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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO.676 of 1994

Decided on: May 31, 1999
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CORAM: HON'BLE MR.K.MUTHUKUMAR, MEMBER(A)
HON'BLE MR.JASBIR S.DHALIWAL, MEMBER(J)

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Smt.Suman Bala, wife of Sh.R.K.Sandil, working as Casual Typist under Assistant Engineer (Soil Mechanics), Office of the Chief Administrative Officer (Constn.), Northern Railway, Kashmere Gate, Delhi.

...Applicant

By Advocate:Sh.B.S.Mainee

Versus

Union of India, through:

1. The General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, State Entry Road, New Delhi.
3. The Chief Administrative officer (Constn.), Northern Railway, Kashmere Gate, Delhi.

...Respondents

By Advocate:Sh.P.S.Mahendru

ORDER

(Delivered by Hon'ble Mr.Jasbir S.Dhaliwal, JM)

This Original Application has been filed by Smt.Suman Bala pleading that she was initially engaged as a Mobile Booking Clerk/Casual Typist on 10.5.1983 under Respondent No.2, through letter dated 7.5.1993 (Annexure A-2). She worked as a Typist from 10.5.1983 to 3.3.1984 and thereafter, she was again engaged as a Typist vide letter dated 27.4.1984 (Annexure A-3). During the second spell, she worked as a Typist from 4.5.1984 to 31.7.1984. Certificate, mentioning that she worked as a Casual Typist for the above mentioned periods, is Annexure A-1 to the O.A. These facts are

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not denied by the respondents, but the only stand taken by them is that she was engaged as a Casual Labour. In Annexure A-2, her letter of appointment as a Typist on casual labour rates, a note has been given that she "is also on the select list for English Typist". After being disengaged for some period, she was re-engaged on 2.2.1985 under Assistant Engineer (Social Mechanics) under Respondent No.3. She claims that she has been working as a Typist since this date and was given temporary status on 1.8.1985. Respondents, however, plead that she was re-engaged on 2.2.1985 as only a skilled labour and was given temporary status as skilled khalasi w.e.f. 4.2.1986. As per Annexure A-4, a proposal was put up for giving her scale rate which was sanctioned vide orders dated 19.8.1985 from the due date. On a query being made regarding the scale of pay to be given, the scale of Rs.260-400 was proposed, but she was given the grade of Rs.225-308. The Trade Unions had raised objections that the staff is utilized as Clerks/Typists, but were being paid lesser salary than what is due to them. In a meeting held, it was decided at the G.M. level that staff being utilised as Clerks and Typists should be made payment in the grade of the post in which they are working (Annexure A-5). The Assistant Engineer, under whom the applicant was working, put up a proposal for grant of scale of Rs.950-1500 through letter dated 26.9.1990 (Annexure A-6). However, no decision was taken and she continued on the scale which on revision came to be Rs.825-1200. She submitted representation dated 14.12.1993 claiming that she has continuously been working as a Typist and should be given the scale of that post. She submitted another representation, dated 19.4.1990, with the same claim and it was apparently thereafter that Annexure A-6 was put up. Receipt of aforesaid representations, attached as Annexure A-7

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collectively, is not denied by the respondents. She claims that her many other colleagues, who were engaged as Casual Typists, have already been given the scale of Typists and she mentions the names of Smt. Shashi Saxena, Smt. Darshana Kumar and Miss Jasbir Kaur (Annexures A-8 & A-9). Placing reliance on the judgment of the Hon'ble Supreme Court in the case of Surinder Singh, reported as : 1986 ATR (1) Page 172, on the principle of 'equal pay for equal work', she claims to be placed in the scale of Rs.950-1500 which is the minimum scale of a Typist. She has prayed for a direction to the respondents to fix her salary in the Grade of Rs.950-1500 with all consequential benefits of arrears and increments etc.

