

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 893/86
T.A. No.

198

DATE OF DECISION 12.10.90

Shri Kedar Nath Petitioner

Shri O.P. Gupta, Advocate for the Petitioner(s)

Versus

The General Manager, Central Respondent
Railway.

Shri M.L.Verma, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.C. Jain, Member (Administrative)

The Hon'ble Mr. J.P. Sharma, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

MGIPRRND-12 CAT/86-3-12-86-15,000

J.P. Sharma
(J.P. Sharma)
Member (Judl.)

P.C. Jain
(P.C. Jain)
Member (Admn.)

(11)
(R)

Central Administrative Tribunal
Principal Bench: New Delhi.
....

Regn.No.OA-893/86

Date of Decision:

Shri Kedar Nath

... Applicant.

Vs.

The General Manager,
Central Railway.

... Respondents.

For the applicant

... Shri O.P.Gupta,
Advocate.

For the respondents

... Shri M.L.Verma,
Advocate.

CORAM: Hon'ble Shri P.C.Jain, Member(Administrative)
Hon'ble Shri J.P. Sharma, Member(Judicial).

JUDGEMENT

(Delivered by Hon'ble Shri J.P.Sharma)

The applicant filed this application under Section 19 of the Administrative Tribunals Act, 1985 for implementation of the order dated 9.4.1983 (Annexure-A).

2. The applicant claimed the relief for declaration that he has acquired the status and position of an Assistant R.T.R. (Ticket Collector) of Control in the Grade Rs.260-400/- with effect from 11.4.1983 with all consequential benefits and further, the difference of arrears of wages in the grade of Rs.196-232 and Rs.260-400/- with admissible allowances w.e.f. 11.4.1983 till ^{date} be ordered to be given to the applicant.

3. The applicant's case in brief is that he was appointed on 15.6.1973 as Khalasi. He was redesignated as Parcel Porter in the same grade of Rs.196-232 from 15.1.1977. It is alleged by the applicant that he also officiated as Assistant Parcel Clerk in the grade of Rs.260-400 from time to time and he has also been paid officiating allowance for some periods. The applicant was ordered by the letter dated 9.4.1983 to work in the R.T.R.Control at New Delhi, where he resumed duty on 11.4.1983. The applicant was not ~~being~~ paid the salary of R.T.R./T.C. in the grade Rs.260-400 so he made a number of representations, the last of which was made on 15.1.1986 (Annexure-B). Since the applicant has ^{neither} been paid the salary in the grade of R.T.R. Assistant nor regularised as ^{such} he has

6

filed this application for the aforesaid reliefs.

4. The respondents in their short reply opposed the application taking the ^{plea} of territorial jurisdiction of the Principal Bench. . . It is said that the applicant ^{is} not a matriculate nor he has ever been trained for the post of A.P.C., R.T.R. or T.C. The applicant was never selected and appointed to a class III post. The applicant was appointed as a Box-Boy at New Delhi Station and on his request he was transferred to Commercial Department as Goods Porter in the ^{on 15.1.77.} grade Rs.196-232/. He was never put to work as Assistant Parcel Clerk. The applicant had been asked by the D.C.S. on 9.4.33 to work with R.T.R. Controller, ^{New} Delhi, during the heavy ^{season and} rush/ the application is devoid of merit and is liable to be dismissed.

5. We have heard the learned counsel for the parties at length and perused the records. The contention of the applicant's counsel is that the applicant has worked ^{as} R.T.R. Assistant since 11.4.1983, and . . . till . . . date of this application, sufficient time has since passed, but he has not been regularised in spite of the applicant having passed the test; nor the applicant has ^{been} paid the salary of the post on which he has ^{been} made to work. The applicant also apprehended reversion. This Tribunal ordered on 2.4.1987 that status quo be maintained and on ~~xxx xxxxx xxxxx~~ 21.4.1987 that status quo was to continue. So, the applicant is still working ^{in the} on the same ^{capacity} without break. The learned counsel for the applicant referred to the certificate given by R.T.R Control Incharge dated 11.4.1983 (Annexure-C) to the effect that the applicant was working in R.T.R. Control against T.C. vacancy from 11.4.1983 and the applicant was authorised to check all charts of Central Railway Trains at New Delhi junction. The learned counsel also pointed out that a memo of charges was served on the applicant on 19.11.1985 (Annexure-D) in which the designation of the applicant is written as R.T.R. Assistant. The learned counsel for the

