

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

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O.A.No.2097/88

DATE OF DECISION:1.7.91.

Shri Sultan Singh ..... Applicant

Versus

Union of India & Ors. ....Respondents

CORAM:

The Hon'blw Mr.A.V.Haridasan, Member(J)

The Hon'ble Mr.I.K.Rasgotra, Member(A)

For the applicant Shri Satish Sethi,  
Counsel.

For the respondents Sh.O.N.Moolri,  
Counsel.

JUDGEMENT (ORAL)

In this application filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant who was holding a substantive post of Shuntman and who has been officiating as Shunting Jamadar on ad hoc basis from 1.7.1983 onwards has challenged his reversion as Shuntman w.e.f. 24.9.1987 and has prayed that the respondents may be directed to treat him confirmed in the post of Shunting Jamadar and also to pay him the difference between the wages which was actually paid to him in the scale of Shuntman and that of Shunting Jamadar for the period during which he had worked as Shunting Jamadar. There is a delay of 23 days in filing this application. It is stated that the applicant had approached the Civil Court for the same relief and

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filed this application, after the suit was dismissed for want of jurisdiction. The delay was <sup>caused</sup> ~~covered~~ only on account of the prosecution of the matter before the wrong forum. The suit was dismissed by the Civil Court on 11.7.88. In the circumstances we are of the view that the delay has to be condoned in the interest of justice. We do so.

2. The respondents in their reply statement have resisted the claim of the applicant. His claim for being treated that he has been confirmed in service as Shunting Jamadar is resisted on the ground that though the applicant was on a purely local ad hoc arrangement called upon to perform the duties of Shunting Jamadar for different spells he had not been given any order of appointment and since he did not qualify in the suitability test he is not entitled to be confirmed as Shunting Jamadar. The applicant in the rejoinder filed by him has not refuted the statement made in the reply statement that the applicant did not qualify in the suitability test. The claim of the applicant for difference in wages is <sup>resisted</sup> ~~admitted~~ by the respondents on the ground that though the applicant was performing the duties of Shunting Jamadar he has not been appointed to that post <sup>at</sup> any time.

3. We have gone through the pleadings and material papers available on records and heard the learned counsel of both the parties.

4. As far as the claim of the applicant for confirmation in the post of Shunting Jamadar is concerned, the applicant though has been working on ad hoc, temporary and local arrangement in that post for a period

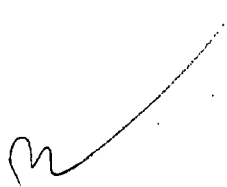
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extending to over four years in different spells there has not been any specific order appointing him to that post. Further the applicant has not refuted the averement made in the reply statement of the respondents that he did not qualify in the suitability test which is a mandatory condition for his promotion to the post of Shunting Jamadar. The learned counsel for the applicant could not bring to our notice the existence of any rule or instruction which would show that a person who had performed the duties of a higher post over  $1\frac{1}{2}$  years should be confirmed in that post without being called upon to qualify in the suitability test or without an order of appointment. Therefore, we are of the view that the applicant is not entitled to the relief of confirmation in the post of Shunting Jamadar.

5. Coming to the claim of the applicant for difference in wages between the pay and allowance of Shunting Jamadar and that of Shuntman it is admitted by the respondents in the reply statement that the applicant had been working as Shunting Jamadar, though not appointed to that post by any order during the period from 1.7.1983 to 30.4.1985; 1.5.1983 to 15.8.1985; 16.8.85 to 31.3.86; 2.4.1986 to 22.8.86 and 23.8.86 to 19.9.1987. Even though the applicant has not been appointed by any order as the fact that the applicant has been performing the duties of Shunting Jamadar is admitted, we are of the view that there is no justification for not giving him the wages that is applicable to that post. There is a plethora of the rulings of the Hon'ble Supreme Court that equal pay has to be paid for equal work. It is well settled that a person who has performed


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duties of a post, is entitled to the pay and allowances attached to that post. As there is no dispute regarding the question that the applicant has not been paid the wages as applicable in the Shunting Jamadar, we are of the view that interest of justice demands an order to the respondents to pay him in the the difference between pay and allowances which was paid to him in the scale of Shuntman and which should have been paid to him in the scale of pay of Shunting Jamadar during the period from 1.7.1983 and 19th July 1987. Though the applicant was made to work in the post of Shunting Jamadar in different spells it is seen from the admission of the respondents in Page 2 of the relief statement that he had been continuously working as Shunting Jamadar from 1.7.1983 to 19.9.1987.

6. In the conspectus of facts and circumstances of the case, we allow the application in part. The claim of the applicant for regularisation as Shunting Jamadar is rejected. The respondents are directed to pay to the applicant the difference between the pay and allowances paid to him in the scale of Shuntman and that of Shunting Jamadar which should have been paid to him for the period from 1.7.1983 to 19.9.1987 for which he has been continuously working as Shunting Jamadar, within a period of 8 weeks from the date of communication of this order.

There shall be no order as to costs.

  
(I.K. RASGOTRA)  
MEMBER(A)  
1.7.91

  
(A.V. HARIDASAN)  
MEMBER(J)  
1.7.91