2. After getting about 8 adjournments and imposition of costs of Rs.1,000/-, respondents filed a written reply pleading therein that she was engaged only as a skilled casual labour on 2.2.1985 and has been given the grade of skilled khalasi vide orders dated 15.12.1986. She is still holding the substantive position of skilled casual khalasi as per the service record. In reply to Para 4.10 it is pleaded that putting up a proposal does not mean that the competent authority has approved the same. This refers to the proposal, Annexure A-6. There is no order of the competent authority for utilising her services as a Typist. It is in reply para 4.16 that by a subsequent addition (which may be interpolation also), it has been mentioned that Annexure A-6 is not a document from the official file. They have denied that she was engaged as a Typist or is a Typist. Applicant has filed a rejoinder.

3. This O.A. was earlier heard by a Bench of the Tribunal and was disposed of vide order dated 25th day

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of July, 1995. Respondents filed a Review Application pleading therein that the Bench had relied upon Annexure A-6, dated 26.9.1990, which the respondents claimed, was not a document on the official record. The Review Application came to be listed for arguments under order dated 10.2.1997 and on the plea aforesaid, the Bench allowed the R.A. for re-hearing of the case on merits.

4. We have heard the Ld. counsel for the parties and have examined the material on record.

5. Applicant's claim is that right from her initial appointment w.e.f. 10.5.1983, upto 31.7.1984, with a break of about 2 months in between, she had worked as a Typist. Her further claim throughout has been that after being re-engaged w.e.f. 2.2.1985 under Respondent No.3, she has been utilized as a Typist only. There is no dispute that she was initially engaged on daily wage rate basis as a casual labour and later on, w.e.f. 2.8.1985, as a skilled casual labour and given temporary status w.e.f. 4.2.1986 in the scale of khalasi. Respondents have denied her working as a Typist. The question to be determined by this Bench, thus, is as to whether she has worked as a Typist w.e.f. 2.2.1985, and if not, what duties the respondents have taken from her. During the course of arguments, after going through documents - Annexures A-1 to A-5, we had put this specific question to the Ld. counsel for the respondents, Sh.P.S.Mahendru to assist the Bench on the aspect that if she was not utilised as a Typist while carrying the designation of a skilled khalasi, what duties had been performed by her or what kind of job or work has been taken by the respondents from her. The ld. counsel, however, shouted at the Bench insisting that it was not his

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duty and it was for the applicant to prove it. We were constrained to observe that the parties are to assist the Court in arriving at a finding of truth on facts as per the facts and if the record is available, as per the record and that they should assist the Court. The impression created in our mind was that the attempt of the respondents and Govt. Counsel was not in assisting the Bench for doing justice, but only to put stumbling blocks by denying everything. We expected the ld. counsel for the respondents atleast to assist us fully in this regard as an officer of the Court, but we regret to observe that such an assistance was not forthcoming. Be that right or wrong, we had also drawn attention of the ld. counsel for the respondents regarding certain additions/alterations/interpolations which appeared to have been made in the written reply and by which Annexure A-6 was denied to be a document from the official record even though it was not denied in their reply to Para 4.10 which had specific reference in this regard in the O.A. No satisfactory explanation emerged. Finding ourselves in such a situation and taking note of another fact that applicant had produced a letter dated 4.2.1994 which also mentions: "..... it is proposed to make the following local temporary adhoc arrangement for Smt. Suman Bala who is working as T/S Skilled Khallasi but performing the job of a typist, since her joining this cell ...", we observe that, finding her work to be quite satisfactory, a proposal was put up for promoting her on temporary/adhoc basis under Circular No.940-E/5/Const., dated 1.4.1991, in the scale of Rs.950-1500, as a temporary Typist. This document was brought on record through an M.A. and official respondents went on to deny this also. When we directed production of the relevant correspondence file, a file containing correspondence upto the year 1990 was produced for perusal and no document/file after that date, particularly for the year 1994, has been produced by the respondents for reasons best known to them. It was in these circumstances that the Bench passed an order on 9.12.1998 observing that

