

IN THE HIGH COURT OF JUDICATURE AT BOMBAYNAGPUR BENCH : NAGPUR**(I) WRIT PETITION NO.250 OF 2008**

1) Union of India, through General
Manager, Central Railway,
Mumbai – CST.

2) The Divisional Railway Manager,
Central Railway, Nagpur.

... Petitioners

- Versus -

Pradeep Yadawarao Thakre,
aged about 47 years, occupation :
Senior Clerk working under the
Divisional Railway Manager
(Personnel), Central Railway,
Nagpur.

... Respondent

Shri R.S. Sundaram, Advocate for Petitioners.

Smt. Rashi Deshpande, Advocate for Respondent.

(II) WRIT PETITION NO.276 OF 2008

1) Union of India, through General
Manager, Central Railway,
Mumbai – CST.

2) The Divisional Railway Manager,
Central Railway, Nagpur.

... Petitioners

- Versus -

Shri Manoj Kumar Gupta,
aged about 39 years, occupation :
Welfare Inspector working under
the Divisional Railway Manager
(Personnel), Central Railway,
Nagpur.

... Respondent

Shri R.S. Sundaram, Advocate for Petitioners.

Smt. Rashi Deshpande, Advocate for Respondent.

(III) WRIT PETITION NO.470 OF 2008

1) Union of India, through General
Manager, Central Railway,
Mumbai – CST.

2) The Divisional Railway Manager,
Central Railway, Nagpur.

... Petitioners

- Versus -

Gulab Shankarrao Umredkar,
aged about 39 years, occupation :
Senior Clerk working under the
Divisional Railway Manager
(Personnel), Central Railway,
Nagpur.

... Respondent

Shri R.S. Sundaram, Advocate for Petitioners.

Smt. Rashi Deshpande, Advocate for Respondent.

**CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.**

DATE : 15 FEBRUARY 2022

ORAL JUDGMENT (PER NITIN JAMDAR, J.) :

These three petitions involve similar facts and common questions of law and, therefore, they are being disposed of by this common judgment.

2) In Writ Petition No.250/2008, Respondent was appointed as Diesel Assistant on 2 November 1989 in Central Railway, Nagpur Division. He was injured while on duty on 9 January 1993, and upon medical examination, he was declared fit in medical category B-2. A screening test was held, and the Respondent was appointed as Junior Clerk in the grade of Rs.950-1500/- by order dated 29 April 1993. The Respondent claimed refixation of pay in the grade of Rs.1200-2040/- from 29 April 1993 with all consequential monetary and promotional benefits. This request was rejected by order dated 20 January 2005 and, therefore, the Respondent filed Original Application No.2060/2005 seeking reliefs sought for in his representation.

3) In Writ Petition No.276/2008, Respondent was appointed as Diesel Assistant on 23 April 1988 in Central Railway, Nagpur Division. Upon medical examination, he was decategorised to the "B-2" category. A screening test was held, and the Respondent was appointed as Junior Clerk in the grade of Rs.950-1500/- by order dated 4 March 1992. The Respondent claimed refixation of pay in the grade of Rs.1200-2040/- from 4 March 1992 with all consequential monetary and promotional benefits. This request was rejected by order dated 20 January 2005, and, therefore, the Respondent filed Original Application No.2061/2005 seeking reliefs sought for in his representation.

4) In Writ Petition No.470/2008, Respondent was appointed as Diesel Assistant on 27 October 1989 in Central Railway, Nagpur Division. Upon medical examination, he was decategorised to the "B-2" category. A screening test was held, and the Respondent was appointed as Junior Clerk in the grade of Rs.950-1500/- by order dated 27 February 1993. The Respondent claimed refixation of pay in the grade of Rs.1200-2040/- from 27 February 1993 with all consequential monetary and promotional benefits. This request was rejected by order dated 20 January 2005, and, therefore, the Respondent filed Original Application No.2059/2005 seeking reliefs sought for in his representation.

5) The Respondents filed applications for condonation of delay in filing Original Applications, and it was stated that the Respondents were not aware of their legal entitlement, and it is upon a friend informing them that they came to know about their entitlement and filed Original Applications. The Central Administrative Tribunal considered the applications for condonation of delay and relying on the decision of the Apex Court in the case of *M.R. Gupta v. Union of India and others*¹ wherein it is held that matter of refixation of pay is a continuous cause of action and bar of limitation is not applicable, condoned the delay in filing Original Applications.

6) Reply-affidavits were filed to the Original Applications. The Respondents filed their rejoinders. The Tribunal by the impugned orders accepted the contentions of the Respondents and held that the Petitioners, instead of placing the Respondents in the equivalent grade of Rs.1200-2040, appointed the Respondents in the lower grade of Rs.950-1500 and that too when 30% of basic pay being paid from the date of medical de-categorisation. The Tribunal also referred to Rule 1314(c)(1) of the Indian Railway Establishment Manual (Volume I), wherein the Tribunal found that in case of medical de-categorisation, the Establishment is expected to take a proactive role in extending the

¹ AIR 1996 SC 669

protection to such employees. The Tribunal also recorded a finding of the fact that three vacancies of Senior Clerk were available in the Personnel Department on 3 January 1993, and there was no impediment for the Petitioners to extend the benefits sought for by the Respondents. The Tribunal accordingly allowed the Original Applications and directed the Petitioners to refix the pay of the Respondents in the pay-scale of Rs.1200-2040/- from 27 February 1993 with consequential benefits. Challenging these orders of the Tribunal, dated 20 July 2007, the Central Railway is before us in these three petitions.

