

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, CAMP AT NAGPUR.

ORIGINAL APPLICATION NO. 2030/2015
with
ORIGINAL APPLICATION NO. 2031/2015
with
ORIGINAL APPLICATION NO. 2032/2015
with
ORIGINAL APPLICATION NO. 2034/2015
with
ORIGINAL APPLICATION NO. 2035/2015
with
ORIGINAL APPLICATION NO. 2028/2015
with
ORIGINAL APPLICATION NO. 2057/2015
with
ORIGINAL APPLICATION NO. 2029/2015
with
ORIGINAL APPLICATION NO. 2025/2015

Dated this the 5th day of December, 2018.

CORAM:- HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)
HON'BLE SMT. RAVINDER KAUR, MEMBER (J)

ORIGINAL APPLICATION No. 2030/2015:

Naresh Mahavir Pali,
Aged 46 years, Occ: Motor Driver,
Central Railway, Nagpur Division,
R/o Near More's Chakki, Avinash Play Ground,
Parvati Nagar, Nagpur- 27.

ORIGINAL APPLICATION No. 2031/2015:

Shri Govind Baliram Sarso,
Aged 57 years, Occ: Motor Driver,
Central Railway, Nagpur Division,
R/o House No. 1801, Ward No. 43,
Sanjay Gandhi Nagar, Rani Durgawati Chowk,
Nagpur- 440 017.

ORIGINAL APPLICATION No. 2032/2015:

Shri Ganesh Baliram Gawai,
Aged 51 years, Occ: Motor Driver,
Central Railway, Nagpur Division,
R/o Railway Qtr. No. AQ/G/II/01,
Behind Railway Reservation Office,
Ajni, Nagpur- 440 003.

ORIGINAL APPLICATION No. 2034/2015:

Abdul Rahim S/o Abdul Rahman,
Aged 54 years, Occ: Motor Driver,
Central Railway, Nagpur Division,
R/o Near Chhoti Masjid, Gitti Khadan,
Katol Road, Nagpur- 440 013.

ORIGINAL APPLICATION No. 2035/2015:

Gajanan Hemraj Gajbhiye,
Aged 47 years, Occ: Motor Driver,
Central Railway, Nagpur Division,
R/o Plot No. 66, Baba Farid Nagar,
Znigabai Takli, Mankapur, Koradi Raod,
Nagpur- 30.

ORIGINAL APPLICATION No. 2028/2015:

Abdul Rashid Sheikh S/o Sheikh Hasan,
Aged 58 years, Occ: Motor Driver,
Central Railway, Nagpur Division,
R/o Hawaii Palace, Opp. Mundliyar Lawn,
Ward No. 16, Shanti Nagar, Nagpur- 440 002.

ORIGINAL APPLICATION No. 2057/2015:

Dharmapal Pailuji,
Aged 57 years, Occ: Motor Driver,
Central Railway, Nagpur Division,
R/o Plot No. 147, Jaywant Nagar,
Post Bhagwan Nagar- 27.

ORIGINAL APPLICATION No. 2029/2015:

Sharad Mohan Shahare,
Aged 53 years, Occ: Motor Driver,
Central Railway, Nagpur Division,
R/o Plot No. 154-D, Patankar Chauk,
Near Gramin Mukhyalaya, Angulimal Nagar,
Post Uppalwadi, Nagpur- 440 026.

ORIGINAL APPLICATION No. 2025/2015:

Shri Prakash Dadaji Kamble,
Aged 57 years, Occ: Motor Driver,
Central Railway, Nagpur Division,
R/o Plot No. 52, Indira Nagar,
Behind T.B. Ward, Post Office Ajni,
Nagpur- 03.

...Applicants in all the OAs..

(By Advocate Shri A B Bambal in all the OAs.)

Versus

- 1) Union of India,
Through General Manager, Central Railway,
Mumbai CST - 400 001.
- 2) Divisional Railway Manager,
Central Railway, Nagpur- 440 001..

