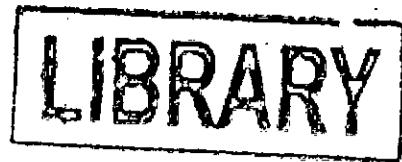


**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH**



OA/350/1709/2017

M.A/350/952/2017

M.A/350/951/2017

Date of Order: 15.05.2018

Coram : Hon'ble Mrs. Manjula Das, Judicial Member

1. Ajit Kumar Pal, son of Late Satyanarayan Pal, aged about 51 years, residing at 6A11, Surya Sen Nagar, Kolkata 700061.
2. Soumitra Ghosh, son of late A.K Ghosh, aged about 57 years, residing at Gupta Baranasi, Vill, Barijahally, Post Office - Chanditala, District - Hooghly.
3. Prasanta Bera, son of late Madan Ch. Bera, aged about 51 years, residing at LMC Sarani, Opposite SBI/Buxara Branch, Buxara Bazar, Howrah 711110.
4. Sankar Roy Chowdhury, son of late Haren Roy Chowdhury, aged about 55 years, residing at Post Office Singur, Burasanti, District - Hooghly 712409.
5. Sailendra Ranjan Chakraborty, son of late P.R Chakraborty, aged about 52 years, residing at 38, Sibtalā Lane, Post Office - Bhadrakali, District - Hooghly 712232.
6. Dipak Kumar Mukhopadhyay, son of Kalobaran Mukhopadhyay, aged about 56 years, residing at 2/C/1, A/L Bannerjee Street, P.O Konnagar, District Hooghly 712235.
7. Soumitra Kumar Das, son of late Surendra Nath Das, aged about 57 years, residing at 12, Shyamaprasad Mukherjee Road, P.O Nabagram, Dist. Hooghly 712246.
8. Gautam Biswas, son of late Nityananda Biswas, aged about 52 years, residing at 45/A, Prabasnagar, P.O Prabasnagar, Dist. Hooghly, 712246.

---Applicants

-Versus-

1. Union of India, through the General Manager, South Eastern Railway Garden Reach Road, Kolkata 700043.
2. The Chief Personnel Officer, South Eastern Railway, Garden Reach Road, Kolkata 700043
3. The Deputy Director, Pay Commission V, Railway Board, New Delhi - 1.

---Respondents

For the Applicant(s) : Mr. A. Chakraborty, Counsel

Ms. P. Mondal, Counsel

For the Respondent(s) : Mr. A.K Banerjee, Counsel

O R D E R(Oral)

Per : Mrs. Manjula Das, Judicial Member:

The applicants have filed this O.A under Section 19 of the AT, Act, 1985

seeking the following relief:

- a) " Memorandum dated 26.03.2015 issued by Assistant personnel office S.E Rly. Garden Reach on behalf of Chief Personnel Office cannot sustained in the eye of law and same may be quashed.
- b) Railway Boards Letter dated 27.02.2013 and 28.07.2014 cannot be sustained in the eye of law and therefore the same may be quashed.
- c) Show cause notice issued on 29.01.2016 issued by Sr. Personnel Officer - I on behalf of Chief Personnel Officer cannot be sustained in the eye of law and same may be quashed.
- d) An order do issue directing the respondents to consider the case of the applicants for grant of financial up-gradation under MACP.
- e) Leave may be granted to file OA jointly under Sec (4)(5)(a) of the CAT Procedure Rule 1987."

2. The applicants have file M.A No. 350/951/2017 and M.A/350/952/2017 for joint prosecution and for condonation of delay respectively.

3. Heard Mr. A. Chakraborty, Id. counsel for the applicant, assisted by Ms. P. Mondal. Mr. A.K Banerjee, Id. counsel for the respondents is also present and heard. I have perused the pleadings and materials placed before me.

4. In M.A 350/951/2017, the applicants have submitted that they have common cause of action and common interests in the matter and prayed for permission to move this original application jointly under Rule 4(5)(a) of CAT Procedure Rules, 1987.

Having heard the ld. counsel for both sides, I find that the applicants have similar cause of action in the matter and the nature of relief prayed by the applicants is same. Accordingly, the M.A 951/2017 stands allowed.

