

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.129/2019 with MA No.137/2019

This the 02nd day of April, 2019

Shri Jagdipbhai Mohanlal Madan

Age about 52 years

D/102 Aditya Heights

Near Gopal Chowk

Rajkot 360 005. Applicant

(By Advocate : Shri P.H.Pathak)

VERSUS

1. Notice to be served through
The General Manager (WR)
Mumbai – 400 020.
2. Divisional Railway Manager (E)
Kothi Compound,
Rajkot 360 001. Respondents.

ORDER – ORAL

Per : Hon’ble Shri M.C.Verma, Member (J)

Learned counsel while pressing for notice has submitted
that applicant joined the services of respondent, as P.Way Mistry

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in year 1990, when was posted as P.Way Mistry met with an accident in June-July of the year 1996. He fell down from bridge and was shifted to Railway hospital Rajkot for treatment. That he has sustained injuries in right leg, head and spinal cord. Consequently thereof he was declared medically unfit for the post of P.Way Mistry That applicant in cadre of P.Way Mistry was in pay scale of Rs. 5000- 8000. The applicant was posted to clerical post and vide Order dated 02.03.1998 he was given lower pay scale of Rs. 4500-7000 though as per provision of Person with Disability Act, he could not be placed in lower pay scale and his pay scale of Rs. 5000- 8000 had to be protected. He too showed that pay scale of applicant was Rs.5000- 8000 referred vide letter dated 10.01.1998 of Section Engineer, Annexure A/1 of the OA. The O.A is with application for condonation of delay. Learned counsel explained the reasons for delay as ailment of the applicant and persons of his family and added that details are mentioned in the application.

2. Considered the submissions and perused the record. Annexure A/2 is the letter dated 02.03.1998 whereby medically de-categorised applicant was given alternative employment as

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Senior Clerk. The Operative portion of Annexure A/2 is reproduced herein below:-

"Shri Jagdip Maandan P.Way Mistry scale Rs.4500-7000 (RP97) under CPWI (I) RJt was declared medically de-categorised for his original post and found fit for other categories, which does not involve heavy manual work (sedentary job) vide Ms-RJT's letter No.MD/216/1/1 dated 3.12.1997 as screened by screening committee and has been found suitable for the post of Sr. Clerk scale Rs.4500-7000 (RS97) vide note quoted above.

Accordingly, Shri Jagdip Madan is posted as Sr. Clerk scale Rs. 4500-7000 (RS97) under CPWI RJT vice Shri Kanan C to be relieved on his request transfer to BRC division.

NB: The Transfer Orders of Shri Kanan C. is being issued separately on relevant file.

This issues with the approval of competent authority."

3. The above order reveals that previously also the scale of applicant was Rs. 4500-7000(RS97) and not Rs.5000-8000. Annexure A-3 is the letter dated 28.4.1998 whereby pay fixation of applicant, after 5th Pay Commission was done and it also reveals that scale of the applicant was Rs.4500-7000 and his pay

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pursuant to 5th Pay Commission was fixed as Rs.5000/- w.e.f. 01.01.1996, Rs.5125/- w.e.f. 01.01.1997 and Rs.5250/- w.e.f. 01.01.1998. It is the only Annexure A-1 which is issued by Section Engineer (P.Way), Rajkot wherein scale of the applicant has been shown as Rs.5000-8000. No reliance can be placed upon this document as authority purposely issued Annexures A/2 & A/3 are competent to say with authenticity about pay and pay scale of the employee whereas Annexure A-1 is only a letter written by Section Eng (P.W) to DRM (E) Rajkot. Anyhow before entering into merit of OA, the crucial issue at this stage is the delay. The alleged cause of action arises in 1998 when Annexure A/2, the letter dated 02.03.1998 whereby medically de-categorised applicant was given alternative employment as Senior Clerk was issued. Already more than 20 years have passed thereafter. Grounds for delay pleaded in the application for condonation of delay and as urged at Bar does not seems to

be plausible & convincing. It is a case not of delay but of laches. Application for condonation of delay thus deserves dismissal and accordingly is dismissed. When application for condonation of delay stands dismissed, OA also does not survive and disposed of as such.

(M.C.Verma)
Member (J)

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