

Central Administrative Tribunal
Jaipur Bench, JAIPUR

ORDERS OF THE BENCH

16th November, 2010

OA 44/2007

Present: None for applicant
Shri T.P.Sharma, counsel for respondents

At the request of Id. counsel for respondents, let the matter be listed for hearing on 22.12.2010.

Anil Kumar

(Anil Kumar)
Member (Administrative)



(M.L.Chauhan)
Member (Judicial)

mk

22.12.2010

Mr. Ashindra Brahma, Counsel for applicant.
Mr. T.P. Sharma, Counsel for respondents

Heard learned counsel for the
respondents

For the reasons dictated
separately, the OA is allowed.

Anil Kumar

(Anil Kumar)
M(A)



(M.L.Chauhan)
M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 22nd day of December, 2010

ORIGINAL APPLICATION NO. 44/2007

CORAM

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Shri Vijay Kumar Kaphal son of Shri Lal Chand Kathapal, aged about 44 years, by Caste Sindhi, resident of Quarter No. 88 T/D Badi Line, Near Railway Hospital, Railway Colony, Sawaimadhopur.

.....Applicant

(By Advocate: Mr. Ashindra Gautam)

VERSUS

1. Union of India through the General Manager, Western Central Railway, Jabalpur (M.P.).
2. Divisional Railway Manager (Establishment), Western Central Railway, Kota Division, Kota (Rajasthan).
3. Senior Divisional Signal and Telecom Engineer (Establishment), Western Central Railway, Kota Division, Kota (Rajasthan).

.....Respondents

(By Advocate: Mr. T.P. Sharma)

ORDER (ORAL)

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

"(i) That by an appropriate order or direction the respondents may kindly be directed to grant the benefit of pay protection of Group 'C' post to the applicant, as granted to the other similarly situated persons.

(ii) Any other appropriate order, direction or relief which this Hon'ble Tribunal deems just and proper, in the facts and circumstances of the case, may also be passed in favour of the humble applicant."

2. Briefly stated, facts of the case are that the applicant was engaged as Daily Rated Worker in the capacity of casual Wireman in the Railway Electrification, Kota on 21.12.1985. The service of the applicant

was regularized in Group 'D' post of Khallasi in the pay scale of Rs. 750-940 after screening on 21.12.1987. The respondents have placed on record the copy of the letter dated 29.12.1987 (Annexure R/1), perusal of which reveals that the applicant was granted temporary status on 21.12.1986 and his pay has been shown as Rs.970/- . The grievance of the applicant is that while regularizing his services in Group 'D' post, he had not been given the benefit of protection of pay whereas in similar circumstances, Shri Abdul Latif son of Shri Abdul Gaffar has been granted the benefit of protection of pay as per the judgment rendered by this Tribunal. For that purpose, the matter was taken up by the Divisional Secretary, DRM (E) Kota's letter No. WCREU/SWM/S&T/2003/0021 dated 24.06.2003 (Annexure A/3). However, the representation of the applicant was rejected vide order dated 14.08.2003 (Annexure R/2) on the ground that benefit of pay protection cannot be granted to the applicant as was granted to Abdul Latif because the benefit of protection of pay was granted to him in compliance of the order passed by this Tribunal which was his personal matter. It is further stated that the applicant was regularly approaching to the respondents and requesting them to grant him pay protection of the Group 'C' post but the respondents did not pay heed on the request of the applicant, which resulted into issuance of notice of demand of justice dated 05.01.2007 but the respondents have not given any reply to the notice of demand of justice. Under these circumstances, the applicant has stated that he has no option but to approach this Tribunal for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The facts, as stated above, have not been disputed. The respondents by way of

preliminary objections have stated that the applicant has not challenged any order and the present OA is also barred by period of limitation in view of the decision rendered by the Hon'ble Supreme Court in the case of **S.S. Rathore vs. State of M.P.**, AIR 1990 SCC 10. On merit, it has been stated that the reasoning given in the letter dated 14.08.2003 (Annexure R/2) i.e. benefit extended to Shri Abdul Latif pursuant to the judgment rendered is personal to him, which benefit cannot be extended to the applicant. The respondents have given additional ground in order to defeat the claim of the applicant that his engagement as casual wireman was contrary to Headquarter Mumbai's letter No. E/Sig/615/6 Wireman dated 19.03.1991 as for the purpose of casual labour wireman, Matriculation is the essential qualification or to have training of electrical fitter (Wireman) by ITI. Since the applicant does not have requisite qualification, he was not found fit for this post.

