

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR

This, the 17th day of August, 2006

ORIGINAL APPLICATION No.301/2006

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)  
HON'BLE MR. J.P.SHUKLA, MEMBER (ADMINISTRATIVE)

Madan Lal  
S/o Shri Ganesh,  
aged about 78 years,  
r/o in front of Shyam Bhawan,  
Near Primary School,  
Raj Bazar, Phulera, Jaipur,  
retired as Train Clerk/Ticket Collector  
the then Western Railway on 31.12.1986.

.. Applicant

(By Advocate: Mr. C.B.Sharma)

Versus

1. Union of India  
through General Manager,  
North Western Zone,  
North-Western Railway,  
Jaipur-302006.
2. Divisional Railway Manager,  
North-Western Railway,  
Jaipur Division,  
Jaipur.
3. Senior Divisional Personnel Officer,  
North Western Railway,  
Jaipur Division,  
Jaipur.

.. Respondents

(By Advocate: ..

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### O R D E R (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- “(i) The entire record relating to the case be called for and after perusing the same respondents may be directed to allow due fixation to the scale of Rs. 260-400 of the post held by the applicant at the time of retirement and extend benefit of pay and allowances including pensionary benefits by revising the same with all consequential benefits including arrears of due fixation and revised pension.
- “(ii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- “(iii) That the costs of this application may be awarded.”

2. Briefly stated, facts of the case which are relevant for deciding this OA, are that the applicant who was initially appointed as Khalasi and subsequently posted as Trains Clerk/Ticket Collector in the pay scale of Rs. 260-400 was declared surplus in the year 1982 and ordered to be reverted from the post of Trains Clerk/Ticket Collector. Feeling aggrieved by the action of the respondents, he filed Civil Suit before the learned Munsif, Sambhar Lake and during the pendency of the Civil Suit stay of maintaining status quo was granted in favour of the applicant. The said suit was transferred to this Tribunal after coming into force the Administrative Tribunals Act, 1985 and registered as Transferred Application No. 309/92. The said Transferred

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Application was disposed of vide order dated 5.7.1993 directing the respondents to grant necessary benefits flowing from the post which the applicant was holding immediately before the date of retirement. It was further observed that after giving the above benefits, necessary orders of all pensionary benefits should also be passed. Pursuant to the directions given by this Tribunal, the respondents implemented the order. The grievance of the applicant in this OA is that his pay has not been correctly fixed pursuant to the directions given by this Tribunal vide order dated 5.7.1993 in TA No. 309/92, inasmuch as, his pay has been fixed on the post of Cabin Man whereas the applicant was working on the post of Trains Clerk/Ticket Collector. Further grievance of the applicant, as can be seen from para 4(8) of the OA, is that the respondents have blocked him in the scale of Rs. 225-308 at the stage of Rs. 308/- till retirement but not allowed pensionary benefits taking into consideration the post held by him at the time of retirement on 31.12.1986. At this stage, it will be useful to quote para 4(8) of the OA which will clinch the matter in issue and thus reads:-

“(8) That the respondents blocked the applicant in the scale of Rs. 225-308 at the stage of Rs. 308/- and allowed and pay and allowance at the stage of Rs. 308/- till retirement, but not allowed pensionary benefits taking into consideration of post hold by the applicant at the time of retirement on 31.12.1986 i.e. Trains Clerk/Ticket Collector and by this action applicant in receipt of less pay and allowances and less pensionary benefits.

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It is further submitted that the respondents at the time of retirement to justify their action shown the applicant as Cabin man in the retirement papers with the scale of Rs. 260-400 and never allowed higher scale during the service. Copy of retirement papers are annexed herewith and marked as ANNEXURE A/5."

3. We have heard the learned counsel for the applicant at admission stage and we are not inclined to interfere in the matter.

4. At the outset, it may be stated that the applicant wants execution of the order dated 5.7.1993 passed by this Tribunal in TA No.309/92. For that purpose, there is specific remedy provided under Section 27 of the Administrative Tribunals Act and the said remedy has to be availed of in the manner and within the period prescribed under Sections 20 and 21 of the Administrative Tribunals Act, 1985. Admittedly, a substantive OA for that purpose is not maintainable. Further, the applicant has not challenged the validity of the order dated 18.4.1994 (Ann.A2) whereby the applicant was informed that he has been granted pensionary benefits of the post of Cabin Man in the scale of Rs. 260-400 in compliance of the order passed by this Tribunal earlier in the TA. Thus, the present OA is liable to be dismissed on this score alone.

5. Even if it is held that the OA is maintainable, the applicant has not made out a case for grant of relief. As per the averments made by the applicant in

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para 4(2) of the OA he was allowed to work on the post of Trains Clerk/Ticket Collector in the scale of Rs. 260-400, although he was not declared successful in the selection and interview held by the respondents for that purpose. Thus the fact remains that the applicant was allowed to work on the post of Trains Clerk/Ticket Collector without qualifying the selection test and thereafter issuing regular promotion order. It is also clear from the averments made by the applicant in para 4(2) of the OA that in the year 1982, the applicant was declared surplus and ordered to be reverted from the post of Trains Clerk/Ticket Collector against which the applicant filed a Civil Suit before the Munsif Court and order to maintain status-quo was passed in favour of the applicant. As already stated above, the said Suit was transferred to this Tribunal after coming into force the Administrative Tribunals Act, 1985 and the same was disposed of by directing the respondents to grant necessary benefits flowing from the post which the applicant was holding immediately before the date of his retirement. As can be seen from Ann.A2 order dated 18.4.1994 while implementing the directions given by this Tribunal in TA No.309/92, the respondents have categorically informed the applicant that he has been paid necessary benefits flowing from the post of Trains Clerk/Ticket Collector w.e.f. 14.7.72 to 30.6.72 and 1.7.72 till he performed duties on the

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remain that the applicant was granted pensionary benefits in the scale of Rs. 260-400. Thus, the applicant cannot be granted any relief as prayed for by him.