7) We have heard Shri Sundaram, learned Counsel for the Petitioners, and Smt. Deshpande, learned Counsel for the Respondents.

8) The first challenge of the Petitioners is to the orders of the Tribunal condoning the delay in filing Original Applications. It is contended that no cogent reason is given by the Respondents in approaching the Tribunal late and, therefore, the delay ought not to have been condoned. We do not find that this challenge has any substance. The Respondents had challenged the order dated 20 January 2005 issued by the Petitioners rejecting their claim by filing Original Applications in the year 2005 itself. The

Respondents have stated that they were not aware of their legal entitlement, and they came to know of their legal entitlement through their colleague whom they have named in the applications. The Tribunal rightly held that the cause of the Respondents was a recurring one and, therefore, covered by the decision of the Apex Court in the case of *M.R. Gupta* (supra). The challenge to the orders of the Tribunal condoning delay is, therefore, negatived.

9) On merits, Shri Sundaram, learned Counsel for the Petitioners, submitted that the Tribunal had misconstrued Rule 1314(c)(1) of the Indian Railway Establishment Manual (Volume I) to the effect that the Tribunal has not considered that this Rule provides for a limitation of three years for review and after a period of three years, the same cannot be reopened. The learned Counsel submitted that the Respondents had taken the post of Junior Clerk on the pay scale given to them without demur and that no vacancies have arisen from that date of their appointment as Junior Clerk and vacancies arising thereafter in the posts equivalent to the one, which they were holding, would be irrelevant as no review could be taken after three years of medical de-categorisation.

10) Smt. Deshpande, learned Counsel for the Respondents, submitted that there is no such embargo in the Manual and entitlement of the Respondents is based on the Circular issued by the Deputy Director of Establishment, Railway Board as far back as on 2 September 1977 regarding 30% to be added to the minimum as well as a maximum of the scale of pay for identifying equivalent posts. The learned Counsel submitted that there is no such concept of three years' limitation either in the Manual or in this Circular.

11) As regards vacancies not arising and the period of three years from medical de-categorisation is concerned, the Tribunal has recorded a finding of the fact that there were such vacancies within a period of three years, i.e. on 3 January 1993. Secondly, the manner in which the learned Counsel of the Petitioners has presented before us Rule 1314(c)(1) was not the case of the Petitioners before the Tribunal that there exists a period of limitation. Thirdly, we find that Rule 1314(c)(1) is an explanatory portion of the Rule, and it does not specifically incorporate any embargo of a period of three years. The Respondents' entitlement arises under the Circular of 1977, and even in the impugned orders, it is stated that the Respondents' entitlement was not being disputed. A specific Rule must exist for taking away this right, which stood vested in the Respondents.

The Tribunal, therefore, considering the right vested in the Respondents and the fact that there existed the vacancies as on 3 January 1993, proceeded to give benefit to the Respondents. That being so, we do not find any error in the view taken by the Tribunal.

12) As regards the contention of the learned Counsel for the Petitioners that the finding of fact that there were three vacancies of Senior Clerk available on 3 January 1993 is not correct, we note that the Tribunal in the impugned orders has recorded that the Respondents (Petitioners) have not challenged the statement. Even otherwise, in writ jurisdiction, unless this finding of fact is shown to be perverse, we would not interfere with the same and nothing is shown that it is perverse. Therefore, even assuming all contentions of the learned Counsel for the Petitioners on the law to be accepted, i.e. a period of limitation or that review cannot be taken after the period of three years, it is not applicable since even before three years there were vacancies, yet benefits were not extended.

13) The next contention advanced by the learned Counsel for the Petitioners is that even as per Respondents' own showing, their entitlement arose in the year 1993 and they had filed the

Original Applications in the year 2005 and merely because the Tribunal allowed the applications for condonation of delay, the monetary benefit with effect from 1993 could not have been extended, and it should have been restricted to three years prior to the filing of the Original Applications. As stated earlier, there is no reply to the applications for condonation of delay. Even in the reply on merits to the Original Applications and additional reply, this ground is not specifically taken. Furthermore, in the light of the decision of the Apex Court in the case of *M.R. Gupta* (supra) that in the matter of pay fixation, it would be a continuous cause of action, the Respondents cannot be non-suited from claiming the benefits from 1993.

14) We also have to take into consideration that the Respondents, who were medically de-categorised having suffered injuries on duty, are persons with disabilities and a different approach needs to be kept in mind when the Court is considering the challenge in the writ jurisdiction.

15) Considering these facts, we do not find that a case is made out for interference in the writ jurisdiction.

16) Writ Petitions are accordingly dismissed. Rule is discharged. No order as to costs.

(ANIL L. PANSARE, J.)

(NITIN JAMDAR, J.)

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