

CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

Date of Decision: 22.05.92

OA 296/91

ANIL KUMAR GUPTA

... APPLICANT.

Versus

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

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

For the Applicant

... Shri B.S. Mainee,
Counsel.

For the Respondents

... Ms. B. Sunita Rao,
Counsel.

1. Whether Reporters of local papers may be allowed to see the judgement ? *Yes*
2. To be referred to the Reporters or not ? *Yes*

JUDGEMENT

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

The applicant, at present working as Senior Clerk under Station Superintendent, Northern Railway, Panipat, has challenged the order dated 22.10.1990 passed by the Divisional Personnel Officer, Northern Railway, New Delhi informing the applicant that as per court decision necessary payment had already been made and further, nothing is due for granting the

benefit of higher pay and seniority etc.

2. The applicant has claimed the relief that the impugned order dated 22.10.1990 be set aside and a direction be issued to the respondents to absorb the applicant in an appropriate grade in accordance with the Railway Board's circular and as per decision of the authority and the Payment of Wages Act and consequential benefits of seniority/increments/arrears/promotion be also given to him.

3. The brief facts are that the applicant's father Shri Sriram Gupta died in harness and the applicant was given compassionate appointment. He was appointed as Guard grade-C in the scale of Rs.330-560 on 30.7.1980. However, when the applicant was in the course of employment he met with an accident on 4.1.1981, as a result of which, his left leg was cut. The applicant got himself treated but he was declared medically unfit for the post of Guard and was given alternative job of Correspondence Clerk in the scale of Rs.260-400.

4. The grievance of the applicant is that as he was working as Guard in the scale of Rs.330-560 and in the case of running staff, 30% of the basic pay should be added to minimum and maximum of the scale of pay for the purposes of identifying equivalent

posts. Thus, the applicant stated that he should have been absorbed in the scale of Rs.425-640 w.e.f. 23.10.81, but he was absorbed in the lowest grade of Class-III category. However, the applicant accepted the offer and made representation but when he did not get any favourable reply, he moved an application in the court of Shri M.R. Palton, Authority under Payment of Wages Act, Panipat that his pay to the extent Rs.277/- p.m. has been wrongly deducted and the said court decreed a sum of Rs.2770/- as difference in the pay for the period from 23.10.81 to 22.8.82 as also Rs.500/- as costs. The respondents filed an application before CAT, Chandigarh Bench assailing the aforesaid judgement but the same was dismissed on 12.1.1988. After this judgement the applicant made a representation and the applicant was ultimately informed by the impugned letter dated 22.10.1990 hence this application.

5. The respondents contested the application and stated that the applicant was appointed as a Clerk in the scale of Rs.260-400 on compassionate ground. His case was subsequently recommended for the post of Guard purely on temporary basis subject to passing the prescribed promotional course named T-3 course. The applicant was declared medically unfit for the post of Guard and he was absorbed as Correspondence Clerk in the grade of Rs.260-400. Thus, it is stated that the

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applicant is not entitled to any relief.

6. The applicant also filed rejoinder and in the rejoinder in reply to para 4.1 it is admitted that the applicant was appointed for the post of Clerk on 29.1.1980 but immediately thereafter on 29.2.1980 the applicant was promoted as Guard on compassionate ground as grade-C vide letter dated 29.2.1980.

7. I have heard the learned counsel for both the parties at length and have gone through the records of the case. The appointment letter dated 29.1.1980 goes to show that the applicant was appointed as Clerk in the grade Rs.260-400 (Annexure-I). The appointment letter dated 29.2.1980 (Annexure-II) goes to show that the applicant was offered temporary appointment as Guard grade-C in the scale of Rs.330-530 with usual allowances as admissible under the Rules. The appointment was purely temporary and on ad-hoc basis till such time, course T-3 is passed from Zonal Training School, Chandausi. Thus, this is not an appointment letter, it is an offer for appointment. The applicant himself in para-4.1 stated that he was appointed as Guard grade-C on 30.7.1980. Thus, there is no ambiguity on the fact that the applicant was first appointed as a Clerk in the scale of Rs.260-400. In the rejoinder it is mentioned that the applicant was promoted as Guard but it is not

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a fact. The applicant met with an accident on 4.1.1981. Thus, he has worked for a period much less than a year. The applicant was not given a clear temporary appointment. He has to pass T-3 Course from the Zonal Training School, Chandausi and his offer of appointment as Guard grade-C clearly shows that the ad-hoc temporary appointment is to last till he passes the said course. However, the applicant could not avail of the chance because of the accident he met on 4.1.1981. In view of this fact, it cannot be said that the applicant was a holder of a lien on the post of Guard grade-C. The lien of the applicant remains on the post of Class-III Clerk post in the grade of Rs.260-400.

8. The contention of the learned counsel is that the Payment of Wages Authority has allowed certain claims but that have no effect because the Payment of Wages Authority has considered the matter of withholding of pay or deduction of wages from the salary of the applicant. However, the case is about the appointment of the applicant after medically decategorisation as he was not fit for the post of Guard grade-C though on ad-hoc basis. The Chandigarh Bench only held that the order passed by the Authority under Payment of Wages Act is not in the jurisdiction and so disposed of the application filed by the respondents assailing that order. That

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order will not give any benefit to the applicant for considering the applicant for appointment to the post of Guard grade-C.

9. The applicant had already joined the post of Clerk on 26.9.1981 and he accepted that offer. He never agitated the matter at any time in any court of law. The cause of action has arisen to the applicant three years earlier of the Administrative Tribunals Act, 1985. The applicant did not assail that order or appointment. Unless this order of appointment of 26.9.1981 set aside the applicant cannot get relief which he has prayed for in the present application. The order dated 26.9.81 (Annexure-IV) has also not been challenged in this case. The order dated 22.10.1990 which is being assailed in the present application only refers to the payment of the salary and the benefit of the higher pay and seniority.

10. The Authority under the Payment of Wages Act has given the decision on 27.3.1986. Even after that the applicant did not claim a declaration that he should have been given an appointment to the post of Guard grade-C or an equivalent grade of Rs.425-640. The applicant's counsel has referred to P.S. No.6845, which is the Board's letter for appointment after one

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is declared medically unfit for the post held by him.
The basic point here is that the applicant had no lien
on the post of Guard grade-C till he has cleared the
T-3 Course in the Zonal Training School, Chandausi,
successfully.

Thus, the present application is totally devoid
of merit and is dismissed leaving the parties to bear
their own costs.

J.P. Sharma
22.5.52
(J.P. SHARMA)
MEMBER (J)