

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

OA No.290/00068/2015

Pronounced on : 05.09.2019
(Reserved on : 26.08.2019

CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

Govind Singh S/o Shri Birdhi Singh, aged 55 years, Resident of 124F, Railway Medical Colony, Hanumangarh Junction, District-Hanumangarh (Raj.).

...APPLICANT

BY ADVOCATE : Mr. Nishant Motsara

VERSUS

1. Union of India through General Manager, Northern Western Railway, Jaipur.
2. Senior Divisional Personnel Officer, Northern Western Railway, Bikaner.
3. Divisional Personnel Officer, Northern Western Railway, Bikaner.
4. Divisional Railway Manager, Northern Western Railway, Bikaner.
5. Anil Sharma S/o Gurudutt Sharma, Technician-I, Electric Power, Northern Western Railway, Bikaner.

RESPONDENTS

BY ADVOCATE: Mr. Girish Sankhala for R1 to R4
 None for R5.

ORDER

...

Hon'ble Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

“8(i). That order passed by respondent department vide Annexure A1 and Annexure A1”A may kindly be set aside or rejected.

- (ii) That pay of the applicant may properly fixed with giving 3% increment as is given to the respondent no.5 who is junior to him and make the pay of the applicant equivalent to the respondent no.5.
- (iii) That applicant may be given opportunity to choose the option form as the opportunity which was not afforded the applicant earlier and remove this anomaly while equalizing applicant with the respondent no.5 on the same pay.
- (iv) Original Application filed by the applicant may kindly be allowed."

2. This Original Application has been made against the order dated 31.01.2011 (Annexure A1) as well as the order dated 02.09.2014 (Annexure A1/A).

3. The brief facts of the present case as narrated by the applicant are that the applicant was initially appointed as Helper in the Railways on 22.06.1979 and thereafter he was given promotion in the year 1991, 2001, 2010 on the post of Technician-I respectively and now he is working on the post of Technician-I. The applicant has completed 30 years of service on 22.06.2009 and he has been afforded the Grade Pay of Rs.2800/- in place of earlier Grade Pay of Rs.2400/-. The applicant has sought pay slip and other documents related to pay scale under RTI Act. Thereafter, he come to know that the person who is junior to him, is given benefit of 3% increment although the same was not affected to the applicant. Although Grade Pay of the applicant was given in the year 2009 but promotional post was given to him in the year 2010 with his junior who is respondent no.5 in this present OA vide order dated 16.09.2010 (Annexure A3).

4. It is further stated that respondent no.5 was appointed on 17.05.1980 and then he was promoted to Technician Grade-I, his Grade Pay was Rs.10,260/- and now it is 12,190/-. The applicant was given Grade Pay of Rs.9900/- and now he is receiving Pay of Rs.11,770/-. The

discrimination is made by the respondents in the matter. Upon query, the applicant to the respondents, it is stated that option form was not filled by the applicant within one month whereas it was filled up by respondent no.5. Office order dated 11.02.2010 given by the respondent is annexed as Annexure A5.

5. The applicant has submitted various representations in the form of reminders to the respondents for pay fixation for the year 2010 to 2012 (Annexure A6 to A11) respectively.

6. It is also further stated that as there was no satisfactory reply from the respondents, the applicant has submitted an application under RTI Act on 19.08.2014 (Annexure A12) as well as 19.09.2014 (Annexure A13) of which reply was not given. Although the respondent has filed the reply of application under RTI Act on 25.08.2014 and 29.09.2014, but the same was not satisfactory. Aggrieved by the action of the respondents, applicant has no other efficacious speedy and alternative remedy except to invoke the jurisdiction of this Hon'ble Tribunal for redressal of his grievances. Hence this OA.

7. In the written statement filed on behalf of respondents No.1 to 4, it has been stated that the applicant has come to this Tribunal for the relief that this OA may kindly be allowed and order passed by the respondent department vide Annexure A1 and Annexure A1/A be set aside and rejected. It is further prayed that the pay of the applicant may be refixed with giving 3% increment as is given to respondent no.5 who is junior to him so that the pay of the applicant is equivalent to respondent no.5. Applicant also prays that opportunity to choose the option may be given to the applicant. The applicant has challenged the order dated 31.01.2011 whereby the representation of the applicant was rejected vide order dated

31.01.2011 by the respondent department, therefore, the cause of action was arisen in way back of year 2011 itself, therefore, the present OA is barred by the limitation as prescribed by the CAT Act, 1985. The applicant has further prayed that the Annexure A1/A dated 02.09.2014 may kindly be quashed.

