

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**MUMBAI BENCH, MUMBAI.**

**ORIGINAL APPLICATION No.239/2014**

**Date of Decision: 28.03.2019.**

***CORAM: R. VIJAYKUMAR, MEMBER (A)***  
***R.N. SINGH, MEMBER (J)***

Shri Nandu Krishna Wani,  
 Age 54 years, working as Technician-III  
 in C & W Department, Bhusawal,  
 R/at Post: Kandri, Rajputwadi, Taluka  
 Bhusawal – 425 205.

... *Applicant*

*(Advocate Shri Vishal Shirke, proxy counsel  
 for Shri S.V. Marne)*

**VERSUS**

1. The Union of India,  
 Through the General Manager,  
 Central Railway, Head Quarters Office,  
 CSTM, Mumbai 400 001.
2. The Divisional Railway Manager,  
 Central Railway, Bhuswal Division,  
 Bhusawal, Jalgaon – 425 201.

... *Respondents*

*(Advocate Shri V.D. Vadhavkar)*

**ORDER (Oral)**

*Per : R Vijaykumar, Member (A)*

Heard the learned counsels for the parties.

2. This Application is filed on 20.02.2014 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs;

*“8.i) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the respondents and after examining the same*

*direct the respondents to grant to the applicant full and actual arrears of pay and allowances arising out of promotion to the post of Technician-III in respect of period from 26.02.2005 to 29.04.2011 with all consequential benefits along with interest @ 12% per annum. Quash and set aside impugned order dated 05.02.2013.*

*8.b) Costs of the application be provided for.*

*8.c) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."*

3. This is a second stage litigation in which the applicant had earlier filed OA No.346/2011 which was disposed of in orders dated 29.08.2012. The facts of the case in regard to the applicant are that; the applicant who joined as Khalasi and eventually rose to Helper Grade I was subjected to disciplinary proceedings and after orders of this Tribunal, was reinstated and wages paid for the period 'not worked' from 03.09.1998 to 16.02.2010. As a consequence, he was promoted to the post of Technician III w.e.f. 29.04.2011 in compliance of orders in OA No.346/2011, on passing Trade Test by that date and passing this test is a pre-condition for the promotion to the post of Technician III. As

admitted (para 4.9 OA), the applicant could not qualify in the Trade Test for promotion as Technician Grade II w.e.f 27.07.2009. Shri Bhaskar Gayaneshwar, who he cites as his immediate junior, was promoted to the post of Technician Grade III w.e.f. 26.02.2005 and further to the post of Technician Grade II w.e.f. 27.07.2009 after duly passing Trade Tests. In consequence, the pay of the applicant was fixed on proforma basis at par with his junior Shri Bhaskar Gyaneshwar whose basic pay as on 01.07.2009 was Rs.8060 and GP Rs.1900 in the post of Technician III. The applicant was given two chances to appear in the Trade Test for the post of Technician II as per Rules. However, he did not qualify in the same and hence, was not granted promotion to the post of Technician III at par with his junior Shri Bhaskar Gyneshwar.

It is further submitted that in OA No.346/2011, the present respondents had filed two affidavits and also produced relevant documents in support of the averment in these two affidavits wherein it

was clearly mentioned that proforma fixation has been given to the applicant from 26.02.2005 at par with his junior. It is submitted that if the applicant had objections to the proforma fixation (as given in Annex. AF-1) for the post of Technician III, then he should have objected before the Hon'ble Tribunal in that OA itself. On the basis of these affidavits, Hon'ble Tribunal vide order dated 29.08.2012 (Annex. A-10) disposed of the OA. Therefore, the applicant is estopped at this stage, from taking objection to proforma fixation. Hence, on this ground, the OA is devoid of merits and liable to be dismissed with cost.

4. The issue in question in this OA is on the claim of the applicant for arrears of pay in the promoted post category of Technician Grade III for the period from 26.02.2005 when he was promoted retrospectively and when he was not working to 29.04.2011, when he passed the Trade Test and received actual promotion.

5. Learned counsel for the applicant was

heard on this issue. He admitted that the applicant had not worked in the promoted post and he had received his promotion on 29.04.2011 for which he stated that it had been made by way of an inter-office note and not by formal orders, but which he has not produced for the perusal of the Tribunal. Instead, he has however produced a pay fixation order dated 14.11.2011 (Annex. A-9) which records his proforma pay fixation in the grade of Technician-III upto 2011. The applicant's claim is that he was not granted promotion to the post of Technician Grade-III w.e.f. 29.04.2011 but actually from 26.02.2005 as mentioned by the applicant in the rejoinder.

6. In response to the notice issued by this Tribunal, the respondents have filed their reply and with the assistance of this reply, the learned counsel for the respondents submits that the OA is barred by the principle of *res-judicata* inasmuch as by the present OA, the applicant has prayed for the actual arrears of pay and allowances arises out of promotion to the post of

Technician - III in respect of the period for 26.02.2005 to 29.04.2011 with all consequential benefits with interest @ 12 % p.a. whereas the applicant has earlier approached this Tribunal by way of OA No.346/2011 and therein also, the applicant has prayed for the similar reliefs inasmuch as in that OA, the applicant has prayed for promotion to the post of Technician - III with actual arrears of pay and allowances from 26.02.2005 to 29.04.2011. They further submit that the applicant was paid his entire dues which were payable to him in terms of consequential benefits and such fact has been recorded by the Tribunal in its order dated 29.08.2012 in OA No.346/2011 (Annex. A-10) which reads as under:

*"When this case is taken up for consideration, it is submitted by learned counsel for the respondents that the entire dues payable to the applicant have been disbursed to him as stated in the additional affidavits dated July 16, 2012 and August 27, 2012. Respondents have also produced relevant documents in support of the averments in these two affidavits.*

*In that view of the matter, taking note of what has been mentioned in these two affidavits, the Original Application is disposed of. No order as to costs."*

7. We have heard the learned counsel for the applicant and learned counsel for the respondents and have carefully perused the case records along with annexures to the reply, rejoinder and sur-rejoinder filed by the respective parties.

8. It is found on examination of the orders that the applicant was granted promotion on 29.04.2011 to the post of Technician Grade-III on passing Trade Test but his pay had been fixed on proforma basis with his juniors from 26.02.2005. The applicant had neither worked in that post for the period 2005 to 2011 nor had he been given regular pay fixation for that period. The respondents have, therefore, denied any grant of promotion from 26.02.2005 as averred by the applicant, and therefore, he cannot claim any arrears in relation to the promoted post for these period. He has, however, already received the arrears in respect of his substantive post of Helper Grade I for this period and the claim is now only limited to the aspect of difference pay between the lower post and the promoted

category.

9. In view of the discussions made therein above, it is evident that the applicant has been actually promoted w.e.f. 29.04.2011 on passing the Trade Test and thus he has not worked on the promotional post of Technician III on any date prior to 29.04.2011. However, his pay has been fixed on proforma basis keeping in view the pay of his junior from 26.02.2005. In this background, we do not find any ground which makes the applicant entitled for arrears of pay keeping in view the fact that his junior has also been promoted w.e.f. 26.02.2005. The fact remains that the applicant has been promoted only after passing of the requisite Trade Test w.e.f. 29.04.2011.

10. In view of the aforesaid facts and discussions, we find no merit in the OA and the accordingly the OA is dismissed. **MA**

**No.282/2014** for condonation of delay stands closed.

(R.N. Singh)  
Member (J)  
dm.

(R. Vijaykumar)  
Member (A)