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Central Administrative Tribunal, Principal Bench

O.A. No.1069 of 2001

New Delhi this the 24th day of October, 2002

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. M. P. Singh, Member (A)

Shri D.D. Sharma,
S/o Shri Bhoo Dev Prasad,
R/o RZ/E - 190, Jal Vihar Colony,
(Bani Camp) Najafgarh, New Delhi-43.
working as Asstt. Wireman/Wireman
under Respondent No.3

- Applicant

(By Advocate : Shri T.C. Aggarwal)

Versus

Union of India through ~

1. The Secretary, Ministry of Information
& Broadcasting, Shastri Bhavan,
New Delhi-1.
2. The Chief Engineer,
Civil Construction Wing (A.I.R.)
Soochna Bhavan, Lodi Colony Complex,
Lodhi Road,
New Delhi.
3. The Engineer-in-Chief,
Dte. General all India Radio,
Akashvani Bhavan, Parliament Street,
New Delhi-1.

- Respondents

(By Advocate : Shri K.C.D. Gangwani)

ORDER (ORAL)

Mr. Justice V.S. Aggarwal, Chairman:

By virtue of the present application, Shri D.D. Sharma, applicant seeks that respondents should publish the Recruitment Rules for the post of Electrician and the mode be made 100% by promotion. He has also prayed that the applicant be given the pay of the post of Electrician which work he was handling from the date he has been posted in the Station H.P.T., Pitampura and he should be given the pay scale in terms of the Assured Carrier Progression Scheme.

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2. The applicant had been appointed as Assistant Wireman. As a result of the Arbitration Award, he was appointed as Wireman. His grievance is that he has been put to work as Electrician from the date he joined the services and, therefore, he has been handling the higher post. Consequently, he should be paid the scale of Electrician. Applicant has also contended that one Shri Ranbir Singh, who is junior to him, has been given the higher pay scale than the applicant and, therefore, the applicant has been discriminated. Needless to state, the applicant ^{ion} as such has ^{been} contested.

3. During the course of submissions, applicant's learned counsel did not press one of his prayers with regard to publication of Recruitment Rules for the post of Electrician and the mode of recruitment should be 100% by promotion. Consequently, in the face of such an application having been made, no opinion is being made in this regard. As regards Shri Ranbir Singh's appointment is concerned, during the course of submissions, it was conceded that his appointment was made directly to the post of Electrician in the year 1995 and at that time, the applicant had not applied for that post. Once that is so, indeed the applicant cannot have any grievance regarding the appointment of Shri Ranbir Singh. The main stress of the applicant's argument was that though he was appointed as Assistant Wireman and later on appointed as Wireman, he has been discharging the duties of the Electrician and, therefore, he should be given the scale of the post of Electrician. In support of this argument, he strongly relied upon the decision of the Hon'ble Supreme Court in

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the case of Jay Dev Gupta Vs. State of Himachal Pradesh
& Anr. (AISL^{Journal} 1999 (1) 110).

4. At the outset, we deem it necessary to mention that judicial precedent is binding with regard to the ratio of the decision. We note that every case has its own docket and peculiar facts. Decision so rendered would be applicable to those facts, unless principle of law is laid. In the case of Jai Dev Gupta (supra), the point for consideration before the Supreme Court was pertaining to the period of limitation in terms of Section 21 of the Administrative Tribunals Act, 1985.

5. Perusal of the facts also shows that in that cited case, Shri Jai Dev Gupta had been appointed to the post of Studio Artist and was discharging the duties of Lecturer in Commercial Arts. The Tribunal had allowed that application. But this question as to whether the application should have been allowed or not was not subject matter of the controversy before the Supreme Court. Therefore, the said case decided must be held to be distinguishable.

6. Our attention has been drawn towards the certificates purpotted to have been issued by the Executive Engineer (Electrical) and Assistant Engineer (Electrical) dated 8/10.8.2000 and 7.1.2000 which are reproduced for the sake of clarity below :-

"TO WHOM IT MAY CONCERN

It is certified that Sh. DEV DUTT (W.M.)
Electrical department has been working in
O/O the Asstt. Engg. civil construction
wing of All India Radio, Ministry of

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Information & Broad casting w.e.f.24.11.1988 to till date.

His nature of duties includes maintenance inspection of wiring and to attend to substation duties. He also have knowledge of maintenance of LogBook and he is expert in maintenance of Switch gair/HT/LT Pannels.

His Performance in maintenance of Electrical Installation is excellent as per my knowledge.

He bears a good moral character.

I wish him success in life."

"TO WHOM IT MAY CONCERN

It is certified that Shri D.D. Sharma Wireman has been working in Civil Construction Wing of All India Radio, Ministry of Information & Broadcasting w.e.f. 24.11.1988. His nature of duties includes maintenance in action of wiring and to attend to sub-station duties. He also have knowledge of maintenance of Log-Book and he is expert in maintenance of HT/LT pannel.

His performance in maintenance of electrical installation is excellent as per my knowledge.

He bears a good moral character.

I wish him success in life."

7. Perusal of the above said letters only reveals that the applicant has been working in the Office of Assistant Engineer (Electrical), Civil Construction Wing and his duties were of maintaining the wiring and attending the sub station duties. The aforesaid certificates only mention about the good work of the applicant in this regard.

8. Can the applicant on the basis of these certificates claim that he is entitled to the salary of the Electrician? In our view, answer has to be given in the negative. The applicant feels shy of producing any

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appointment letter as Electrician. Our attention has not been drawn to any order of posting whereby the applicant was asked to discharge the duties of Electrician.


8. In the face of the aforesaid decision, we are of the considered opinion that the applicant cannot claim that he is entitled to the scale of Electrician and consequent upon which arrears should be paid to him.

A 9. However, during the course of submissions, it had been pointed that, in any event, the applicant is entitled to the benefit of Assured Carrier Progression Scheme. To this, learned counsel for respondents, on instructions, has stated that such benefit shall be granted to the applicant in terms of the said Scheme.

10. In view of the aforesaid, present OA is allowed in part. It is directed that the benefit of Assured Carrier Progression Scheme should be given by the respondents to the applicant and the payment of arrears should be paid to him within a period of two months from the date of receipt of a certified copy of the present order. In case the arrears are not paid within the stipulated time, the applicant will be entitled to grant of interest at the rate of 9% on arrears till the payment of arrears is paid.

11. For the other reliefs, the application is dismissed.


(M.P. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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