4. We have heard the learned counsel for the parties and have gone through the material placed on record. We are of the view that the applicant has made out a case for the grant of relief in terms of the decision rendered by the Full Bench of this Tribunal in the case of **Aslam Khan vs. Union of India & Others**, A.T. Full Bench Judgments 1997-2001 Page No. 157 decided on 30.10.2000. In the aforesaid case vide order dated 08.09.2000, the DB of this Tribunal referred the following question for decision by the Full Bench:

"Whether the person directly engaged on Group 'C' post (Promotional post) as casual basis and subsequently acquired temporary status, would be entitled to be regularized on Group 'C' post directly or whether such person requires to be regularized in the feeding cadre in Group 'D' post by providing pay protection of Group 'C' post."

5. The Full Bench after taking into consideration the judgment of the Apex court in the case of **Union of India & Another vs. Moti Lal & Others**, 1996 (33) ATC 304 answered the reference 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."

6. In similar circumstances, the Apex Court in the case of **Bhadei Rai vs. Union of India & Others**, 2006 SCC (L&S) 89, has held that casual labour who has been granted promotion of Group 'C' post on ad-hoc basis of higher pay scale when repatriated to his parent division in Group 'D' carrying lower pay scale cannot be regularized against Group 'C' post. However, the appellant is entitled to the relief of pay protection on account of repatriation from Group 'C' to Group 'D' post and the appellant's pay which he was last drawing on the date of repatriation from Group 'C' to Group 'D' shall be protected.

7. Thus in view of the law laid down by the Full Bench in the case of Aslam Khan (supra) and also decision of the Apex Court in Bhadei Rai (Supra), we are of the view that the applicant is entitled to the protection of pay of Group 'C' post from the date his services were regularized in the feeder cadre in Group 'D' post of Khallasi in the pay scale of Rs.750-940 (Rs.2550-3200 RSRP) pursuant to order dated 29.12.1987. Since the applicant has not approached this Tribunal within the time prescribed under Section 21 of the Administrative Tribunal's Act, 1985 and his pay has not been fixed in accordance with the law, which is a continuous cause, as such the OA is not required to be

dismissed on the ground of limitation. In such circumstances, arrear of pay shall be subject to limitation as held by the Apex Court in the case of **M.R. Gupta vs. Union of India & Others**, 1995 (31) ATC 186.

Accordingly, we are of the view that while fixing the pay of the applicant pursuant to order dated 29.12.1987 (Annexure R/1), such fixation shall be made notionally and the applicant shall not be entitled to the arrear of pay with effect from December, 1987 till the filing of this OA on 21.08.2007. However, the applicant shall be entitled to arrear of pay on account of re-fixation of pay in the aforesaid terms with effect from 21.08.2007 and payment of such arrear shall be paid to the applicant within a period of three months from the date of receipt of a copy of this order.

8. The additional ground taken by the respondents that engagement of the applicant as Casual labour/Wireman was not in accordance with circular dated 19.03.1991 deserves out right rejection as the applicant was engaged as Casual labour Wireman prior to 19.03.1991 when no such prescription of qualification was stipulated for engaging casual wireman and applicant being eligible was thus screened and absorbed against Group 'D' post by the respondents while regularizing his services in Group 'D' post of Khallasi.

9. For the foregoing reasons, the OA is allowed in the aforesaid terms with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

M.L. Chauhan
(M.L. CHAUHAN)
MEMBER (J)

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