

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2747/2003

New Delhi, this the 22nd day of December, 2004

Hon'ble Sh. Sarweshwar Jha, Member (A)

1. Sh. Amar Nath, S/o Sh. Bishamber Nath
2. Sh. Narender P. Singh, S/o Sh. Raja Ram Singh
3. Sh. Shiv Raj Singh, S/o Sh. Shiv Charan Singh
4. Sh. Ram Nihor, S/o Sh. Surya Narayan Singh
5. Sh. Mata Prasad, S/o Sh. Ram Phal
6. Sh. Ramesh Chand, S/o Sh. Duni Chand
7. Sh. Ganpat, S/o Sh. Tirath Raj
8. Sh. Kedar Nath, S/o Sh. Ram Dev
9. Sh. Piarelal, S/o Sh. Kashi Ram
10. Sh. Shanker Singh, S/o Sh. Chiokut Singh
11. Sh. Shyam Lal, S/o Sh. Bhagboo
12. Sh. Rajender Rai, S/o Sh. Ram Naraian Rai
13. Sh. Lal Sahib Singh, S/o Sh. Raja Ram
14. Sh. Ram Bharosey, S/o Sh. Moti Ram
15. Sh. Umesh Chand Tiwari, S/o Sh. Srinath Tiwari
16. Sh. Bhim Singh, S/o Sh. Muni Ram
17. Sh. Ram Sumer, S/o Sh. Ram Jus
18. Sh. Beeru, S/o Sh. Raj Nawal
19. Sh. Rakesh Malik, S/o Sh. Sri Ram
20. Sh. Chotte Lal Singh, S/o Sh. Raja Ram Singh
21. Sh. Ram Lakhan, S/o Sh. Bhagwati
22. Sh. Shobh Nath, S/o Sh. Ram Piarey
23. Sh. Ram Sumer, S/o Sh. Srinath

(All working as Mali under Section Engineer N.R., Hazrat Nizamuddin)

24. Sh. Sarjoo Prasad, S/o Sh. Bhagwat
 25. Sh. Kamal Singh, S/o Sh. Ranjeet Singh
- (Both working as Mali under Section N.R., New Delhi)

(By Advocate Sh. D.S. Mahendru)

V E R S U S

UNION OF INDIA THROUGH

1. General Manager
Northern Railway
Baroda House, New Delhi.
2. Divisional Railway Manager
Northern Railway, State Entry Road

...Respondents

(By Advocate Sh. A.K. Shukla)



ORDER

This application has been filed by the applicants (25 in number) against denial of various scales of pay/regular pay scales to them with effect from the dates of their having completed 120 days of continuous service, which is a condition precedent to grant of the authorized scale of pay. They have prayed that they may be granted the regular pay scales from the date on which they had completed 120 days of regular service and their pay may be refixed accordingly. They have also prayed for interest being paid to them on the consequential benefits.

2. The applicants were initially appointed on various dates as given in the various sub-paragraphs of paragraph 4 and as summarized on page 27 of the OA (Annexure A-1). It is observed that all of them were initially appointed as casual workers/Mali in the 1970s and claimed to have completed 120 days of service on different dates beginning from 1973 to 1980. Their appointments were, however, regularized on dates later than the dates on which they had completed 120 days of service. The time lag between the two dates ranges up to about 4 years. The applicants have been continuing in the service of the respondents till date.

