

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

OA/050/00511/2016
[MA/050/00027/2017]

Date of orders : 22nd July, 2019

CORAM

HON'BLE MR. JAYESH V. BHAIRAVIA, MEMBER [J]
HON'BLE MR. DINESH SHARMA, MEMBER [A]

1. S.K.Pathak, son of late Hari Kant Pathak, Senior Inspector of Store Accounts [A].
2. Avishek, son of late Amar NathOjha, Account Assistant.
3. Suresh Kumar Sharma, son of late R.B. Thakur, Account Assistant.
4. Ashok Kumar Gupta son of late Beni Prasad, account Assistant.
5. Pramod Kumar Rajak, son of late Ram Das Rajak, Account Assistant.
6. Dilip Kumar son of late SheoNandan Singh account Assistant.
7. Smt. Jaya Sarkhel wife of Sri ChandanKuamrSarkhel, Account Assistant.
8. Ashok Kumar Gupta, son of late S.N. Prasad, Account Assistant.
9. Abhinandan Kumar, son of late Shital Prasad, Singh, Account Assistant.
10. Satish Kumar Singh, son of late Bindeshwari Prasad Singh Account Assistant.
11. Satish Chandra Lal, son of late Krishna Chandra Lal, account Assistant.
12. Mahesh Kumar son of Sri Parshuram Singh, Accountant Assistant.
13. Arvind Kumar Sinha, son of late Sureshwari Prasad, Account Assistant.
14. Ajay Kumar Sinha son of late Hem Chandra Sinha, Accountant Assistant.
15. Anil Kumar son of late Rajdeo Singh Accountant Assistant.
16. Arun Kumar Kharga, son of Sri Ram Lakhankharga, Senior Section Officer [Accounts].
17. ShahidParwez, son of late Md. Latif, Senior Section Officer [Accounts].
18. PunamKumari daughter of Sri C.B. Pandey, accounts Assistant.
19. Arun Kumar Verma son of late Bindeshwari Prasad Verma, Senior Section Officer [Accounts].
20. Sunil Kumar Keshri son of late B.N. Prasad Keshri, Account Assistant.
21. PashupatiNath Singh Ajay son of Sri Sheo Kumar Singh, Stock Verifier.
22. Abinash Chandra Pandey son of late B.N. Pandey, Account Assistant.
23. SubhaNathOjha son of late NandjiOjha, Senior Inspector of Store Account [A].

24. Satish Kumar Jha son of JatashankarJha, Senior Section Officer [A].
25. BrajKishre Singh son of late Sri Bihari Singh, Accounts Assistant.
26. Surendra Prasad Son of late Yadunandan Prasad, Accounts Assistant.
27. Hansraj son of late Meghraj Ram, Accounts Assistant.
28. Uday Narayan Ray, son of Sri R.K. Yadav, Accounts Assistant.
29. LalBabu Mishra, sonof late Bageshwari Mishra, Stock Verifier.
30. Ashok Kumar Singh, son of late S. Singh, senior Inspector of Store Account [A].
31. Raj Kumar Tiwari, son of late Sheo Shankar Tiwari, Senior Section Officer [A].
32. Mithilesh Kumar Pandey, son of late Chandra DeoPandey, Senior Section Officer [A].
33. Rajiv Kumar Jha, son of late BalmukundJha, Senior Inspector of Store Account [A].
34. Sunil Kumar, son of late Devendra Singh, Senor Stock Verifier.
35. Ganesh Prasad, son oflateLal Singh, Senior Stock Verifier.
36. Om PrakashYadav, son of late IndraDeo Prasad, senior Stock Verifier.
37. RameshwarYadav son of late Ram ShresthYadav, Account Assistant.

All are posted under Senior Divisional Financial Manager, East Central Railway, Danapur, District – Patna [Bihar].

.....applicants

By Advocate :ShriM.P.Dixit.

