

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the Tuesday 20th day of November Two Thousand And Eighteen

PRESENT:

THE HON'BLE MR. R. RAMANUJAM, MEMBER (A)

THE HON'BLE MR. P. MADHAVAN, MEMBER (J)

M.A.310/364/2018 in O.A.310/936/2018 & O.A.310/936/2018;
O.A. 674/2018; OA 1015/2018; M.A.310/423/2018 in and OA
1025/2018; O.A. 1031/2018; O.A. 1032/2018; O.A. 1033/2018; O.A.
1034/2018 and O.A. 1035/2018.

1. Hector David Clark,
B-1, K.C. Rathinam Royal,
C.544, 22nd Street,
Periyar Nagar,
Chennai- 600 082;
....Applicant in both MA364/2018 in and OA936/2018;
2. K.R. Mani,
No.3, Balaraman Street,
Guduvanchery,
Chengalpet (Tk),
Kanchipuram (Dt.);
.....Applicant in OA. 674/2018;
3. K. Geetha,
W/o (late) P.T. Kapali,
No. 29/2, Neels Garden, 1st Street,
Perambur,
Chennai- 600 011
....Applicant in OA. 1015/2018;
4. M. Ganesan,
No.6, Majestic Colony (Extension),
3rd Street, Ponniyammanmedu,
Chennai- 600 110
....Applicant in both MA 423/2018 in and OA1025/2018;
5. S. Murali,
E-7-568, SIDCO Nagar,
Villivakkam,
Chennai- 600 049
....Applicant in OA. 1031/2018;
6. N. Raghunathan,
A-31, Karthikeyan Salai,
Periyar Nagar,
Chennai- 600 082
....Applicant in OA. 1032/2018;
7. M.S. Rajaraman,
1& 2, AF.1, A-Block, Seena's Enclave,
Senthil Nagar Main Road,
Soorapet,
Chennai- 600 066.
....Applicant in OA. 1033/2018;

8. B.A. Samuel,
No.300, Srinivasan Street,
G.G. Nagar, Mugappair (East),
Chennai- 600 107

....Applicant in OA. 1034/2018;

9. S. Jayanandam,
New No. 24/1, 11st Street,
North Jagannatha Nagar,
Villivakkam,
Chennai- 600 049.

....Applicant in OA. 1035/2018;

(By Advocate: M/s. R. Pandian)
Versus

1. Union of India Rep. by:-
The General Manager,
Southern Railway,
Park Town, Chennai- 600 003;
2. The Chief Personnel Officer,
Southern Railway,
Park Town, Chennai- 600 003;
3. The Deputy Chief Personnel Officer/M&E and Tfc.,
Southern Railway,
Park Town, Chennai- 600 003;
(Not party in O.A. 1032/2018)
4. The Chief Workshop Manager,
Carriage & Wagon Works,
Southern Railway, Perambur,
Chennai- 600 023;
(3rd respondent in O.A. 1032/2018)
5. The Secretary,
Railway Board,
Rail Bhavan,
New Delhi- 110 001.
(4th Respondent in O.A. 1032/2018)

...Respondents in both MA and OA

(By Advocate: Mr. P. Srinivasan
Mr. A. Abdul Ajees
Mr. K. Vijayaraghavan
Mr. R. Sathyabama)

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member (A))

Heard. M.A.364 of 2018 in OA. 936/2018 has been filed by the applicant seeking condonation of a delay of 14 years 3 months and 29 days in filing the O.A.

2. Based on the submission of the Ld. Counsel for the applicant and the contents of the affidavit filed in support of the M.A., as the matter appears to involve a continuing cause of action, delay is condoned. M.A. is accordingly allowed.

