

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(12)

O.A. No. DA 2556/91 **199**
T.A. No.

DATE OF DECISION 26.2.1997

<u>Surinder Singh & Bijda Pandit</u>	<u>Petitioner</u>
<u>Shri B.S. Mainee</u>	<u>Advocate for the Petitioner(s)</u>
<u>Versus</u>	
<u>UDI</u>	<u>Respondent</u>
<u>None</u>	<u>Advocate for the Respondent(s)</u>

CORAM

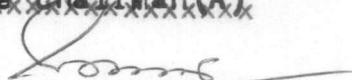
The Hon'ble Mr. Dr. Jose P. Verghese, VC (J)

The Hon'ble Mr. S.P. Biswas, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(Hon'ble Shri N. Krishnamurthy, Vice Chairman (A))


 (S.P. Biswas)
 Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA 2556/91

New Delhi, this 26th February, 1997

(13)

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri S.P. Biswas, Member(A)

1. Shri Surinder Singh, **Cashier**
2. Shri Binda Pandit, **Cashier**
 Rail Yatri Niwas
 Northern Railway, New Delhi .. Applicants

(By Advocate Shri B.S. Mainee)

versus

Union of India, through

1. General Manager
 Northern Railway
 Baroda House, New Delhi

2. Chief Manager
 Rail Yatri Niwas
 Northern Railway, New Delhi .. Respondents

(None present for the respondents)

ORDER

Hon'ble Shri S.P. Biswas

The short question for determination is whether the applicants, formally posted in Rail Yatri Niwas (RYN for short) as Clerk-cum-Typist in grade Rs.950-1500, are eligible for pay and allowances meant for higher grade (Rs.1320-2040) of Cashier for actually shouldering responsibilities of Cashier's job. With the opening of RYN with effect from January, 1988, the applicants were posted there to work as Clerk-cum-Typist-cum-Time Keeper on 12.2.88 and 6.4.88, respectively. They, however, continued to work as Cashiers for more than three and half years but received the salary of Clerks. Consequently, they seek directions to the respondents to pay them the salary of cashiers in the grade of Rs.1320-2040 from the date they have been working alongwith interest at the rate of 12% and regularise their services as Cashiers for having worked for such a long period.

2. In support of his claim, the learned counsel for the applicants relied on the decisions in the following cases :

(14)

- (1) ATJ 1996 (1) 306 : Kunu Prusty vs. Union of India & Ors.
- (2) SLJ 1992 (3) 60 : Vijay Kumar & Ors. vs. State and Ors.
- (3) CSJ 1992 (3) 3 : K. S. Ranganathan vs. Union of India & Ors.

3. The undisputed facts are that the applicants, though not officially posted as Cashiers but have been collecting cash at the RYN counter from authorised passengers for having stayed in the Niwas. It is also not in dispute that none else were posted as Cashier for this new organisation. Neither it is in dispute that the official roster of work continued showing applicants' duties as Cashiers and that they have been working in that capacity to the satisfaction of the Chief Manager, RYN. What has been disputed is that the applicants were not appointed as Cashiers on regular basis and that they are not entitled to claim the emoluments of cashiers as collection of only a few thousand rupees per day does not entitle a person to claim higher salaries applicable to cashier's post.

4. As held by the Hon'ble Supreme Court in the case of R.C.Rooungta Vs. UOI & Ors. 1995(30)ATC 462, it is not for the Tribunal/Court to make roving enquiry into the disputed facts and enter into findings of its own. Judicial review of the administrative orders are to be directed not against the decision itself but against the decision making process. Authority for such a proposition is available in the case of Tata Cellular

Vs. UOI 1994(6)SC 651 and Government of Tamil Nadu Vs.

A.Rajapandian 1995(1)SC SLJ 12. However, it is the responsibility of the Tribunal to satisfy itself that the decision making authority has reached a conclusion justified by law and established facts.

(15)

5. By A-3 order dated 11.11.88, the Chief Manager, RYN (R-2) has officially directed the applicants to work as Cashiers. That apart, the duty roster at pages 15-16 of the OA issued by Executive Manager/RYN has specifically laid down the duties of staff at RYN and these rosters contain names of applicants as Cashiers in different shifts. In addition, annexures attached to rejoinder (pages 40 to 52 of the O.A.) bring out that cashiers in certain night shifts had to handle cash of more than Rs.20,000/-. There are evidences to believe that on some occasions handling of cash went upto even Rs.60,000/- and the amount related to refund of security deposits as well as receipt of rental dues from the passengers. Respondents have not controverted the contentions of applicants based on these evidences and have simply stated that ordering the applicants for the purpose of handling cash of a few thousands only does not entitle them the benefits of scale of Rs.1320-2040 without there being a formal appointment order in that grade. Faced with the availability of such unassailable documents before us, we are not inclined to accept the contention of the respondents that the applicants were not working as Cashiers.