Versus

1. The Union of India through the Secretary, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
2. The Financial Commissioner, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
3. The General Manager, East Central Railway, Hajipur, PO – Hajipur, District – Vaishali [Biha].
4. The Financial Advisor & Chief Accounts Officer, East Central Railway, Hajipur, PO – Hajipur, District – Vaishali [Bihar].
5. The Senior Divisional Financial Manager, East Central Railway, Danapur.

..... Respondents.

By Advocates: Mr. Ram KinkerChoubey

ORDER

Per Jayesh V. Bharavia [J]:- Altogether 37 applicants seek permission to file one original application to ventilate their grievance since their grievance is common in nature. Prayer is allowed.

2. In the instant original application, the applicants have prayed for

the following reliefs : -

“8[1] That Your Lordships may graciously be pleased to extend the same and similar benefit of judgement/order dated 09.04.2010, 03.04.2013 passed by Hon’ble High Court, Patna as contained in Annexure-A/2 and A/3 upheld by Hon’ble Supreme Court of India on 07.07.2014 as contained in Annexure-A/4 together with the similar benefit granted by CAT, Ernakulum Bench on 30.06.2006 upheld by Hon’ble Kerala High Court and Supreme Court of India on 27.03.2012 and 25.02.2013 as contained in Annexure –A/5 and A/6 respectively.

8[2] That your Lordships may further be pleased to direct the respondents to pay the arrears of pay with effect from 01.01.1996 to 18.02.2103 in favour of applicants along with compound interest at the rate of 18% without any further delay.

8[3] That the Respondents be further directed to grant all consequential benefits in favour of the applicants.

8[4] Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicants.”

3. The brief history of the case of the applicants is that while they working under the Respondents, recommendations of 5th CPC was implemented w.e.f. 01.01.1996, whereby the existing scale of Rs. 1200-2040, 1400-2600, 1640-2900, 2000-3200/3500 was revised to Rs. 4000-6000, 5000-8000, 5500-9000 and 6500-10500 but subsequently the said revised pay scale was upgraded in the replacement scale of Rs. 4500-7000, 56500-9000, 6500-10500 and 74500-11500 respectively w.e.f. 01.01.1996 on notional basis and w.e.f. 19.02.2003 on actual monetary basis.

4. The applicants submitted that in the meantime, some co-employees namely Sudama Singh and others being aggrieved with their notional fixation in place of actual monetary benefits w.e.f. 01.01.1996 have filed one OA 925/2003 before this Bench of the Tribunal but the same was dismissed on 30.06.2005 [Annexure-A/1], and against the order passed by this Tribunal in the aforesaid OA, the applicants filed a

writ petition before the Hon'ble High Court of Patna vide CWJC No. 11452 of 2005 which was allowed on 09.04.2010 [Annexure-A/2] with following order and directions :-

“8. In the result, we set aside the order dated 30th June, 2005 passed in OA No.925/2003 and the orders dated 07.03.2003 and 16.06.2004 [Annexure-3 and 9], stands modified. We take this writ petition to be in a representative category for all employees of the Accounts Establishment of the Indian Railways. All of whom shall get the benefits of appropriate pay-scale w.e.f. 01.01.1996, with payment of arrears of salary, but without the application of payment of interest. It goes without saying that the post retirement benefits of such employees who have already superannuated, shall be revised, apart from payment of arrears of salary. There shall be no order as to costs.”

Thereafter, the Respondent Railways filed a Civil Review No. 233/2010 before the Patna High Court but the same has been dismissed on 03.04.2013 [Annexure-A/3].

5. Aggrieved by the said order/judgement passed by Hon'ble High Court, the Respondents filed Special Leave to Appeal [C] No. 1587-1588/2014 before the Hon'ble Apex Court, the said SLP filed by the respondents was dismissed vide order dated 07.07.2014 [Annexure-A/4] with the following observations –

“We do not find any legal and valid ground for interference. The special leave petitions are dismissed. However, the relief granted by the Central Administrative Tribunal [CAT] as affirmed by the High Court shall be confined to the parties before the Tribunal as well as before the High Court. This is without prejudice to the rights of other claimants which will be adjudicated on its own merit as and when any such claim is raised.”