3. As the issues raised and the facts of the case in all the OAs are submitted to be similar, the OAs are disposed of by this common order. OA 936/2018 is taken up for the purpose of recording a brief background thereof. This O.A. has been filed by the applicant seeking the following reliefs:-

“to call for all records relating to rejection of the request of the applicant for revising his Pay Scale (Inspector/PCO) from Rs. 4500-7000 + 100 to Rs.5000-8000 w.e.f. 01.01.1996 (in V-CPC), from PB-1 (5200-20200) + GP2800 to PB-2 (9300-34800) +GP 4200 (in VI-CPC), violating the directions of the Railway Board in Letter No. E(P&A) I-71/FE-2/DC dated 09.02.1979 and to quash the impugned order in No.P(S) 443/IV/MW/CW/Vol.6 dated 26.02.2018 passed by the 3rd respondent and No.CPB/P1/535/PCO dated 08/28.03.2018 passed by the 4th Respondent. Consequently to direct the Respondents:-

“i) To revise and re-fix the pay of the applicant (Inspector/PCO) in the Pay Scale of Rs.5000-8000 (revising from Rs.4500-7000+100) w.e.f. 01.01.1996;

ii) to further revise and re-fix the pay of the applicant in PB-2 (9300-34800) with GP 4200 (from PB-1 with GP 2800) w.e.f. 01.01.2006 and

iii) Accordingly to re-fix the pension and other consequential benefits due to the applicant until this date.”

4. The applicant is aggrieved by Annexures- 17 and 18 impugned orders dated 26.02.2018 and 08/28.03.2018 respectively, by which his representation to be treated similar to the applicants in OA 85/2003 and

granting the benefits accordingly had been turned down on the plea that the Railway Board in their letter dated 10.02.2017 had advised to implement the orders of the Tribunal in O.As. No. 302/2002, 450/2002 & 85/2003 in favour of the applicants therein only. Attention is drawn to the statement in Annexure-A7 impugned order dated 26.2.2018 that the question of law was kept open and, therefore, the applicant's contention that the issue of grant of pay scale of Rs. 5000-8000 to the Mistries had attained finality, was not correct. The Apex Court had not decided the question of law and, therefore, the matter had not attained finality. As such, the dismissal of the Civil Appeal would not entitle him to any benefits as in the case of similarly situated employees.

5. Learned counsel for the applicant would submit that the disposal of the applicant's application in this manner was not in accordance with the law laid down by the Hon'ble Apex Court under which every similarly situated person does not have to approach the Court individually once the point of law is settled in favour of the others. As for the contention that the law had not attained finality, it is argued that it is not possible for lower courts to revisit the issue of law and that the matter could only be reviewed by the Hon'ble Apex Court. In the meantime, the applicant could not be discriminated against in a manner that would be violative of Article 16 of the Constitution of India, it is contended.

6. Although notices were issued to the respondents, no reply has been filed. However, learned counsel for the respondents would advance his arguments on the lines of the impugned orders.

7. We have considered the submissions by the rival counsel. We are of the view that the matter has to be decided on the point of law and not so much on facts unless the respondents are of the view that the applicants are not similarly placed.

8. As far as the point of law is concerned, we are persuaded by the argument of the learned counsel for the applicant that when the Hon'ble Apex Court has kept a matter open, it is not for the lower courts to revisit the question and decide the matter contrary to the reasoning adopted in the cases already decided by the Tribunal and the High Court concerned. As such, till the issue of law is decided finally by the Hon'ble Apex Court, the case of the applicants would have to be considered on the basis that they are similarly placed unless contrary facts are available on record to distinguish their claim.

9. Hon'ble Apex Court, after considering various judicial precedents in this regard, laid down the legal principles for relief to similarly placed persons in ***State of U.P. & Ors vs. Arvind Kumar Srivastava & Ors – CA 9849/2014*** as follows:-

"23) The legal principles which emerge from the reading of the aforesaid judgments, cited both by the applicants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach in the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see ***K.C.Sharma & Ors. V. Union of India*** (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language

of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

The crucial issue, therefore, would appear to be whether the orders of the Court relied upon by the applicants were judgments in rem or in personam. Without examining it on these lines, the statement that the Railway Board decided to implement them as judgment in personam could not be considered a satisfactory response to their claim.

10. In view of the above, we deem it appropriate to set aside the impugned orders Annexures -17 &18 dated 26.02.2018 and 08/28.03.2018 and direct the respondents to consider the matter in accordance with the aforesaid legal principles laid down by the Hon’ble Apex Court and pass a reasoned and speaking order within a period of three months from the date of receipt of a copy of this order.

11. OAs are disposed of as above. Pending MAs, if any, stand closed in the light of this order. No costs.

(P. MADHAVAN)
MEMBER (J)

(R. RAMANUJAM)
MEMBER (A)

Asvs.

20.11.2018