

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

OA 2939/2013

Reserved on: 21.02.2017  
Pronounced on: 9.03.2017

**Hon'ble Mr. P.K. Basu, Member (A)  
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

1. Joginder Pal Singh aged 56 years  
S/o Late Shri Ashanand  
R/o M-458, Rishi Nagar,  
Rani Bagh, Delhi-34
2. Rajbir Sharma aged 50 years  
S/o Shri Kanwar Singh  
R/o 1025/2, Gali No.3  
Shanker Garden, Bahadur Garh,  
District Jhhajjhjar (Har.)
3. Pushpraj Singh aged 45 years  
S/o Shri Om Prakash  
R/o 22/C-4, Railway Colony,  
Punjabi Bagh, New Delhi-26

... Applicants

(Through Shri H.P. Chakravorti, Advocate)

Versus

1. The Union of India through,  
The General Manager  
Northern Railway, Baroda House  
New Delhi-1
2. The Chief Manager (Printing & Stationary)  
Northern Railway, Printing Press,  
Shakurbasti, New Delhi-35

... Respondents

(Through Shri Satpal Singh, Advocate)

ORDERMr. P.K. Basu, Member (A)

The applicants were appointed as Press Khalasi (Rs.750-940) in 1998. The next promotion of Press Khalasi is Basic Trades Man (BTM)/ Junior Machine Man (JMM) in the pay scale of Rs.800-1150. A notice was issued on 2.03.1989 to all Press employees intimating that in the Machine Division, some posts of BTM are vacant and the employees can give option by 7.03.1989. It was further intimated that the appointment will be as Khalasi Helper in the pay scale of Rs. 800-1150 and for appointment as BTM, they would have to pass necessary trade test.

2. One of the applicants namely Shri Pushpraj Singh exercised his option to be considered for promotion to the post of BTM from the post of Khalasi. Vide Office Order dated 19.07.1989, he was promoted to the post of BTM in the pay scale of Rs.800-1150 on successfully passing the trade test. The applicants were then promoted to the post of Machine Man in the pay scale of Rs.950-1500 in the year 1992 after passing the trade test and medical test. In this regard, office order dated 13.02.1992 with respect to the above applicant has been enclosed at Annexure A-6. Further, the applicants were promoted as Planner Grade – 2 in the pay scale of Rs.1200-1800. Office order dated 8.07.1996 in this regard is enclosed at Annexure A-7. The applicants further got promoted to the post

of Technician (Machine) Grade II in the pay scale of Rs.4000-6000 and Grade-I in Pay Band-2 Rs.5200-20200 with Grade Pay Rs.2800/- vide promotion orders dated 4.03.2006 and 11.09.2009. According to Railway Board order contained in PS No.10386, PS No.10547 and PS No.10654, where a person has been selected for regular appointment and before formally taking over charge of the post for which selected person is required to undergo training, training period undergone by such a government servant whether on remuneration of stipend or otherwise, may be treated as duty for the purpose of drawing increments. The training period as duty for the purpose of increments has to be allowed in the case of those railway servants also who have undergone training on or after 1.01.1986. However, in such cases, the benefit of counting period for pay will be admissible on notional basis from 1.01.1986 and on actual basis from 1.10.1990.

3. The applicants allege that Shri Rajkumar Parcha, Shri Jagdish Kumar and Shri Baljit Singh, all Machine Men, who were promoted as skilled Machine Men in the pay scale of Rs.950-1500 later than the applicants, were granted the benefit of counting training period for the purpose of increments, whereby fixing their pay at the stage of Rs.950/- with effect from 28.08.1989 vide office order dated 14.09.1998 (Annexure A-9). As a result, the juniors got more pay than the applicants. The applicants representation in this regard was rejected vide letter dated 23.05.2011 by the respondents, stating that the applicants had not given their option when asked for and they also had not

filed any representation between 1991 and 2000. Vide letter dated 24.03.2012, again the applicant no.1 was informed that there is no case of stepping up of pay as the juniors have been given the benefit of PS No.10386, PS No.10547 and PS No.10654. Vide letter dated 2.08.2013 the applicants were again informed that they were not entitled to stepping up.

