

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 4th day of Dec.2001.

QUORUM : HON. MR. S. DAYAL, A.M.

HON. MR. RAFIQUDDIN, J.M.

O.A. NO.1258 of 1996.

1. Sri Tribhuvan Nath Kushwaha, working as UDC, Central Administrative Tribunal, Additional Bench at Allahabad.

..... Applicant.

Counsel for applicant : Sri Arvind Kumar.

Versus

1. Union of India through the Secretary, Ministry of Personnel, Public Grievances & Pension, New Delhi.

2. The Hon'ble Chaiman through the Registrar, Principal Bench, Central Administrative Tribunal, Faridkot House, Copernicus Marg, New Delhi.

3. The Hon'ble Vice-Chaiman, through the Registrar Central Administrative Tribunal, Additional Bench, Allahabad.

4. F.A. & C.O. Central Administrative Tribunal, Room No.739, Shastri Bhawan, 7th Floor of Wingham Rajendra Prasad, Road, New Delhi.....

..... Respondents.

Counsel for respondents : Sri A. Sthalekar.

ORDER (ORAL)

BY HON. MR. S. DAYAL, A.M.

This application has been filed for setting aside the orders dated 21/22.3.94 and 5.12.95. Further directions to respondents have been sought for paying the salary of Court Officer to the applicant in the grade of Rs.2000-3500 w.e.f. 11.9.90 to 30.3.93 and 6.11.95 to 20.8.97 when the applicant was sent back to his post of U.D.C.

2. We find from order dated 10.9.90 that Sri T.N. Kushwaha ^{while} ~~was~~ working as ^a receptionist ~~was~~ asked to take ^{over} ~~work~~. The work of Court Master in Court No.2 and was required to work till further orders vice Sri Sanjeev Sinha, Court

Officer who was to be relieved on 11.9.90 (F/N). This order has been annexed as Annexure-V to this O.A. He made a representation on 8.4.94 and 28.4.94 seeking payments of salary in the scale of Rs.2000-3500 from 11.9.90 to 13.9.93 as he had worked on the post of Court Officer (Annexure A-VIII) This representation of the applicant was forwarded to the Principal Bench for being placed before Hon'ble Chairman by letter dated 1.6.94. This representation was rejected by order of Principal Bench dated 5.12.95 in the following manner :-

"The matter has been examined in consultation with F.A. & C.A.O. and it has been found that Allahabad Bench of the Tribunal has rightly rejected the representation of Sri T.N. Kushwaha, UDC. The pay and allowances be paid on the basis of post held by the individual."

The applicant was again appointed from bill section to Court No.I on 6.11.95. On 12.8.96, he was transferred from Court No.I to Court No.3. On 29.10.96, he was again re-transferred from Court No.III to Court No.I. He claims to have continued to work as Court Officer till he was transferred to Junior Section vide order dated 20.8.97. The relief has been claimed by the applicant.

3. We heard the arguments of Sri Arvind Kumar, Counsel for applicant and Sri A. Sthalekar, Counsel for respondents. We perused the record of the case .

4. We find that the applicant had specifically claimed that he was given the exclusive charge of the work of Court Master w.e.f. 11.9.90. The respondents have not denied it but have submitted that he had to continue to work as UDC during this period, as he was not designated or appointed as Court Master or Court Officer. The Counsel for respondents has contended that the office order dated 10.9.90 was erroneous in so much as the applicant could not have been appointed as Court Officer for which 8 years of continuous service as a regular Assistant was required while the applicant was only a UDC at that time. The respondents have admitted that the applicant was again

posted in Court No.I to work as Court Officer and subsequently transferred from Court No.I to Court No.III vide order dated 29.10.96. The respondents have denied the allegation of the applicant that he was doing 'Begar' and have contended that he was being paid the salary of UDC. Counsel for respondents has placed reliance on Swamy's Compilation of Fundamental Rules (12th Addition) and has stated that the guide-lines given by Govt. of India showed that for being entitled to the higher scale, the applicant should have been required to discharge of the duties of Court Officer including statutory functions and the approval of competent authority should have been obtained for issuance of formal orders for appointment of the applicant on the post of Court Officer. This was not done. The applicant was required to attend the usual day to day work and was not entitled to additional remuneration.

5. We have considered the contention of the respondents that the applicant was neither eligible for appointment as Court Officer nor he was appointed as Court Officer. This is correct. Order dated 10.9.90 which showed that the applicant was appointed as Court Master in Court No.II was erroneous. The applicant at this time was in the scale of Rs.1200-2040 as UDC and the post of Court Master was in the pay scale of Rs.1400-2600.

6. We find that the contention of Counsel for the respondents that the applicant continued to perform the duties of UDC while being posted as Court Master, cannot be accepted. The work of Court Master deputising for Court Officer is full time work and would leave no time for the performance of duties as UDC. Under the circumstances, we are of the view that FR 49(3) will apply and the applicant will be entitled to the salary for the post of Court Master for the period of his officiation on the post.

7. Counsel for the applicant referred to a judgment of a Division Bench of this Tribunal dated 6.9.2000 in

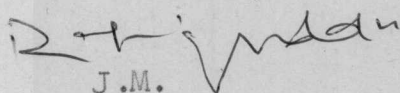
O.A. 676/94 between Lal Babu and Union of India & others.

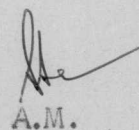
It has been held in that O.A. that although the applicant did not possess the qualification for the post of Counter Clerk, he continued to discharge the function of Counter Clerk and, therefore, he was entitled to payment of difference of pay scales. We are not convinced that the facts of this judgment are applicable here for payment of salary of Court Officer to the applicant. The judgment is relevant in so far as the payment of salary of Court Master to the applicant is involved.

8. Counsel for applicant submitted that since the applicant had worked as Court Officer, he should have been granted the salary in the scale of Court Officer, which was Rs.2000-3500. The Counsel for respondents was already mentioned that the post of Court Officer was 2 stages above with the post of UDC and required 8 years regular service as Assistant. Besides the appointment of the applicant on 10.9.90 as Court Master. The applicant was not, therefore, eligible for the post of Court Officer and was not entitled for the salary of the Court Officer. He was entitled to the salary of Court Master, a post to which he was appointed.

9. In effect, the respondents are directed to pay the salary of Court Master to the applicant for the duration he worked in Court No. I, II and III from 11.9.90 to 30.3.93 and from 6.11.95 to 20.8.97 within a period of three months from the date of receipt of a copy of this order.

There shall be no order as to costs.


J.M.


A.M.

Asthana/