6. The applicants further submitted that the employees of Accounts Department of Railway of other region had also raised their grievance before the CAT, Ernakulum Bench vide OA No.671/2003 [Jose Sebastian and Ors. Vs. UOI & Ors.], which has been allowed on

30.06.2006. Against the aforesaid order, the Respondents Railway approached the Kerala High Court and also the Hon'ble Supreme Court where they have lost, vide order dated 27.03.2012 [Annexure-A/5] and 25.02.2013 [Annexure-A/6] respectively.

7. It is further submitted that after the order passed by Hon'ble Apex Court dated 07.07.2014 [Annexure-A/4], the applicants submitted their representations dated 02.12.2014 for extension of similar benefits since they are similarly placed at par with co-employees namely Sri Sudama Singh and others [Annexure-A/7]. The representation was forwarded by the Respondent No.5 on 04.12.2014 but the respondents have not considered the same. Therefore, the Association of Accounts Employees have filed a case before the Hon'ble Supreme Court vide Writ Petition [Civil] No. 544/2015 [Railway Accounts Employees Association [RAEA] and Ars. vs. the Secretary, Ministry of Railways & Anr.] for grant of benefit of payment of arrears. However, the Hon'ble Supreme Court vide its order dated 29.04.2016 [Annexure-A/9] dismissed the aforesaid writ petition as withdrawn with liberty to work out the remedy in accordance with law. Therefore, the applicants submitted that they have no other remedy but to file the instant OA.

8. The applicants have filed one MA No. 27 of 2017 seeking condonation of delay in filing the instant OA on the ground that there is no wilful laches or negligence on the their part in pursuing the matter rather it is evidently clear on the face of record that there is wilful and sheer negligence on the part of the respondents since they have all along delayed the matter, for which the applicants cannot be allowed to suffer. The ld. Counsel submitted that this is a covered matter rendered by the decisions of Hon'ble High Courts and Supreme Court.

9. The Respondent Railways have filed their written statement and denied the contentions raised by the applicants. According to them, the OA is hopelessly barred by limitation prescribed under Section 21 of the A.T. act, 1985 as the prayer relates to arrears w.e.f. 01.01.1996 to 18.02.2003 on account of implementation of recommendations of 5th Central Pay Commission. The benefit of 5th CPC was extended to all the employees as per the guidelines contained in the report. The respondents have very fairly admitted that in view of the order passed by Hon'ble Supreme Court, few staff have been benefitted and restricted the relief to the persons who were party before the Hon'ble Court in that particular case as directed by Hon'ble Apex Court. The judgement of Hon'ble Apex Court was not in rem rather in personem, as such the applicants are not entitled for the same relief due to delay and laches on their part.

10. Heard the ld. Counsel for the parties and gone through the records.

11. The ld. counsel for the applicants relied upon the decisions rendered by Hon'ble High Court of Patna reported in 2017 [3] PLJR 741 [CWJC No. 15717/2016, The Union of India through the Chairman, Railway Board, Ministry of Railway & Ors. Vs. Manoj Kumar & Ors.] whereby similarly situated private secretaries were granted the benefits by CAT, Madras Bench – upheld by Madras High Court and Apex Court – necessity for consistency in judicial adjudication, similarly situated persons must be extended similar or identical benefits – decision of CAT, Patna Bench directing similar relief justified. The Hon'ble High Court further held that discrimination cannot be allowed to be practiced in matters of extending benefits of pay scale to employees similarly situated. The ld. Counsel for the applicants also relied upon the decisions

rendered by Hon'ble High Court of Jharkhand, Ranchi in W.P.[S] [D.B.] No. 1379/2015 as also the order passed by CAT, Patna Bench in OA 447/2015 which was upheld by Hon'ble High Court of Patna in CWJC No. 2261/2017 dated 15.05.2017. There is no dispute with respect to proposition of law as enumerated in the aforesaid judgement/orders for grant of similar benefit to the similarly placed employees as held by the Hon'ble High Court of Patna. However, in the present case, we have to examine whether the said rulings will be applicable.