6. Yet for another reason, the applicant cannot be granted any relief. The applicant was informed vide letter dated 18.4.1994 (Ann.A2) that he has been retired on 31.12.1986 from the post of Cabin Man and he has been allowed all the pensionary benefits in the scale of Rs. 260-400/950-1500. At this stage, the applicant cannot be heard to say that at the time of retirement he was holding the post of Trains Clerk/Ticket Collector and as such he may be deemed to have been retired from that post. As already stated above, the applicant was not promoted as Trains Clerk/Ticket Collector on regular basis, as admittedly the applicant though has appeared in the selection and interview for the post of Trains Clerk/Ticket Collector but result of the said selection was not declared. It is also not disputed that the applicant was ~~declared~~ <sup>declared surplus</sup> and he was ordered to be reverted from the post of Trains Clerk/Ticket Collector. According to the applicant, since the Trial Court in Civil Suit has granted order of status-quo, as such the applicant should have been allowed to retire from the post of Trains Clerk/Ticket Collector. However, as per version of the respondents, as can be

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post of TC/TNC. The applicant was further informed that after 1.8.82 when the post of Cabin Man was upgraded from the pay scale of Rs. 225-308 to 260-400 he has been granted the benefit of the said scale on the post of Cabin Man till he retired on 31.12.1986. It is further stated that he has been given pensionary benefits of the scale of Rs. 260-400 (R)/960-1500 (RP). Thus, according to the respondents, nothing is due to the applicant. From the material placed on record, it is evident that thereafter the applicant did not agitate the matter and felt satisfied and it is only after a lapse of about 12 years that the applicant has filed this OA thereby praying that the respondents may be directed to allow due fixation in the scale of Rs. 260-400 of the post held by him at the time of retirement. As already stated above, according to us, the present OA is wholly misconceived and the applicant is not entitled to any relief. As can be seen from Ann.A5 i.e. Pension Calculation Sheet against item 8 and 9 average emoluments of 10 months' pay, it is clear that pension of the applicant has been fixed in the scale of Rs. 260-400 and average emolument of the applicant comes to Rs. 330.60. Thus, the contention raised by the applicant in para 4(8) that the respondents have blocked him at the stage of Rs. 308/- and not allowed the pensionary benefits taking into consideration the post held by him at the time of retirement is factually incorrect. The facts

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view of the respondents seems to be probable as the applicant was declared surplus in the year 1982 from the post of Trains Clerk/Ticket Collector only when there were no posts available. In case there were posts available, there was no occasion for the respondents to declare the applicant as surplus. The Trial Court has granted the order to maintain status quo which means the position which was prevalent when the stay order was granted by the Trial Court. Admittedly, as already stated above, there was no post of Trains Clerk/Ticket Collector when the applicant was declared surplus, as such, it cannot be said that the order of status quo would mean that the applicant was holding the post of Trains Clerk/Ticket Collector. Any how, we are not called upon to give any finding on this issue, as this point is not directly in issue in this OA and these observations have been made for the purpose of deciding the issue whether the applicant was given due fixation in the pay scale of Rs. 260-400 at the time of retirement and as to whether it is a case of wrong fixation. Thus, according to us, the controversy raised by the applicant that he retired from the post of Trains Clerk/Ticket Collector and not from the post of Cabin Man cannot be entertained at this stage. Admittedly, the applicant has been retired in the scale of Rs. 260-400 from the post of Cabin Man and at the time of retirement the scale of Trains Clerk/Ticket Collector was same. The applicant has

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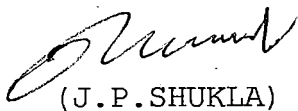


seen from Ann.A2, the applicant was holding the post of Cabin Man and not that of Trains Clerk/Ticket Collector and the applicant was duly informed vide letter dated 18.4.1994 (Ann.A2). In case the applicant was aggrieved, he should have filed OA within the period of one year from passing of the order dated 18.4.1994. Admittedly, the applicant has filed this OA after a lapse of about 12 years without there being any application for condonation of delay. Thus, such a stale claim cannot be entertained in view of the provisions contained under Section 20 and 21 of the Administrative Tribunals Act, 1985. The learned counsel for the applicant submits that since the applicant was drawing less pensionary benefits, as such it is recurring cause of action and the OA is within limitation and can be entertained and at the most, <sup>even on account of</sup> such a claim cannot be denied to the applicant. According to us, though this plea of the applicant is attractive but not legally sustainable. The dispute in this case does not relate to wrong fixation of pay or that the applicant was drawing less pensionary benefits on account of wrong fixation. The issue in this case relates to whether the applicant was holding the post of Cabin Man or Trains Clerk/Ticket Collector when the applicant was declared surplus in the year 1982 and ordered to be reverted from the post of TC/TNC. According to the respondents, the applicant retired from the post of Cabin Man on 31.12.1986. This

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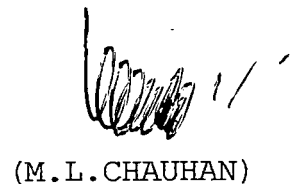
been granted benefit of that scale while calculating the pensionary benefits. As such, according to us, the OA is bereft of merit and also that such a stale claim cannot be entertained after a lapse of about 12 years in view of the provisions contained in Section 21 of the Administrative Tribunals Act, 1985.

7. In view of what has been stated above, the OA is dismissed at admission stage with no order as to costs.



(J.P. SHUKLA)

ADMV. MEMBER



(M.L. CHAUHAN)

JUDL. MEMBER

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