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the respondents have not come out specifically as to what work they are taking from the applicant even though her designation is a skilled khalasi, with temporary status. The Bench observed that letters dated 26.4.1990 and 4.2.1994 (Annexures A-6 to the O.A. and A-1 to MA 1859/97) appear to have been issued from HQs office, Kashmere Gate, and were put up before the Dy.C.E./C/G.. Names of officers were also legible from these two letters. Since the respondents had denied these documents, the Bench observed that as it was nobody's case that signatories to these letters were not working in the respondent department, a direction was issued to Respondents 2 & 3 to obtain affidavits of those four officers whose signatures appear to be on the aforesaid Annexures A-6 and A-1 and their names were mentioned in the order, by supply of copies of these letters to those officers. Respondent No.3 was particularly directed to file an affidavit clearly stating as to what duties the applicant has been performing while carrying her designation of temporary skilled khalasi, if not from 2.2.1985, atleast since the issue of letters, Annexures A-6 and A-1, above-mentioned. It was made clear in this order that any delaying tactics, or an attempt to delay the filing of such affidavits, shall raise an adverse inference against the relevant party on which legal consequences may follow. We bring it on record with a heavy heart that respondents have taken even these directions in a very light manner. On 4.1.1999, MA No.82/99 was filed for extension of time for complying with order dated 9.12.1998, pleading therein that Sh.G.S.Chatri was out of station for about 15 to 20 days and, thus, his affidavit could not be obtained. Sh.B.K.Chadha has given in writing that he is not in a position to admit or deny his signatures on the letter shown to him without having a look on the original documents. Regarding the core issue as to what duties the applicant was performing,

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it has been mentioned that a report was called from the Supervisor(Works) of the office where the applicant was working and as per his report, there is no evidence of specific duties being performed by her since 26.9.1990. Said Supervisor has been instructed to further scrutinize the records and to state the duties being performed by the applicant for which further time has been sought. Now, more than 3 months have passed since then and the respondents are yet to show any further development in finding out as to what work the respondents had been taking from the applicant, if she was not working as a Typist. In this application it was mentioned that Shri P.R.Khanna was approached by one Shri Romi Mago, O.S.Grade II of Personnel Branch, but Shri Khanna had refused to give the affidavit. Applicant has filed a reply to this application and has also filed a separate MA wherein it has been mentioned that Sh.P.R.Khanna had given an affidavit to Shri Romi Mago in compliance with the directions of this Tribunal and an affidavit has been produced by the applicant which is on record. It

clearly mentions that he was working as AEN(C) in the office of Respondent No.3 and on 26.6.1990, he had put up a note (which is Annexure A-6) to the effect that "Smt Suman Bala who was working as a T/S Skilled Khallasi but performing the job of a typist since her joining this cell." It is further mentioned that "note dated 26.9.90 was signed by the Deponent and thereafter orders were passed by the Dy. C.E. (C)/G Kashmere Gate, Delhi in terms of which the Deponent was directed to discuss the matter with APO(C)".

6. We have been constrained to mention all this not only for doing justice in the case but also to bring on record our consternation from the attitude adopted by the respondents which is clearly a deliberate attempt to mislead the Court. We have also

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examined letter submitted by Sh.B.K.Chadha. though the Court is not to act as an expert on perusing of signatures, but we must mention here that the stand taken by Shri Chadha, apparently on the basis of the provisions of Indian Evidence Act, that he cannot state anything regarding his signatures on letter dated 4.2.1994, is nothing but an attempt to put spokes in the wheels of justice. To a naked eye, the signatures on Annexure 'D', placed on record by the respondents alongwith MA 82/99, appear to be akin to the signatures on letter dated 4.2.1994.