...Respondents in all the OAs.

(By Advocate Shri Alok Upasani in all the OAs.).

**Reserved on: 26.11.2018 (OA Nos. 2030, 2031,
2032, 2034, 2035 & 2057 of 2015) & 28.11.2018 (OA
Nos. 2028, 2029 & 2025 of 2015)**

Pronounced on: 05.12.2018

ORDER**Per : R.Vijaykumar, Member (A)**

These OAs have been filed on 09.01.2015 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"8.1. Call for the records of the case from the respondents.

2. quash and set aside the order of Respondent No.2 dt. 18.09.14 (Ann. A.1).

3. Direct the respondents to protect the last pay drawn by applicant in group 'C' post i.e. Motor Vehicle Driver even after his repatriation to group 'D' post in his parent department and to re-fix pay further when he was promoted as Motor Driver on regular basis.

4. direct the respondents to pay the arrears of wages as a result of re-fixation of pay, along with accrued interest at 9% p.a.

5. Direct the respondents to count the period of service spent by the applicant on adhoc basis in group 'C' post for all purposes.

6. Any other relief deemed fit and proper in the circumstances of the case may kindly be granted.

7. Allow the application with cost."

2. The nine applicants who have filed separate applications bear some differences in their dates of initial appointment on casual basis and then on promotion as Motor Vehicle Driver Grade-III on adhoc basis and further, in some cases, further promotion as Motor Vehicle Driver Grade-II (Highly Skilled). After initial appointment on casual basis, they were granted MRCL status after serving for 120 days and then accorded temporary status in the Engineering Projects/Construction Wing of the respondents. Thereafter, they were absorbed in the Open Line category as per rules while continuing to be posted as Drivers on adhoc basis in the Construction Wing which continued until the project where they were working was completed after which they were transferred by repatriation to their substantive post of Gangman/Khalasi in 1997. Subsequently, they responded to a notification issued by respondents and successfully participated in a Trade Test after which they were regularly appointed as

Motor Vehicle Driver Grade-III and in some case, promoted thereafter to Grade-II. The relevant dates for the six cases heard together in this application are as below:-

Case No. & Name	Casual Driver	Temporary Status	Gangman absorption	MVD Grade-III	Date of Repatriation
2030/2015 N.M. Pai	03/01/89	17/01/90	25/01/97	10/07/02	06/06/97
2031/2015 G.B. Sarso	01/01/84	01/01/86	28/02/97	04/11/06	23/04/96
2032/2015 G.B. Gawai	21/11/88	16/11/89	10/09/97	02/02/10 w.e.f 30/12/09	14/07/10
2034/2015 A.R.Rahman	19/11/88	14/11/89	10/09/97/ 21/10/97	30/12/09	19/02/00
2035/2015 G.H. Gajbhiye	21/04/89	1990	10/09/97	30/12/09	08/03/01
2028/2015 A.R. Sheikh	14/11/83	10/11/84	10/09/97	23/12/09	25/05/04
2057/2015 D. Paikuj COD MA No. 2097/2015	03/04/86	28/03/87	10/09/97	02/05/08	06/08/04
2029/2015 S.M. Shahare COD MA No. 2240/2016	<u>04/04/86</u> 03/01/89	<u>04/04/88</u> 17/01/90	25/01/97	10/07/02	<u>01/08/05</u> 25/07/97
2025/2015 P.D. Kamble COD MA No. 2268/2017	27/11/82	01/01/84	01/04/97	12/10/06	19/03/97