12. It is noticed that the relief sought for by the applicants relates to arrears of pay w.e.f. 01.01.1996 to 18.02.2003. Admittedly, first time the applicants had filed their claim before the concerned authority only in the year 2014 by way of filing their representations. It is stated by the applicant that the said representations have not been considered by the respondents. Subsequently, it is stated that the Association of the employees filed an SLP which was dismissed as withdrawn on 29th April, 2016 with a liberty to work out their remedy in accordance with law.

13. It is also required to take into consideration that the order passed by the Hon'ble Apex Court in SLP [C] 1587-1588/2014 dated 07.07.2014 in the case of Union of India & Ors. Vs. Sudama Singh and Ors. wherein it is held that the relief granted by the Hon'ble High Court shall be confined to the parties before the Tribunal as well as before the High Court and without prejudice to the rights of other claimants which will be adjudicated on its own merit as and when any such claim is raised.

14. In the present case, it is noticed that the applicants have raised

their claim for grant of payment of arrears of pay w.e.f. 01.01.1996 to 18.02.2003 by filing the present OA on 18.07.2016. An application for condonation of delay has been filed on behalf of all the 37 applicants wherein it is stated that after filing of representation dated 04.12.2014, the applicants have not received any favourable reply. Subsequently, the SLP filed by the Association was dismissed as withdrawn on 29.04.2016 and therefore, there is no wilful delay on the part of the applicants. The said submissions to condone the delay in filing the present OA is not sustainable.

15. Admittedly, the applicants were aware when their rights were accrued for the purpose of claim of arrears of pay on account of recommendations of 5th CPC w.e.f. 01.01.1996 to 18.02.2003. Thereafter, they did not raise any grievance till December, 2014 and only on 04.012.2014, they have submitted their representations and raised their grievance about grant of arrears of pay w.e.f. 1.1.1996. The Hon'ble Apex Court has categorically held that the relief granted by the Hon'ble High Court in CWJC No. 11452/2005 shall be confined only to the parties of the said writ petition as well as the applicants before the CAT [i.e. in OA No. 925/2003]. It is also noticed that all the applicants of the aforesaid OA 925/2003 [five in number] had approached this Tribunal long back in the year 2005 aggrieved by the notification dated 07.03.2003 and 16.06.2004 whereby they had claimed their right to receive arrears of pay by removing the anomalies. However, the applicants herein have not raised any grievance till 2014. The applicants failed to explain the gross delay caused in filing the present OA. Even otherwise, what are the reasons for such gross delay in filing the OA has not been satisfactorily explained by the applicants.

16. In our considered opinion, mere filing a writ petition before the Hon'ble Supreme Court through an Association, does not save the applicants from the application of the Law of Limitation, since the writ was itself filed long after the period of limitation had expired. The Hon'ble Apex Court has also not observed anything about the bar of limitation granting the liberty to the Association to work out their remedy in accordance with law. The claim of the applicants relates to "pay/salary", i.e. claim of money, which was said to be arose in the year 2003 itself. The applicants were obviously sitting on the fence and waiting for the outcome of the litigation to put their claim. Since the Hon'ble Apex Court expressly limited granting of relief to only those who were parties to that litigation and gave liberty to others to take legal recourse, this legal recourse obviously be taken only if permissible under the law, including the law relating to the period of limitation.

15. Under the circumstances, we do not find any justifiable reason to condone the delay as requested in the MA. The MA and OA are accordingly dismissed. No costs.

[Dinesh Sharma]
Member [Admn.]

[Jayesh V. Bhairavia]
Member [Judicial]

mps/-