3. The applicants have also claimed that on completion of 120 days continuous employment, a preliminary verification in regard to their age and completion of requisite number of days of continuous services has been done by the respondents and the same has been followed up with their medical examination. As employees with temporary status, they are entitled to the rights and benefits admissible to the railway servants under the Disciplinary & Appeal Rules. Their services prior to their having been declared temporary are not to be counted for the purpose of seniority. They were to be granted seniority from the dates of their regular appointment, after screening. The respondents have also held that seniority of individual employees if already determined in any other manner shall not be altered subject to the provisions that such seniority has not been determined in pursuance of any judicial decision or otherwise. The grievance of the applicant is that they have suffered financially due to

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their pay having not been fixed correctly in accordance with the rules of the respondents. In support of their contention, the applicants have referred to the decision of the Principal Bench of the Tribunal in OA 2623/2003 as passed on 25.10.2004 in which it has been held as under:-

4. I have carefully considered the rival contentions of the parties. It is trite law that the decision of the Tribunal, which does not give cognizance of the decision of the Hon'ble High Court, is per incurium and is not a precedent to follow. I find that in OA No.2253/2004 decided on 21.9.2004 in the matter of **Shri Mahtab Singh and others vs. Union of India and others**, a direction had been issued on the basis of the decision of the High Court in the case of **Ram Prasad and Others vs. Shri Ganpati Sharma and Anr.** decided on 27.10.1999 to the respondents therein to consider the claim of the applicants therein for accord of arrears. Since the decision of the High Court has been taken cognizance while deciding the aforesaid O.A., I follow the same.

5. The objection raised by the learned counsel of the respondents that the applicants, without resorting to Section 20 of the A.T. Act, have come straightway before this Tribunal is overruled as after attaining the finality of the issue involved and granting the benefit to the applicants therein, the respondents, as a model employer, should have accorded the same benefit to the similarly situated persons like applicants.

6. In the result, OA is disposed of with a direction to the respondents that in the event the applicants furnish the material record of their working as labourers, their claim for grant of arrears shall be worked out on the basis of the decision in the case of **Banwari Lal vs. Union of India and others** in OA No.1528/1997 decided on 31.10.1997 and a detailed and speaking order shall be passed within a period of two months from the date of furnishing of the material record of their working by the applicants and in the event, the applicants' records are found to be justified, the applicants should be reimbursed the same within one month thereafter. No costs.'

Reference has also been made to the decisions of the Tribunal in OA 2927/2003 passed on 4-12-2003 and which have been complied with by the respondents as per the submissions made in reply to CP

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257/2004 in the said OA. While the respondents had contested the admissibility of the CP for the reason that there was a delay of more than 20-25 years in the applicants in the said OA in filing the OA; they had not even filed an application for condonation of delay in filing of the OA. The contention of the respondents had been that the Tribunal could not have passed the orders in the said OA beyond their jurisdiction, as under the rules relating to limitation under Section 21 of the Administrative Tribunals Act, 1985, such application is not to be filed. However, from what has been submitted by the respondents in reply to the said CP, it has not been clarified whether the payments made to the individuals as listed in paragraph (e) under paragraph 6 of their reply whether these included the amounts as payable to the applicants on completion of 120 days of services or for the periods different from 120 days in the case of each individual applicant.

4. The respondents have, however, taken me through their reply in which they have admitted that the applicants were initially appointed on casual/temporary basis between 1973 & 1978 and their services had been regularized between 1973 & 1980 on different dates and further that they approached the Tribunal for the first time for claiming the back wages after a long delay of more than 20-25 years without filing any application for condonation of delay in filing the OA. In this connection, they have referred to the decisions of the Hon'ble High Court in **Ragho Singh v. Mohan Singh & Ors.** (2001 (9) SCC 717) in which it has been held that in the absence of an application seeking condonation of delay, the petition is liable to be dismissed. Reliance has also been placed on the decisions of the Hon'ble Supreme Court in **S. Jaffar Sahib v. Secretary, APPSC & Ors.** (1996 (11) SCC 753) in which the Hon'ble Supreme Court dismissed the petition solely on the ground of delay. Referring to the decisions of the Hon'ble Supreme Court in Govind Singh V. UOI in which the application was found not maintainable solely on the ground of delay in approaching the Court, a view seems to have been taken that the Central Administrative Tribunal had not been set up when the cause of action had arisen in the said case.