3. All the above cases have been heard together primarily because the applicants were absorbed notionally on open line as Gangman/Khalasi in 1997 in the lower pay

scale as compared to the pay scales they were drawing as Drivers on adhoc basis in the construction organisation. Of these cases, three applicants have filed MAs for condonation of delay. Later, at the time of repatriation in 1996-05, as detailed in Table above, they were fixed in accordance with the IREM Rules, as emphasised by the respondents, in the lower pay scale of Gangman/Khalasi at PB-I with GP of Rs. 1800/- whereas they had been drawing a higher pay scale of PB-I with GP of Rs. 1900/- as Drivers on adhoc basis in the Construction/Electrification projects. Therefore, the respondents had argued that all the cases were affected by limitation since the applicants were required to take legal recourse either from 1997 or from 2000/2001 but only approached the respondents with a representation on 05.09.2011 and 31.01.2013 and have filed this application on 09.01.2015 after several years of delay and that their applications are affected by laches which have not been properly explained. It is on this basis that the

respondents have replied to the applicants in response to their representation of 2011/2013 in the impugned orders No. NGP/P.800/F/OG/Motor Driver dt. 18.09.2014 which is reproduced below:

No. NGP/P.800/F/OG/Motor Driver

Dated: 18.09.2014

Shri Gangaram Pantavne & 11 Others.

(Through Sr.DME/NGP)

Your representation Dt:31.01:2013 regarding pay protection as Motor Driver under Rule FR 15 (a) consequent upon your promotion in Gr.Rs.3050-4590/Rs.5200-20200 + GP Rs.1900/-has been examined and it is advised as under:

1. All the representationists were initially appointed in Casual capacity in RE organisation and working in various capacities on ad-hoc basis, Subsequently, you all were absorbed in Gr. D posts in pay scale of Rs.2550-3200/-+ GP 1800/- in PB 5200-20200/-fixing your lien in various departments on this Division. On your reporting from RE Project, your pay was-fixed according to your substantive position in Gr. 'D' in this Division.

2. After empanelment for the post of Motor, Driver Gr.Rs.5200-20200+GP Rs.1900/-, you were promoted as Motor vehicle Driver and your pay has been fixed from the date of taking over charge as Motor Driver on regular basis by this Division under relevant orders.

3. Since you were not substantively holding the post of Motor Driver in RE project but only on ad-hoc & you were regularised in Gr. 'D' in Railways having lien in Nagpur Division, on your promotion to the post of Motor Drive in Gr.Rs.3050- 4590 5200-20200 + 1900 GP by

this Division, you were not entitled for pay protection i.e. the pay drawn as Motor Driver on ad-hoc basis in RE project (prior to your posting after empanelment on regular basis on Nagpur Division). Thus your request cannot be agreed to under rule 15 (a).

4. It is further mentioned that benefit of pay protection-has not been extended to any other employees of this Division, who arrived from RE project as stated in your representation.

In view of the above, your request for pay fixation by protecting your pay drawn as a Motor Driver while working in RE organisation, on your promotion to the post of Motor Driver in GP Rs. 1900/- on regular basis after the selection by this Division, cannot be agreed to.

Please note.

Sd/-

(G.M. Srinivasan)
Divisional Personnel Officer
Nagpur.

4. The six applicants in OA Nos. 2030, 2031, 2032, 2034, 2035, 2028 of 2015 have not moved any application for condoning the delay as argued at para 3 of their OA that the application is within limitation to which the respondents have replied stating that the applicants were repatriated at their request to the parent department in some cases and thereafter received less pay than they were getting before repatriation. Therefore, the

first cause of action arose in 1997 when they were regularised in Group-D of Gangman/Khalasi. The subsequent cause of action arose when they were actually repatriated in 2001/2002 and then again when they were promoted after successfully completing trade test as Drivers. The application should have been filed within one year of these dates.

5. The three applicants in OA Nos. 2057, 2025, 2029 of 2015 have filed MA Nos. 2097/2015, 2240/2016 and 2268/2017 respectively for condonation of delay in filing the present OA. It is stated that since the applicants pay was reduced on repatriation and they are claiming protection of the pay drawn by them immediately before repatriation, there is continuing cause of action from month to month and hence, the OAs are not barred by limitation.