applicant also referred to certain documents filed alongwith rejoinder to the counter of the respondents and these documents relate to the payment of officiating allowance to the applicant for the period from 25.1.1979 to 14.2.1979 and 16.3.79 to 15.3.79 when the applicant was posted as Parcel Porter but was working in higher grade of Rs.260-430 (Annexure E and F). The memo of charge-sheet dated 24.6.1987 as also the memo dated 20.7.89 show the designation of the applicant as R.T.R. Assistant working in R.T.R. Office (Annexure-G & H) and the reply to this is Annexure-I. The special duty pass (Annexure-J), however, shows the designation on 9.4.1983 as Parcel Porter. The learned counsel also referred to certain documents filed during the course of the arguments to show that there was a vacancy in R.T.R. Office at New Delhi Station. The attendance sheet in the R.T.R. Office shows the designation of the applicant as Incharge T.C. and the pass issued to the applicant also shows as T.C.R. on 31.12.1983. The various privilege passes issued to the applicant also show his designation as TC, R.T.R. From the above documents and the averments made in the application it is argued by the learned counsel for the applicant that since 11.4.1983 the applicant has been constantly working on a Class III post in the grade of Rs.260-400/- but he has not been paid salary for the post nor been regularised in that post. The contention of the learned counsel for the applicant is that by working on a class III post for such a considerable time a vested right is acquired by the applicant. But this cannot be accepted, because the applicant has never been appointed to a Class III post. The appointment, whether adhoc, temporary or regular has only to be made by an order and no such order has been filed by the applicant nor anywhere mentioned thereof in the application. Unless there is an appointment order for a post, the applicant cannot claim any right to that post. The only appointment order in the name of the applicant is for the post of a Khalasi and subsequently as a Parcel Porter as he was shifted to

: 4 :

Commercial section. In the office order dated 9.4.1983 (Annexure-A) it has been written clearly "that Shri Kedar Nath, Parcel Porter (Literate) Mathura has worked in the enquiry office for three to four years. He is conversant with enquiry-cum-R.C.S.Clerk dates and also preparation of charts." With these remarks in the said letter, he was ordered to work with the Reservation Supervisor, Central Railway, New Delhi in R.T.R system. This does not show his posting to Class III post.

6. The representation of the applicant dated 15.1.1986 (Annexure-B) itself admits in para 1 that he was working at Mathura Junction as Parcel Porter in the grade of Rs.196-232 (RS which leaves no doubt that while working since 1983 in R.T.R. Office he was never appointed to any Class III post but was only working in the R.T.R. Reservation Section of Central Railway, New Delhi Station. The certificate (Annexure-C) dated 11.4.1983 creates no right to appointment in Class III post in favour of the applicant. The memo of charge-sheet in 1985 and 1987 served on the applicant as also certain passes issued to the applicant do show the designation of the applicant as R.T.R. Assistant but these by themselves will not give any right to the applicant to hold a Class III post in the grade of Rs.260-400 as no appointment letter has ever been issued to the applicant. In fact, proforma for passes are filled by the employee himself. Thus the arguments of the learned counsel for the applicant have no weight and cannot be accepted.

7. The above view is supported by the authority of Ram Sarup Vs. State of Haryana, 1982(2) SLJ page 14 Supreme Court, where the appointment of a clerk to the post of Head Clerk was made without authority of law so such incumbent was not absorbed in the cadre of Head Clerk as the appointment letter was only for the post of a Clerk. Further in 1986(2) SLJ CAT Delhi 308, Anant Rao Shinde Vs. U.O.I.

: 5 :

it has been held that the appointment to a post is governed by the rules framed under Article 309 of the Constitution and the recruitment is to be made according to the rules and any appointment against any derogation of the rules would be illegal and unsustainable. In the Manager, S.B.I. Kanpur Vs. The Presiding Officer, reported in 1990(2) SLJ page 33, the Hon'ble High Court Allahabad held that where a person has no right to a post or to a particular status, and an Authority acting beyond its competence, gives that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given a particular status. In the above authority, State of Punjab Vs. Jagdish Singh, AIR 1964 SC 521, Kashmir University Vs. Mohd. Yasin and Ors. and AIR 1974 SC 238 have also been referred to.