5. So far as the M.A 350/952/2017 for condonation of delay is concerned, ld. counsel for the applicant submitted that this is a matter of fixation of pay due to grant of ACP/MACP, therefore, law of limitation does not apply in such case and it is recurring/continuous cause of action.

Ld. counsel for the respondents vehemently opposed the submission made by ld. counsel for the applicant, stating that the applicants have filed this case long after the cause of action arose in the matter and have not furnished reasonable explanation for the delay in filing the O.A, therefore, the M.A for condonation of delay is not maintainable under Rule.

In M.R Gupta -vs- Union of India and Ors reported in (1995)5SCC - 628, the Hon'ble Apex Court held as under :

*"Application to the extent of proper pay fixation is not time barred although the claim of a consequential arrears will be subject to law of limitation".*

In the present case, the applicants' grievance is regarding withdrawal of monetary benefits granted to them under MACP Scheme earlier. Therefore, it appears that it is a case of recurring/continuous cause of action.

In view of the above reasons, the M.A stands allowed.

6. O.A 350/1709/2017: The brief facts of this matter as narrated by the ld counsel for the applicant in this O.A are that the applicants were initially appointed as Junior Clerks under the Respondents of different dates between 1986-1992, they were declared successful for their posting as Sr. Clerks against direct recruitment quota on 06.09.1995 and were posted as such.

The applicants were granted ACP after completion of twelve years of service from 09.03.1995 vide order dated 10.07.2007. The Railway Board has taken a decision on 27.2.2013 that 13/3 persons vacancies in the post of Sr. Clerks are to be taken for promotion and not for direct recruitment. On



12.09.2012, the Railway Board issued circular regarding treatment of employee selected under SEE/GDCE Scheme. Thereafter, on 04.04.2014, the Chief Personnel Officer, requesting the Railway Board to review their order to grant MACP taking into account the services rendered by them as Sr. Clerks on 28.07.2014. The Railway Board reiterated their earlier stand. However, a memorandum dated 26.03.2015 was issued by the Railway Authority on the basis of the letter issued by Railway Board stating that posting of the applicants as Sr. Clerks was given as promotion. Accordingly, a show cause notice was issued on 29.01.2016 asking the applicants to show cause as to why excess monetary benefits granted under ACP Scheme will not be recovered from their salaries as per the extant rules. The applicants replied to the show cause notice on 16.02.2016. The grievance of the applicants is that the respondent authorities have not taken any decision on their representations against the show cause notice till date. Being aggrieved and dissatisfied with such action of the respondent authorities, the applicants have approached this Tribunal seeking the aforesaid relief.

7. Ld. counsel for the applicant Mr. A. Chakraborty submitted that the applicants will be satisfied for the present if the applicants are permitted to make detailed representations ventilating their grievances to the respondent authorities and the competent authority is directed to consider and dispose of the same within a specific time limit, taking into account their reply to the show cause notice on 16.02.2016 (Annexure A-9 to the O.A), and pass a reasoned and speaking order on their representations as per rules.

Ld. counsel for the respondents Mr. A.K Banerjee submitted that he has no objection if such prayer of the ld. counsel for the applicants is allowed.

8. In view of the above, the applicants are given liberty to file detailed representations to the respondent authority concerned ventilating their grievances against the show cause notice issued to them within a period of 15 days from the date of receipt of this order. If such representations are filed, the competent respondent authority is directed to consider and dispose of the same by passing a reasoned and speaking order as per rules, taking into account



their earlier reply to the show cause notice on 16.02.2016 (annexure A-9 to the O.A) within a period of 3 months from the date of receipt of such representations. The decision so arrived shall be communicated to the applicants forthwith. It is needless to mention that if the applicants are aggrieved with the decision of the authorities, they may approach this Tribunal again to redress their grievances.

It is made clear that I have not gone into the merits of the case and all the points raised in the representations are kept open for consideration by the respondent authority as per rules and regulations governing the field.

9. With the above observations and directions, the O.A is disposed of. No order as to costs.



(Manjula Das)  
Member (J)

SS