

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
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O.A. NO. 1058/1987

DATE OF DECISION : 27.02.1992

SHRI CHUNI LALL MALHOTRA

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM

SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

... SHRI B.S. MAINEE

FOR THE RESPONDENTS

... SHRI O.P. KSHATRIYA

1. Whether Reporters of local papers may be allowed to see the Judgement? *u/s*

2. To be referred to the Reporter or not? *u/s*

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J)

The applicant, Fuel Issuer, Loco Shed, Northern Railway, Jind filed this application under Section 19 of the Administrative Tribunals Act, 1985 for the redress of the grievances in respect of non payment of pay and allowances due to him for working on officiating basis as Senior Clerk since 28.12.83. He is also aggrieved by the transfer of the post of Senior Clerk in the Loco Shed, Jind to Ambala Division vide order dt.8.6.87.

2. The applicant claimed the relief of a direction to the respondents to pay all the dues and arrears on account of pay and allowances for the post of Roster Clerk (Senior Clerk) w.e.f. 28.12.1983 as he has been performing the duties of this post in compliance with the order dt. 28.12.83. Further, it is prayed that the applicant be ordered to be regularised in the post of Roster Clerk (Senior Clerk). It is also prayed that the post of Senior Clerk held by the applicant may be excluded from notice dt. 18.5.87 and status-quo be maintained.

3. The applicant was appointed as Fuel Issuer in the pay scale of Rs. 260-400 in the Loca Shed at Jind in the Northern Railway. By the order dt. 28.12.83, one Gajender Singh, TK-II retired w.e.f. 31.12.83, so Shri Balkrishan Sharma holding the charge of Roster Clerk was asked to take over the charge from him. Shri Chuni Lall, Tool Checker was asked to take charge from Shri Balkrishan purely on trial basis by virtue of the office order of even date. The applicant has since been working on that post. The respondents by the order dt. 18.5.87 transferred the post of Senior Clerk from Jind to Ambala Division. The case of the applicant is that Shri Balkrishan Sharma was working as Roster Clerk which is a Senior Clerk's post and since he has

made to work on that post as Roster Clerk, he is entitled to the scale of that post, i.e. Rs.330-560 and in spite of representation, he has not been given the same. The applicant moved also some application under Payment of Wages Act, 1936, but subsequently withdrew that application as the order in that case was passed on 26.12.86 wherein it was directed that the department may consider the case to decide it at its own level giving the applicant relief by officiating appointment on the present post on which he is working. But the applicant has not been paid and instead the post of Senior Clerk has been transferred to Ambala Division.

4. The respondents contested the application and stated that the applicant was never made to work as Senior Clerk which is a selection post. The applicant was only made to work on trial basis as Shri Balkrishan Sharma, Roster Clerk was shifted as TK-I in place of retiring person-Gajender Singh. The applicant never worked on officiating basis on the post of Senior Clerk and has been still working as Fuel Issuer and getting all the facilities of Fuel Issuer, such as uniform etc. The applicant has nothing to do with the transfer of the post to Ambala Division. It is further stated that there is no specification of pay and grade for any post

of the clerical cadre functioning under Loco Forman, Jimd.. The applicant has been declared unsuitable for the post of Senior Clerk in the grade of Rs.330-560 in 1982 as he failed in the examination of 1982 and also he did not take the examination in 1986 (Annexures R1 and R2 to the counter). Thus according to the respondents, the applicant has no case.

5. We have heard the learned counsel for the parties at length and have gone through the record of the case. The applicant, of course, belongs to clerical grade and when the Roster Clerk who happened to be in the grade of Rs.330-560 was shifted as TK-II, the applicant was asked to look after that work also. Merely one clerk being clerk's asked to do another work in the Loco Shed where there is no specification of post of clerks cannot claim as a matter of right when he is not appointed on officiating basis to that post. The applicant has not filed any appointment order and the only order on which he relies is dt.28.12.83 wherein he has been asked to take charge purely on trial basis from Shri Balkrishan Sharma. Secondly, the applicant filed an application under Section 15 of the Payment of Wages Act, 1936 and did not press his claim at that time and withdrew the same which goes against the applicant.

6. The officiating pay for the post on which a person is made to work on officiating basis can very well be given to that person provided he is given ad hoc promotion. The applicant himself failed in the examination held in August, 1982 before he was asked to work on trial basis as Roster Clerk and was totally unsuitable regarding his promotion as Senior Clerk in the pay scale of Rs.330-560. The applicant, therefore, very well knew that he is totally unsuitable for consideration  $\angle$  the post of Senior Clerk <sup>regular basis</sup> merely because one of the persons was working as Roster Clerk in the grade of Senior Clerk in the pay scale of Rs.330-560, will not by itself make the applicant appointed to that post. In clerical cadre, a clerk may discharge any function  $\angle$  to the post where he is posted. It is not shown that Roster Clerk carries higher responsibilities or a supervisory job over other clerks. The promotion to the post of Senior Clerk is basically on the basis of a selection. Since the applicant had already failed in 1982, then his appointment on officiating basis also is ruled out. Secondly, the applicant himself did not take the next examination in 1986 and was contented to remain as a Fuel Issuer by virtue of his own admission given in the application dt.2.2.1986 (Annexure R3 to the counter).

7. The learned counsel could not show that any post like Roster Clerk is classified in the hierarchy of posts in the

grade of Rs.330-560. Actually the exact post is of Senior Clerk and the learned counsel has equated the post of Roster Clerk with that of Senior Clerk which cannot be accepted. It is not shown that promotion from the post of Fuel Issuer is to the post of Roster Clerk. In fact, the applicant has to pass a selection to become a Senior Clerk. Since Roster Clerk is not a promotion post, the applicant cannot claim that as he was looking after the work of Roster Clerk in place of Balkrishan Sharma, so he should be given the same grade as was being drawn by him in the pay scale of Rs.330-560.

8. The applicant also by his own conduct, has waived any right which existed in his favour, firstly by withdrawing application under Section 15 of the Payment of Wages Act, 1936 and further by giving an application on 2.2.1986 that he should be designated as Fuel Issuer and be given all the benefits and amenities available to the incumbent of that post.

9. Regarding the transfer of post to Ambala Division, the applicant cannot have any grievance as it is for the administration to adjust the post and since Senior Clerk's post was needed in Ambala Division Loco Shed, the same was transferred in Ambala Division.

10. Much emphasis has been laid by the learned counsel that the applicant should be given the salary for the job which he has been performing since 28.12.83. However, the job he was performing, even if it is taken to be of a Roster Clerk, does not carry the pay scale of Rs.330-560 and it cannot be presumed that one who is working as Roster Clerk should be deemed to be a Senior Clerk in the pay scale of Rs.330-560.

11. The applicant has himself failed once and did not avail of the chances in 1986. So he cannot claim that he should be deemed to have been regularised or promoted to the post of Senior Clerk, which is a selection post.

12. In view of the above facts, we find that there is no merit in the application and is dismissed leaving the parties to bear their own costs.

AKS

J. P. Sharma  
(J.P. SHARMA)  
MEMBER (J)

D. K. Chakravorty 27/1/92  
(D.K. CHAKRAVORTY)  
MEMBER (A)

Pronounced by Hon'ble Shri J.P.Sharma, Member (J).

J. P. Sharma  
(J.P. SHARMA)  
MEMBER (J) 27/1/92