5. The learned counsel for the applicant also argued that in para 110 of the Railway Establishment Manual, a Railway servant after serving for five years in Class IV post is entitled to promotion. However, the fact remains that the applicant has to clear a test and in the application there is no mention that he ever cleared any departmental test which are held for promotion from Class IV to Class III post. The applicant only in his representation dated 15.1.1986, (Annexure-B) mentioned that "I had also qualified the written test for Class III selection" but no evidence in this regard has been furnished. The respondents in their counter in para 4 clearly stated that the petitioner has concealed the material facts that he is not matriculate and trained for the post of A.P.C/R.T.R. and T.C. and also that he has not been selected for these posts. In view of this categorical reply by the respondents, it was for the applicant to prove that he has passed the departmental test. Thus, the applicant is not eligible for promotion to a class III post and merely by looking after the work on a higher post will not entitle him to any benefit of appointment or regularisation unless and until he gets an appointment according to the rules.

4

6. The learned counsel for the applicant referred to the various circulars of the Railway Board of 1956, 1965, 1970 and 1983 which are at pages 16 to 21 of the application. The learned counsel also referred to AIR 1978 SC 284, Railway Board and Ors. Vs. P.R. Subramaniam & Ors. wherein it has been held that the decision of the Railway Board has the force of Rules made under Rule 157 of the Railway Establishment Code. The various circulars referred to by the learned counsel for the applicant only visualize the appointment in an officiating capacity to a higher post. In the present case, the applicant has never been appointed in an officiating capacity. The other authorities cited by the learned counsel for the applicant, namely, B.L. Sharma Vs. D.T.C. Delhi reported in 1985(1)SLR page 543, Delhi High Court and Madhukar Raghunath Nafdey Vs. Union of India & Ors. reported in 1975 Vol. II SLR page 110 Calcutta High Court are not applicable to the present case. In the case of B.L. Sharma (Supra) there was officiating promotion which was the subject matter of dispute and that is not so in the present case. In the case of Madhukar Raghunath's case (Supra), there was adhoc promotion to the higher post and the incumbent was working for more than 18 months. So, in view of the various circulars the reversion of the petitioner in that case was held illegal and that amounted to a punishment which could not be imposed without a departmental enquiry under D.A.R. 1968. Thus, the applicant cannot get any right to a Class III post and he cannot be granted the relief prayed for ^{that is} for a declaration to the effect that the applicant has acquired the status and position of an Assistant R.T.R.

7. The applicant has also claimed the salary for the post of R.T.R. Assistant on which he ^{alleged} has to be working continuously since 11.4.1983, though he has not been paid in that grade but was being paid in the lower grade of Parcel Porter Rs. 196-232. The applicant is entitled to get the salary for the work done ^{by} looking to the work in / ^{Reservation} Section. If a similarly

↓

: 7 :

placed person is paid in higher grade than the applicant discharging the same duties and functions, he should not be paid in a lower grade as it will tantamount to discrimination against the applicant and shall also be violative of Articles 14 and 16 of the Constitution of India. It is not denied by the respondents that the applicant is not working in R.T.R. Section of Central Railway. The respondents have admitted in the counter that he was asked to work with R.T.R. Controller, New Delhi Railway Station during the heavy rush season. In view of this, the applicant shall be entitled to the salary of the grade of Rs.260-400 (RS) from 11.4.83 up till the time he continues to look after work in that post of R.T.R. Assistant. The applicant, therefore, is entitled to this relief.

8. In view of the above discussion, the application is partly allowed and we direct the respondents to pay to the applicant the pay and allowances admissible in the grade of Rs.260-400 from 11.4.1983 till the applicant continues to look after the work in the said grade of R.T.R. Assistant/T.C. or any other post of that nature deducting such amount which had already been paid to the applicant in the lower grade. The other relief claimed by the applicant is disallowed.

9. In the circumstances of the case, we leave the parties to bear their own costs.

J. P. Sharma
(J.P. Sharma)
Member (Judl.)

P. C. Jain
(P.C. Jain)
Member (Admn.)