5. The applicants have, however, proceeded to file their rejoinder in which they have talked of entitlements and privileges admissible to temporary railway servants under Chapter XXII of the IREM. In this regard, a reference has been made to the decisions of the Principal Bench of the Tribunal as were appealed against by the Union of India & Ors. in the Supreme Court of India and which was decided on 18.2.92 holding that the plea of the applicants that they have worked for 120 days in the organization of the respondents had not been denied by the respondents. Accordingly, the Hon'ble Apex Court held that they were eligible for temporary status with back wages and that the applicants in the said Civil Appeal were eligible for back wages. Reliance has also been placed on the decisions of the Hon'ble Delhi High Court in Civil Writ Petition No.5247/97 in which it has been observed that 'There is no reason as to why the petitioners should be denied the reliefs when the persons similarly situated have been granted the reliefs in the aforesaid LCAs by the Central Govt. Labour Court, New Delhi'. The applicants have referred to the decisions of this Tribunal in OA 2610/2002 as passed on 11-10-2002 in which similar payments have been allowed in the light of the decisions of the Hon'ble High Court in CWP No.5247/97 passed on 27-10-99 as referred to in OA 2040/2002 dated 5-8-2002.

6. Ld. counsel for the respondents, however, has vehemently opposed the application and the arguments advanced by the applicants as well as their learned counsel in support of their claims for grant of pay scales from the dates they had completed 120 days' required service and that their pay be fixed accordingly on the ground that the claims related to the period prior to the setting up of this Tribunal and further that the applicants did not submit any representation on the subject at the appropriate time. Their having approached the Tribunal after almost 30 years of the incident having taken place is thus not justified. According to them, this application is fit to be dismissed on the ground of limitation alone. In this connection, they have placed reliance on the decisions of the Hon'ble Supreme Court in **S. Jaffar Sahib v. Secretary, APPSC & Ors.** (supra) in which, among other things, it has been held that delay in seeking relief cannot be allowed.



The observations of the Hon'ble Apex court in this regard are as under:-

4. The appellant appeared in person in this Court and contended that appointments having been made contrary to the Rules of Reservations, the said appointments are invalid and inoperative. The appellant's right to be appointed was illegally taken away and therefore this Court should annul the appointment of the respondents forthright and direct reconsideration of the appellant's appointment. We are unable to accept this contention at this belated stage. As has been stated earlier the appellant challenged the appointment of the respondents before the Tribunal in the year 1987 and the Tribunal did not interfere with the appointments made in the year 1981 and the said order became final not being challenged in any higher court. The appellant then filed second round of petition in the year 1990 which was rejected by the Tribunal on the ground of laches and the application for review stood dismissed on the ground that there is no error of law apparent on the face of the order which can be reviewed by the Tribunal. On the admitted facts that appointment of respondents to the post of Deputy Collector was made in the year 1981, an application before the Tribunal in the year 1990 could not have been entertained after lapse of 9 years. Then again there is an additional hurdle on the part of the appellant namely affected persons are not made parties to the proceedings. It is too well settled that without impleading a person as a party whose rights would be affected, no court/tribunal can pass any order against him. In the aforesaid premises we find no justification for our interference under Article 136 of the Constitution with the impugned order of the Tribunal. The appeal is accordingly dismissed but in the circumstances there will be no order as to costs."

Reference has also been made in this regard to the decisions of the Hon'ble Supreme Court in **Ragho Singh v. Mohan Singh & Ors.** (2001 (9) SCC 717) in which it has been held that appeal filed beyond time is liable to be dismissed in absence of an application under S-5 of the Limitation Act, 1963 for condonation of delay.