4. The applicants have placed on record letter dated 1.03.2013 written by the Chief Manager to the General Manager (Personnel), Northern Railway, Baroda House, New Delhi mentioning about the case of the applicants plus another seeking advice on whether or not, senior can be granted stepping up of pay (Annexure A-13). Having got no response from the respondents, the applicants have filed the instant OA seeking the following reliefs:

- 8.1 to place the complete relevant record of the case and allow the OA and quash and set aside the impugned orders dated 23.05.2011, 24.03.2012 and 2.08.2013 (Ann. A-1 colly) with all consequential benefits;
- 8.2 to direct the respondents to consider the case of petitioners for the stepping up of their pay at par with their junior counterparts on account of refixation of pay these juniors vide order dated 14.09.1998 (Ann. A-9) and release the difference of arrears accordingly with interest @ 18% p.a. there on or alternatively to withdraw the fixation of pay of Mr. Rajkumar Parcha Machine Man T/No. 497, Mr. Jagdish Kumar, Machine Man T/No. 499 and Mr. Baljit Singh Machine Man 404, in pay scale of

Rs.950-1500 done w.e.f. 28.08.1989 and 25.09.1990 vide above order dated 14.09.1998 by giving them show cause notice for such withdrawal; and

8.3 to grant any other or further appropriate relief as deemed just and proper by this Tribunal in the facts and circumstances of the case besides cost and expenses of the present litigation, to the extent of at least Rs.50,000.

5. The grounds for making the prayers are as follows:

- (i) Shri Rajkumar Parcha, Shri Jagdish Kumar and Shri Baljit Singh were all juniors to the applicants in the cadre upto such refixation with retrospective effect and still they are juniors to them;
- (ii) The applicants were not considered for promotion to skilled grade at the time of asking options. The applicants and the aforementioned three persons belong to the same cadre and posts in which they have been promoted on regular basis and are identical in the same cadre and scale of pay of lower and higher posts are also identical and anomaly is directly as a result of refixation of their pay more than the applicants; and
- (iii) Annexure A-11 (colly) which are basically internal notes of the department, would show that it was felt in the department that they should be considered for stepping up of pay.

6. The respondents have, first of all, raised the preliminary objection that the OA should be dismissed on the ground of limitation as the applicants had to submit the options in the year 1989 according to notice dated 2.03.1989, referred to above but they have submitted their options on 6.06.2000 and 1.07.2000, after a gap of 13 years and have filed the present OA in the year 2013. In this regard, the respondents have relied on several judgments. We quote below some of them:

- (i) **Arun Agarwal Vs. Nagreeka Exports Pvt. Ltd. and anr.**, 2002 (10) SCC 101 – It has been held by the Hon'ble Supreme Court when preliminary objection is taken, it is required to be decided first;
- (ii) **Dhiru Mohan Vs. Union of India**, Full Bench CAT 1989-1991 Vol.II Page 498 – It has been held that as the Administrative Tribunals Act is special law and provides specific limitation, the Limitation Act cannot be invoked for deciding the question of limitation under this Act;
- (iii) **D.C.S. Negi Vs. Union of India and ors.**, SLP (Civil) No.7956/2011 – the Hon'ble Supreme Court while dismissing the appeal has observed that the Administrative Tribunal established under the Act is duty bound to first consider whether the application is within limitation and application can be admitted only if the same is found to have

been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period;

- (iv) **Ratan Chandra Sammanta Vs. Union of India,** 1994 SCC (L&S) 182 – The Hon’ble Supreme Court ruled down the law “Delay deprives the person of remedy available in law. A person, who has lost his remedy by lapse of time, loses his right as well”;
- (v) **S.S. Rathore Vs. State of Madhya Pradesh,** AIR 1990 SC 10 – It has been held that “the repeated representation does not extend the period of limitation”;
- (vi) **Karnataka Power Corporation Ltd. through Its CMD and another Vs. K. Thangappan and another,** (2006) 4 SCC 322 – the Hon’ble Supreme Court held that mere making of representations cannot justify delay;
- (vii) **Jai Dev Gupta Vs. State of Himachal Pradesh and another,** 1999 (1) AISLJ SC 110 – it has been held by the Hon’ble Supreme Court that continued representations do not keep the limitation alive;
- (viii) **Bhoop Singh Vs. Union of India and others,** (1992) 3 SCC 136 – it has been held that “Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner,

irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief."

7. Learned counsel for the respondents stated that the law settled by the Hon'ble Supreme Court in various judgments is that when a preliminary objection is taken, it has to be decided first; a person who has lost his remedy by lapse of time, loses his right as well; repeated representations do not extend the period of limitation; if a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief."

8. It is further argued that as per Full Bench of the Tribunal in **B.L. Somayajulu and others Vs. the Telecom Commission and others with connected cases** (1994-1996, page 189) for stepping up of pay, it has been held as under:

- (A) Pay-Stepping up of – Stepping up can be granted only where there is a provision in law in that behalf, and only in accordance with that.
- (B) A claim for stepping up can be made only on the basis of a legal right and not on pervasive notions of equity or equality, unrelated to the context of statutory law.
- (C) Pay- Stepping up of – Every claim must be based on an enforceable legal right – A right arises by conferment and not by comparison.
- (D) Pay - Stepping up of – Held a jurisdiction in equity does not inhere in the Tribunal.