6. When the matter came up for hearing today, it was pointed out by the respondents that a previous decision had been taken in OA No. 2033/2015 on 23.11.2017 where the same

issue of limitation was in focus and that these cases fell into the same category and were covered by the same considerations that led to the dismissal of that OA and consequent denial of relief to the applicant. During the hearing, Shri A B Bambal, learned counsel for the applicants and Shri Alok Upasani, learned counsel for the respondents were heard on the matter.

7. It is evident that the applicants had the first cause of action in 1997 when they were regularised as Gangman/Khalasi even as they were working in higher scales of Drivers Grade-III & Grade-II in the Construction/Electrification Project Organisation. However, there was no financial or physical impact on the applicant at that point in time and perhaps, the applicants could also not have anticipated the early closure of the projects and that they would be compelled to revert to their parent and substantive cadre of Gangman/Khalasi in the lower pay scale. The next opportunity was when they were

physically transferred including on request and posted as Gangman/Khalasi in their substantive pay scales and their pay was fixed in accordance with the IREM Rules. Respondents state that the claim of the applicants for pay protection under FR 15(A) was not as per rules because the applicants were not transferred but absorbed in lower posts. This is as per the reply contained in the impugned order in these applications.

8. In these cases, except OA Nos. 2057/2015, 2029/2015 & 2025/2015, there is the added feature that the applicants have not filed any application for condonation of delay and have simply made a bare claim that they are not effected by limitation. The reasons given in the MAs for condonation of delay filed in OA No. 2057/2015, 2029/2015 & 2025/2015 is similar to the MA for COD filed in the reference case of OA No. 2033/2015 decided previously. On this aspect of limitation, we can do no better than to take on record the view expressed by this Tribunal in OA No. 2033/2015 at Paras 18-26 as brought

out below:

"18. Now turning to the point of limitation, the learned Advocate for the applicant submitted that since the claim is for proper fixation of pay on repatriation it gives rise to continuous cause of action from month to month and hence, there is no question of delay in filing the present OA. It is also stated that since the applicant's pay was substantially reduced on repatriation to the substantive post of Group 'D', he could not approach this Tribunal earlier, due to financial crisis.

19. However, so far as this aspect of the case is concerned, this is not a case of fixation of pay in the strict sense nor on applicant's transfer to a lower post, thereby he will be entitled to get the protection of pay as provided under FR 15(a). In the present case, the applicant was admittedly posted on higher post of Motor Driver purely on adhoc basis after he was absorbed in Group 'D' post of Gangman. He continued to work on the said adhoc post with the benefit of higher pay scale during the period from 04.10.1996 to 25.08.2004 i.e. for about eight years before he was repatriated. It is needless to say that the substantive post was Group 'D' and hence, he was repatriated to the said post since he was not absorbed or regularized in said Group 'C' post.

20. In such circumstances of the case, it cannot be said that this is a case of fixation of pay since the applicant's pay in the substantive cadre of Group 'D' was already fixed so also pay in the post of Motor Driver in Group 'C' on adhoc basis. Thus, when an employee is repatriated to the substantive cadre, it cannot

be said to be a reversion to the said post. As such, normally, on repatriation to the substantive post, the employee gets the pay scale applicable to the said post and not the pay scale, which he was getting immediately before repatriation from higher post on adhoc basis. Further, on repatriation the applicant will not continue to work as Motor Driver and hence there is no question of grant of the pay attached to the said post to him on his repatriation. He will be working in Group 'D' and hence he will be entitled to receive pay scale of the said post only and not of the higher post. However pay in the substantive post will be fixed counting years of service rendered by him in the higher on adhoc basis. The same was accordingly fixed in this case.