6. The learned counsel for the applicants has, however, insisted on the merit of the fact being seen and again referred to the decisions of this Tribunal in OA 2623/2003 in which some of the cases as have been referred to above by the parties, have also been referred to. The ld. counsel for the applicants has argued that once the merits of the

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case have been admitted by the respondents, it will be in the fitness of things that they check their records to find out when the applicants had completed 120 days of service in order to be eligible for the scales of pay which they have prayed for. According to them, the contention of the respondents that it will be difficult to locate the relevant records after the lapse of about 30 years is not valid, as respondents are supposed to keep such records in order to finalize the pension/retirement related matters which involve benefit of some period of service prior to grant of temporary status being allowed in such cases. They have also contended that relevant information in this regard should be available in the service books prepared in respect of the applicants who have been in the service of the respondents for the last about 30 years. On the question of the applicants not having submitted representations and having rushed to the Tribunal for reliefs after 30 years, Id. counsel for the applicants has submitted that this aspect of the matter has already been discussed and decided by the Lucknow Bench of this Tribunal in OA 327/95 decided on 30-10-2002, in which, it has been held that 'As a model employer, it is the duty of the respondents to consider the case of all the employees in accordance with the rules and regulations. It is the duty of the respondents to prepare the seniority list and act fairly rather than to compel every employee to rush to this Tribunal or keep representing time and again. When the respondents had failed to perform their duty, it is improper for them to insist that firstly a representation must be put forward before the relief due to the person can be granted. Thus we have no hesitation in negating such a plea'.


7. On consideration of the rival contentions of the parties, I find that the respondents have granted temporary status to the applicants later than they had completed 120 days of service. They have nowhere disputed the claims of the applicants that they should have been granted temporary status earlier than the dates on which it was actually granted to them. They have simply reiterated their arguments that the applicants have approached the Tribunal after 20-25 years and which attracts the provisions of the Limitation Act and also that they have not even cared to file an application for condonation of delay



in filing the OA. They have also cited certain decisions to support their arguments on this count. However, on closer perusal of the decisions on the subject, it is observed that the said decisions are not straightaway relevant to the case of the applicants. The fact of the matter essentially is that temporary status has already been granted to the applicants and their claim that they had completed 120 days of service earlier than the date on which the temporary status was granted to them, has not been disputed by the respondents. The question of their having furnished any documentary evidence to dispute the claims of the applicants normally would not arise, as they have not contested the claims of the applicants. Moreover, the submissions of the applicants and also their learned counsel that it should be possible for the respondents to verify their records so as to find out the dates on which the applicants had completed the 120 days of service appear to be quite significant, particularly when it is seen that the respondents will have to have the relevant information on the qualifying service which each of the applicants will have rendered till the dates of their superannuation.

8. I am, therefore, inclined to agree with the learned counsel for the applicants that the service cards and the other relevant information for the part of service which the applicants had rendered prior to the grant of temporary status to them cannot be dispensed with by the respondents and, therefore, should be made use of for verifying the claims of the applicants and giving them due consideration in the light of the decisions as have been relied upon by the applicants.

9. In consideration of the above, I am, therefore, inclined to partly allow this OA with a direction to the respondents that they verify the claims of the applicants in regard to their having rendered 120 days of required service earlier than the dates on which they were appointed on regular basis with reference to their records, service cards, service books etc. and to see whether they became eligible for regular appointment on dates prior to the dates on which they were finally appointed on regular basis. If on such verification, it is found that the applicants had completed 120 days of service prior to the said



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dates and had thus become eligible for regular appointment earlier, the respondents shall consider giving them the benefit of regular appointment from the date on which they had completed 120 days of service and had fulfilled the other conditions for regularization of their services keeping in view the scheme on the subject and also the decisions of this Tribunal and the Hon'ble High Court/Supreme Court as referred to above and in the orders of this Tribunal as cited in OA 2623/2003. The respondents shall also grant a personal audience to the applicants so as to elicit any further necessary information on the subject from them so as to resolve the matter in the light of the above directions at the earliest, in any case, within a period of three months from the date of receipt of a copy of this order. No costs.



(Sarweshwar Jha)
Member (A)

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