8. It is further stated that in pursuance of question put by the applicant, the answering respondent has replied by way of letter dated 02.09.2014, therefore, the order dated 02.09.2014 is not rejection order although the answering respondent has answered the question raised by the applicant by way of application which is submitted under RTI Act, hence, the said order has impugned order. As per the MACPS, the pay of the applicant has already been fixed as per the Scheme vide order dated 22.06.2009. The answering respondent has also given an opportunity to the applicant that if he has any grievance he may submit option as per PS No.7937 and 138/2007 within one month, but applicant did not opt option form, therefore, the cause of action arose in the year 2009. Therefore, the applicant is bound by principle of acquiescence and estoppels. Hence, the Original Application filed by the applicant deserves to be dismissed with exemplary costs.

9. Heard Shri Nishant Motsara, learned counsel for the applicant and Shri Girish Sankhala, learned counsel for respondents no.1 to 4 and perused the material available on record to adjudicate on the following reliefs sought by the applicant:

- (i) That pay of the applicant may properly fixed with giving 3% increment as is given to the respondent no.5 who is junior to him and make the pay of the applicant equivalent to the respondent no.5.
- (iii) That applicant may be given opportunity to choose the option form as the opportunity which was not afforded the applicant

earlier and remove this anomaly while equalizing applicant with the respondent no.5 on the same pay.

10. The claim of the applicant is that he has completed 30 years of service on 22.06.2009 and has also been given the promotion on 16.09.2010 by the respondent department vide their order placed at Annexure A3. Consequent to this, as per the impugned order dated 31.01.2011 the applicant was informed that he has been granted the up gradation of 3 increment under MACPS vide the respondent letter dated 11.02.2010 by which his salary has been upgraded w.e.f. 22.06.2009.

11. The impugned order also very clearly stipulates that if the applicant wishes to get the benefit of next up gradation he is required to exercise his option within one month from the date of issue of the letter.

12. As stated by the respondents in their counter, the applicant did not exercise his option for fixation of pay and therefore could not be given the relief as he seeks in the OA.

13. As regards the applicant submission about respondent no.5 being granted the benefit it has been clarified by the submissions made by respondents that respondent no.5 in the OA had duly submitted his option in terms of Railway Board Circular No.7937. Accordingly, the pay of respondent no.5 who is junior to the applicant was fixed from the date of his next increment in compliance of Circular No.7937.

14. Railway Board Circular have also clarified that it is a well settled rule that while giving financial up gradation under Modified Career Assured Progression Scheme, the claim of stepping up of pay by senior employees over juniors will not be sustained. Hence, there had been no irregularly committed by the official respondents in the present case. It is clear from the discussions as above that in the absence of the option being indicated

by the applicant the respondent department cannot be faulted in the matter of grant of the increment.

15. As submitted by the respondents the cause of action arose in the year 2010 since circular No.101/2009 was issued for granting benefit, wherein the respondent department prescribed that if any employee has grievance, he may submit his grievance through proper channel within one month but in this case, the applicant has failed to do so at the relevant time. In addition to this, the applicant also did not raise the grievance at the time of issue of impugned order dated 31.01.2011 (Annexure A1). The applicant is thus not allowed to agitate his cause in the year 2015.

16. Therefore, in view of these circumstances, the Original Application suffers from latches and barred by the limitation as prescribed under the CAT Act of 1985.

17. It is also observed that there is no application for condonation of delay in filing the present Original Application. Response to an RTI application does not constitute a cause of action. It is submitted that as per the Administrative Tribunal Act, 1985, any original application will be filed within the one year from cause of action has arisen. As per the Section 21 of the AT Act, 1985, the cause of action has arisen in the year 2010 but the applicant did not approach before the competent court and now in the year 2015, the present Original Application filed against the order dated 31.01.2011 whereas the representation of the applicant has been rejected by the competent authority, therefore, in view of these circumstances, the OA is suffers from latches and barred by the limitation as prescribed under the Act of 1985.

18. As per the law laid down by the Hon'ble Apex Court reported in AIR 1999 Supreme Court, page no.3837 that the any original application will be filed after the prescribed period, it is to be supported by the application for condonation of delay under Limitation Act. Therefore, in view of the above, in absence of any application for condonation of delay, the Original Application suffers from infirmity.

19. In view of the infirmity of limitation and inability to file application for delay, the OA is not maintainable. Even on merit, as per the discussions as above, the OA also lacks merit. It, accordingly, deserves to be dismissed and is dismissed. No order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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