence the plea raised by the applicants in their OA that they have sent representations to the respondents is not correct.

5. The learned counsel for the applicants argued that the applicants had represented against the wrong fixation. The respondent No. 2 always advised the applicants that the issue is pending in the office of the respondent No. 1 and any decision would be taken only after hearing from respondent No. 1. The applicants were helpless because they had no intention to go back to the parent cadre. He further stated that the applicants sent a joint representation to respondent No. 1 on 24.2.1999 giving references of their earlier representations. He has further drawn our attention towards the rejoinder wherein it is mentioned that the averment of the respondents about non-receipt of the representations and legal notice etc. is far from the truth. The documents show that there is acknowledgement of respondents. Hence the respondents cannot say that they had not received the representations of the applicants. The learned counsel for the applicants further

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argued that the representation dated 24.2.1999 was sent by them jointly to the respondents i.e. Chief Personnel Officer, South Eastern Railway, Calcutta, through the respondent No. 2. It was duty of the respondent No. 2 to send the same to the respondent No. 1, because legally the applicants cannot make any representation directly to the respondent No. 1 ignoring the respondent No. 2. The applicants were bound to send the representation through proper channel.

6. We have given careful consideration to the rival contentions made on behalf of the parties and we find that the arguments raised on behalf of the respondents about the representation and legal notice of the applicants as not received in their office is not proper and justifiable. It may be due to negligence or mistake on the part of the office of the respondent No. 2. The applicants have not represented directly to the respondent No. 1 because they were subordinate officers and they were expected to send their representations through proper channel i.e. through respondent No. 2. It was the duty of the respondent No. 2 to send the representations to the respondent No. 1, when they have received the same as is evident from the acknowledgement made in Annexure A-5 and Annexure A-6. The respondent No. 1 could not take any decision about the claim of the applicants due to non-receipt of the representations of the applicants. It was a fault and negligence on the part of the office of the respondent No. 2.

7. The learned counsel for the respondents also argued that the OA is barred by limitation. Regarding this the learned counsel for the applicant argued that the

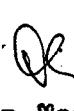
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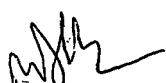
representations were made within time but due to the negligence or fault on behalf of the office of the respondent No. 2, the same were not sent to the office of the respondent No. 1. We support the arguments raised on behalf of the applicants. Hence the Original Application cannot be said to be time barred.

8. Thus without going into the merits of the case, we are of the considered opinion that the Original Application should be disposed of with a direction to the applicants to make another detailed representation to the respondent No. 1 through proper channel within a period of one month from the date of receipt of copy of this order. We do so accordingly. If the applicants complies with the aforesaid order, the respondent No. 1 shall consider and dispose of the said representation within a period of two months from the date of receipt of the said representation by passing a speaking, detailed and considered order. The respondent No. 1 shall also enquire as to why the earlier representations addressed to him by the applicants, through respondent No. 2, were not sent/dispatched to his office.

9. Accordingly, the Original Application stands disposed of. No costs.

10. The Registry is directed to supply the copy of the memo of parties to the parties while issuing the certified copy of this order.

  
(Madan Mohan)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman