

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00785/2017

Tuesday, this the 30th day of July, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

S. Madhusoodhanan Nair, aged 61 years, S/o. K.P. Sreedharan Nair,
 Retired Pointsman Grade I, SMR/O/QLN, Trivandrum Division,
 Southern Railway, Residing at M.S. Bhavan, Kesava Nagar-164,
 Valathengil PO, Kollam. **Applicant**

(By Advocate : M/s. Varkey & Martin)

V e r s u s

1. Union of India, represented by General Manager,
 Southern Railway, Chennai – 3.
2. Senior Divisional Personnel Officer,
 Southern Railway, Trivandrum – 695 014.
3. The Divisional Railway Manager,
 Southern Railway, Trivandrum – 695 014. **Respondents**

(By Advocate : Mr. C.B. Sreekumar)

This application having been heard on 25.07.2019 the Tribunal on
 30.07.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

- “a) Call for the records leading to the issuance of Annexure A2 and A6
 and to quash the same.
- b) Direct the respondents to re-fix the applicant's pay on the basis of
 Annexure A4 option exercised by the applicant while being promoted as
 Pointsman A with all consequential benefits including revision of
 applicant's pension.

c) Grant such other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.”

2. The brief facts of the case are that the applicant was appointed in the Railway as a Substitute in the year 1979. He got temporary status and was finally absorbed as Traffic Porter in the Traffic Department of Trivandrum Division of Southern Railway. He was promoted as Pointsman B and Pointsman A and he retired from service on superannuation on 31.10.2015 while working as Pointsman Grade-I. Applicant submits that he is drawing less pay than his juniors and there is an anomaly in fixation of pay which results in applicant getting pension at the reduced rate and lesser retirement benefits. Applicant highlighted his grievances regarding the incorrect fixation of pay to the respondents while in service but respondents did not pay any heed to the same. The latest representation dated 22.10.2016 was submitted by the applicant to the 2nd respondent. The 2nd respondent responded to the representation of the applicant submitting that the applicant has not exercised option for fixation of pay on promotion in scale of Rs. 3,050-4,590/- from 24.3.1998 to 1.4.1998. The same is denied by the applicant stating that applicant while working in the scale of Rs. 800-1,150/- at Quilon was promoted to officiate as Pointsman-I in scale of Rs. 950-1,150/-. The applicant exercised option to fix his pay in promoted grade w.e.f. 1.4.1998 after drawing increment in the existing scale. The applicant exercised his option in time and he is entitled for fixation of pay on the basis of his option. Pointing out all these the applicant made Annexure A5 representation which was rejected by the respondents vide Annexure A6.

Aggrieved the applicant has filed the present OA.

3. Notices were issued to the respondents. They entered appearance through the learned Standing counsel Shri C.B. Sreekumar, who filed a reply statement contending that the applicant is seeking the benefit of pay fixation after a period of two decades which is against the law of limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985. Moreover, in the matter of *Mohd. Khalil v. Union of India* – (1997) 3 SLJ (CAT) 54, the apex court held that no application shall be admitted by the Tribunal unless it is made within a year from the date of which the final order had been given. Further in *Bagmal v. Union of India* – (1997) 2 SLJ (CAT) 543 the apex court held that delay cannot be condoned unless sufficient ground is shown.

4. On merits the respondents submit that on Annexure A4 option form exercised by the applicant on 10.6.1997, his pay was fixed in the post of Pointsman Grade-I w.e.f. 1.4.1998. In the option form he had ticked the portion that I hereby opt to fix in pay in the higher grade straight away w.e.f. 1.4.1998 i.e. at the stage next above the notional pay arrived at by increasing the pay in respect of the lower post by one increment subject to a minimum of Rs. 1,070/- in terms of Rule 1313 (FR 22) R.II. Accordingly, his pay was fixed at Rs. 3,235/- w.e.f. 1.4.1996 as he was receiving Rs. 1,030/- as on 1.4.1996 in the lower grade. Subsequently, his pay was revised to Rs. 3,300/- w.e.f. 1.4.1997, Rs. 3,425/- w.e.f. 24.3.1998 on promotion in scale Rs. 3,050-4,590/-. Further the respondents submitted that in Annexure

A4 option form he had opted for wrong fixation. Instead of selecting paragraph '2' for option benefit he had exercised option 'A'. Hence he was not entitled for pay fixation benefit as sought. Further he had exercised option belatedly i.e. more than two months instead of exercising option within one month from the date of shouldering higher responsibility only on 24.3.1998 and he exercised option only w.e.f. 10.6.1997. Thus, he was not considered for option benefit. Respondents pray for dismissing the OA.

5. Heard Shri Martin G. Thottan, learned counsel appearing for the applicant and Mr. C.B. Sreekumar, learned counsel appearing for the respondents. Perused the record.

6. The short point to be considered by this Tribunal is whether the option exercised by the applicant on 10.6.1997 can be revised at this stage after his retirement for proper fixation of his pay/pension or not ?

7. As per Annexure A4 option form exercised by the applicant on 10.6.1997, his pay was fixed by the respondents in the post of Pointsman Grade-I w.e.f. 1.4.1998. We find that the applicant in the option form had ticked the portion that I hereby opt to fix his pay in the higher grade straight away w.e.f. 1.4.1998 i.e. at the stage next above the notional pay arrived at by increasing the pay in respect of the lower post by one increment subject to a minimum of Rs. 1,070/- in terms of Rule 1313 (FR 22) R.II. Accordingly, the respondents fixed his pay at Rs. 3,235/- w.e.f. 1.4.1996 as he was receiving Rs. 1,030/- as on 1.4.1996 in the lower grade.

Subsequently, his pay was revised to Rs. 3,300/- w.e.f. 1.4.1997 and Rs. 3,425/- w.e.f. 24.3.1998 on promotion in scale Rs. 3,050-4,590/-. The applicant opted for wrong fixation in Annexure A4 option form instead of selecting paragraph '2' option which was beneficial to him. Further the option exercised by him was belated i.e. instead of exercising option within one month from the date of shouldering higher responsibility on 24.3.1998, he had exercised option on 10.6.1997. Seeking the benefit of pay fixation after a period of two decades is against the settled principles of law as laid down by the apex court in *Mohd. Khalil's* case (supra) and as held by the apex court in *Bagmal's* case (supra) the delay cannot be condoned unless sufficient ground is shown.

8. In view of the above, we do not find any merit in the Original Application. Accordingly, the OA is dismissed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00785/2017**APPLICANT'S ANNEXURES**

- Annexure A1** - True copy of the representation dated 22.10.2016 submitted by the applicant.
- Annexure A2** - True copy of the letter No. V/P.626/MPA 2016/183/VGR dated 14.12.2016 issued on behalf of the 2nd respondent.
- Annexure A3** - True copy of the order bearing No. OO/45/97/Gr.D dated 29.5.1997 issued by the second respondent.
- Annexure A4** - True copy of the option exercised by the applicant dated 10.6.1997.
- Annexure A5** - True copy of the representation dated 25.5.2017 submitted by the applicant.
- Annexure A6** - True copy of the letter No. V/P.500/MPA/40/2017 dated 10.7.2017 issued by the third respondent.

RESPONDENTS' ANNEXURES

- Annexure R1** - True copy of the option form submitted by the applicant.
- Annexure R2** - Attested copy of the relevant page of service register of the applicant.

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