7. The fact that Shri Chatri was to be back after 15-20 days and that the supervisor, after passage of many months has still failed to submit his report, are facts on which this Bench has to draw adverse inference against the respondents. We are given an impression that respondents are deliberately trying to delay supply of the relevant information which, if produced, could have gone against them. It would have been so simple to make enquiries from the office where the applicant has been working and to enquire from her colleagues, from her immediate superiors and, if possible, to record their statements, to find out as to what kind of duties the applicant has been performing. We are not happy even with the affidavit filed by Respondent No.3 wherein also a direct reply has not been given on the question posed to him as to what duties the respondents had been taking from the applicant. He has also reiterated that Sh.G.S.Chatri was out of station and was likely to come in 15 to 20 days. He mentions that applicant was performing the duties as a skilled khalasi and on occasions had typed official letters also. Question which we posed to ourselves is what other skill ^{other} than typing the applicant possesses. If she was a skilled labour, unlike an unskilled labour, one has to fall back on this question as to what skill other than

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typing she could have performed. We are not assisted on this aspect by the respondents. While she has been given the designation of a skilled khalasi, respondents are still not forthcoming as to what skilled job, if not ^{of} a typist, she was performing. In these circumstances, we are justified in coming to the conclusion that the stand of the applicant has been correct. Even the sequence of events shows that she must have been performing the duties of a Typist as she did this job right from 1983 as is shown by Annexures A-1 to A-3. Since Sh.P.R.Khanna has filed an affidavit regarding Annexure A-6, dated 26.6.1990, stating therein that this proposal was put up by him for grant of scale of a Typist and was discussed with Dy. C.E. also, we have to hold that the respondents have taken a false stand deliberately. They have withheld the relevant official file when existence of such documents is proved fairly well from the affidavit of Sh.P.R.Khanna. It is also stated in the affidavit that the applicant performed the job of a typist since her joining that Cell. That she performed duties other than a Typist, has not been proved by the respondents and one can legitimately raise a presumption that even after 26.6.90 she was performing duties as a typist. Annexure A-7 ^{A/6-A} (collectively) are the representations of the applicant with specific assertions made in the years 1993 and 1994 that she had been performing duties as a Typist right w.e.f. 2.2.1985. Receipt of these representations has not been denied by the respondents. Putting up of Annexure A-6 appears to be quite logical after one considers her representation dated 19.4.1990. From the reluctance and hesitation of the respondents to tell the truth, we raise a presumption regarding letter dated 4.2.1994 also. On the basis of all this, we come to the conclusion that even though the applicant has been given the designation of skilled khalasi, she has been utilised

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by the respondents for performing duties as a typist throughout.

8. Annexure A-5 is a decision taken by the respondent department with the Trade Union that if some ~~workers~~ are being utilized as MCCs/Clerks or Typists, they should be made payment treating their utilisation as such only as a local temporary adhoc arrangement. Letter dated 4.2.1994 is on the basis of this decision. Even otherwise, when a person is made to work on a post while carrying another designation as adhoc arrangement, he is normally paid the pay and allowances of the job taken from him. Courts have recognized it under the principle of 'equal pay for equal work'. Taking note of these factors, we hold that the applicant is entitled to the grant of pay scale of a Typist for the period she has worked as such. We are conscious of the fact that she has not been regularly appointed as a 'Typist' and we are not sure whether under the relevant recruitment rules she would be eligible for it. Since there is no prayer in the O.A. for regularisation of her services as a Typist, that aspect is not taken up by us.

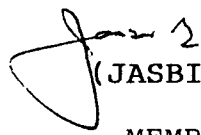
9. In view of what has been discussed above, we allow the present O.A. with a direction to the respondents to pay her salary equivalent to the grade of a Typist w.e.f. 18 months prior to the filing of the O.A. i.e. April 4, 1994 up-to-date. Respondents shall work out the difference of amounts which would become payable to her by adjusting the pay & allowances already given to her on the lower scale and make payment of the arrears within a period of three months from the date of receipt of a copy of this order. We impose costs of Rs.5,000/- on the respondents for deliberate obstruction of justice.

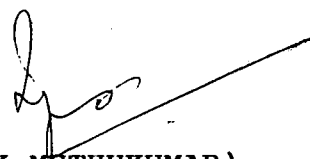
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which has been discussed above. Respondents will be at liberty to fix responsibility of the officer(s) and to recover it from him/them.

10. The Original Application stands disposed of in terms of the above directions.


(JASBIR S.DHALIWAL)
MEMBER(J)


(K.MUTHUKUMAR)
MEMBER(A)

Dated: May 31st, 1999

'bss'