21. This being the position, it is obvious that there cannot be a continuing cause of action from month to month for fixation of pay on repatriation. The cause of action would arise on repatriation to substantive post with pay applicable to said post and hence, in view of the provisions of Section 21 of the Administrative Tribunals Act, 1985, the OA should have been filed within a period of one year from the order of repatriation i.e. till 25.08.2005. In the present case, the OA having been filed on 09.01.2015 i.e. after about ten years from accrual of cause of action, the same is obviously barred by time.

22. Further, in the present case, it is obvious from record that the applicant undisputedly acquiesced in the order of repatriation and placing him in the pay scale of the substantive post of Gangman and he made no grievance in this behalf till he submitted a first representation

on 05.09.2011 followed by the reminder on 31.03.2013. Even after he was regularly promoted as Motor Driver with effect from 13.12.2009, from which date he got revised pay scale applicable to the said promotion post, still he did not make any grievance about protection of his pay on repatriation till he submitted first representation as stated above.

23. During the course of the arguments, the learned Advocate for the applicant submitted that the OA is not barred by limitation since it is filed within a period of one year from the date of the impugned order dated 18.09.2014, which has been passed on the representations submitted by the applicant. However, it is the settled law that while considering the issue of limitation in the light of the provisions of Section 21 of the Administrative Tribunals Act, 1985, the crucial date for counting the period of one year is the date on which the cause of action first arose and not when the employee submitted a representation for redressal of his grievance nor from the date of order passed by the authority thereon. This is so because for submitting a representation by the employee and for taking a decision on it, no time limit is fixed, although the representation for redressal of his grievance should be submitted as early as possible and within a reasonable time and so also the authority should take a decision on it at the earliest. In such circumstances of the case, it cannot be said that the OA is filed within limitation when cause of action first accrued way back on 25.08.2004 when the applicant was repatriated to the substantive post of Group 'D' with pay for the said post and his pay which he was drawing immediately

before his repatriation is not liable to be protected. No justifiable or sound reasons are given by the applicant in the MA for condonation of delay, which has been filed when the respondents have specifically raised objection regarding limitation in their written statement and not at the initial stage when the OA was filed and it is simply mentioned in paragraph No.3 thereof that the application is within the period of limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985, which is not so. In any case, it cannot be said that the applicant is successful in crossing the hurdle of limitation to approach this Tribunal.

24. From the above discussion, we are of the considered view that the OA is barred by limitation, although the claim is for protection of his pay, which he was drawing immediately before his repatriation to the substantive post in Group 'D'.

25. Since the OA is found to be barred by limitation, there is no question of considering the applicant's claim on merit, although the learned Advocate for the applicant strongly placed reliance on the decision rendered by the Hon'ble Supreme Court in ***Bhadei Rai Vs. Union of India and others, AIR 2005 SC 2404***, decided on 06.06.2005. In that case also, the main relief was for absorption / regularization in the higher post on which the applicant therein was appointed on adhoc basis and continued under said post for 20 years. The said claim was rejected with a direction that the respondents may consider the applicant for regular promotion as and when his turn comes. However, the Hon'ble Supreme Court in exercise of the powers vested in it, protected the

pay which the applicant therein was drawing before his repatriation to the substantive post. In that case, the issue regarding limitation was not involved and hence was not considered. However, in the present case, the OA is found to be barred by limitation as stated and discussed in preceding paras. In the case referred above, the decision rendered in ***Inder Pal Yadav Vs. Union of India, in Writ Petition No.548/2000 decided on 13.01.2003*** by the Hon'ble Supreme Court was also considered, in which the issue regarding protection of pay on repatriation to the substantive post from the promotional post on adhoc basis was involved.

26. However, as stated earlier, although the law laid down by the Hon'ble Supreme Court in the above referred matters cannot be disputed, the OA is hit by limitation. Hence, no relief can be granted to the applicant."

9. Therefore, these OAs are dismissed as barred by limitation without any order as to costs.

(Ravinder Kaur)
Member (J)

(R.Vijaykumar)
Member (A)

Ram.