(4) 16

6. We find that the provisions under Rule 1337 (FR 49) of Indian Railway Establishment Code, Vol.II of 1990 are clearly applicable to the facts of this case especially because these are the orders of the competent authority directing the applicants to perform the duties of higher responsibility. The relevant portion of the above rule is reproduced hereunder:

"COMBINATION OF APPOINTMENTS

1337. (FR 49) - A competent authority may appoint a railway servant already holding a post in substantive or officiating capacity, to officiate, as a temporary measure in one or more of other separate posts at one time. In such cases his pay shall be regulated as follows:

(a) the highest pay to which he would be entitled if his appointment to one of the posts stood alone, may be drawn on account of his tenure of the post;

(b) for each other posts he draws such reasonable pay, in no case exceeding the half the presumptive pay (excluding overseas pay) of the post as the competent authority may fix; and

(c) if compensatory or sumptuary allowances are attached to one or more of the posts, he draws such compensatory or sumptuary allowances as the competent authority may fix, provided that such allowance shall not exceed the total of the compensatory or sumptuary allowances attached to all the posts.

(Authority = RB's No.F(E) II-84/PA/1/2 dt. 29.1.84 (NR-S No.8682) (2027 (2) RII)"

7. None of the order (verbal or A-3) contains anything about the emoluments to which the applicants are entitled during the period they were asked to look after the responsibilities of Cashier, though applicants have been repeatedly (A-5 series) pressing for officiating pay and allowances.

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8. We also find that there are provisions for ordering officiating promotion on local arrangement basis when regularly selected cashiers or senior-most employees are not available. The order of the Railway Board in respect of such local arrangements reads as under:

"Sub: Officiating promotion in local arrangements.

In this office letter No.42-E/0V (Eiv) dated 17.5.68 (PS No.4305) it was laid down that for making promotions in local arrangements against short term vacancies people from local area should be considered. But it has been pointed out that promotion of staff from other units though at the same station involves dislocation of work. This question has, therefore, been reconsidered and in partial modification of the observations made in this letter dated 17.5.68 (PS No.4305), it has been decided that against short term vacancies senior-most eligible staff locally available in the Unit/Branch be considered. The existing practice of making sub-sectional arrangements against short term vacancies in the Divisional Controlled posts may also be allowed to continue to avoid dislocation of work.

Serial No.4264; Circular No.42E/0V(EIV) dated 20-3-1970"

9. It is not in dispute that none were formally appointed as Cashier. What has been questioned by the respondents is that they were not formally appointed. At the same time respondents have not categorically denied having taken the work of cashier from the applicants. We find no justification on record to show as to why under the circumstances of this case, the procedures laid down in Rule 1337 (FR 49) and PS 4964 aforesaid could not be followed. Under the circumstances aforesaid, statement of the respondents that "cash collection of a few thousand rupees per day does not entitle a person to claim emoluments of cashier" cannot be accepted. Applicants have made repeated representations claiming for pay and allowances

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for the period they have worked as cashiers but the respondents decided to turn Nelson's eye on those representations.

10. We further find that the decisions in CA 1737/89 are squarely be applicable to the facts and circumstances of this case. In that CA, the Apex Court was examining the ratio arrived at by the New Bombay Bench of this Tribunal in OA 294/86 cited in the case of R.Srinivasan Vs. UOI & Ors. 1994(1) ATJ Vol.16 232. In that case (OA-294/86) the applicants were shouldering higher responsibilities of officer of grade II but denied emoluments for the said post. It was observed that inasmuch as the applicants have not given in writing that they would not claim any extra remuneration, they would be entitled to such payments as per rules. That judgement has become final since the appeal filed by the respondents against the said judgement in the aforesaid CA was dismissed by the Hon'ble Supreme Court by an order dated 2.8.91 (emphasis added).

11. In the background of the reasons aforequoted, the application succeeds on merits and we allow the O.A. with the following directions:-

i) Respondents shall make payment of officiating allowance or justifiable amount of honorarium to the applicants for the period they have actually performed the duties of Cashier within a period of three months from the date of receipt of a certified copy of this judgement alongwith interest @ 12% per annum, from the date payable till the date of payment.

b

iii) This is eminently a fit case to order costs in the light of the law enunciated by Hon'ble Supreme Court in Central Cooperative Consumers Store Ltd. vs. Labour Court, H.P. Shimla and Ors., 1993 (3) SCC 214, wherein legally valid claims were denied because of unreasonable and defiant attitude of respondents. The same situation prevails here. Accordingly, we direct respondents to pay Rs.1,000 (Rupees one thousand only) to each applicant as costs. Respondents will be free to recover this amount from the pockets of those responsible functionaries as the Public Exchequer cannot be burdened for the lapses of erring officers/officials.

The application is disposed of as aforesaid.

S.P.Biswas
(S.P.Biswas)
Member(A)

Dr. Jose P. Verghese
(Dr. Jose P. Verghese)
Vice-Chairman(J)

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