9. The short case of the respondents is that when options were called for in 1989 from all erstwhile Group 'D' staff in Grade of Rs.750-940 departmentally as trainee Machine Man on stipend basis Rs.800-830 for a period of three years so that trained staff be available to fill up the post of skilled Machine Man, the applicants did not submit their options in time whereas Shri Rajkumar Parcha, Shri Jagdish Kumar and Shri Baljit Singh had submitted their options at that time and accordingly they joined on 28.08.1989. On completion of their training, according to Railway Board instructions already cited above, their pay was refixed treating training period as duty for the purpose of drawing increments with effect from 28.08.1989, notionally upto 30.09.1990 and actually from 1.10.1990. Therefore, vide order dated 14.09.1998, they were given the benefit of training and the juniors pay was refixed after counting the training period from 28.08.1989. It is further stated that Shri Raj Kumar Parcha and Shri Jagdish Kumar (retired on 30.06.2013) belonging to SC community, were promoted as Technician – I with effect from 1.09.2005 and 1.02.2008 prior to the applicants and getting the higher pay.

10. It is also clarified that the juniors who were regularly promoted as Machine Man on 18.09.1992, were notionally promoted with effect from 28.08.1989 and the department has notionally refixed the pay scale of juniors in terms of PS No.10654 in the pay scale Rs.950-1150 as Machine Man. The

applicants got promotion from the post of BTM on 3.04.1991, 11.02.1992 and 11.05.1991.

11. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited.

12. The facts of the case are that the applicants who were Khalasis, on the basis of trade test, became BTM on 19.07.1989 (applicant no.3). The promotion was in the pay scale of Rs.800-1150. They were promoted as Machine Man in the pay scale of Rs.950-1150 on 3.04.1991, 11.02.1992 and 11.05.1991. The juniors got promoted as Machine Man (Rs.950-1500) on 18.09.1992 i.e. later than the applicants. There is no dispute also regarding the fact that the applicants are senior to Shri Rajkumar Parcha, Shri Jagdish Kumar and Shri Baljit Singh. The dispute is that according to Railway Board instructions cited above, since these juniors joined as trainee Machine Man and underwent three years training, they were given notional effect in pay fixation from 28.08.1989. Thus, their pay became higher than those of the applicants.

13. The applicants case is that since they were all along seniors and now their juniors are getting higher salary as a result of Railway Board instructions, their pay should be protected vis-à-vis their juniors by stepping up. The respondents case is that since their pay is higher due to specific instructions of the Railway Board and the fact that the applicants did not respond to notice dated 2.03.1989 and filed their

options, rather they filed it some time in the year 2000, they have no ground for claiming stepping up of pay. Apart from this argument on merit, the respondents have also taken the stand that the OA has been filed after a gap of 13 years and, therefore, it is barred by limitation.

14. On the ground of limitation, we agree with the respondents that there has been considerable delay for which no cogent reasons have been submitted by the applicants. In fact, there is no request for condonation of delay either. Therefore, keeping in view the judgments cited by the respondents and specifically S.S. Rathore (*supra*), Jai Dev Gupta (*supra*) and Shri Bhoop Singh (*supra*), the delay cannot be condoned and this OA is not maintainable under Section 21 of the Administrative Tribunals Act, 1985.

15. Even on merits, it would be seen that stepping up of pay is not to be granted in each and every case on the ground that a junior cannot draw higher pay than a senior. The stepping up of pay is governed by FR 22 read in conjunction with the Department of Personnel and Training (DoP&T) OM dated 4.11.1993 and such stepping up can be only on fulfillment of the following conditions:

“(a) both the junior and senior officer should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre.

(b) The scales of pay of the lower and higher posts in which the junior and senior officers are entitled to draw pay should be identical.

(c) The anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advanced increments or any other account the above provisions will not be invoked to step up the pay of the senior officer.”

16. It will be clear that the above conditions are not satisfied as in this case as the seniors drawing lesser pay has not happened as a result of FR 22-C. Secondly, when the time was available for the applicants to opt for trainee Machine Man, they did not opt. This would become clear from their representations submitted in 2000 in which they have not mentioned a word about having opted for the same. Therefore, even on merits, the OA does not succeed. It is, therefore, dismissed both on limitation and also on merits. No costs.

( Dr. Brahm Avtar Agrawal )  
Member (J)

( P.K. Basu )  
Member (A)

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