

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated : This the 25th day of NOVEMBER 2003.

Original Application no. 82 of 1998.

Hon'ble Maj Gen K.K. Srivastava, Member A  
Hon'ble Mr. A.K. Bhatnagar, Member J

Raj Kumar Goswami, S/o Sri P.L. Goswami,  
R/o Station Road, Lalitpur (UP) working  
in the office of the C.W.E. M.E.S., Jhansi Cantt.,  
JHANSI.

... Applicant

By Adv : Sri M.P. Gupta

V E R S U S

1. The Union of India through the Secretary,  
Ministry of Defence, Govt. of India,  
NEW DELHI.
2. The Commander Works Engineer, Head Quarter,  
JHANSI.

... Respondents

By Adv : Km. S. Srivastava

O R D E R

Hon'ble Maj Gen K.K. Srivastava, AM.

In this OA, filed under Section 19 of the A.T. Act, 1985, the applicant has prayed for direction to the respondents to fix the pay of the applicant at Rs. 1200/- permonth in the pay scale of Rs. 950-1500 with all consequential benefits like seniority <sup>and</sup> arrears of pay and allowances.

2. The facts of the case, in short, are that the applicant was appointed in the respondent's establishment on 1.5.1978. On 5.12.1992, when his services were terminated, the applicant was working as Skilled Electrician in the pay scale of Rs. 950-1500 and he was drawing the basic pay of Rs. 1200/- permonth. The termination order

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5.12.1992 was challenged before this Tribunal in OA no. 1839 of 1992, which was finally disposed of by order dated 3.11.1995 in favour of the applicant. Instead of reinstating the applicant on a class III post, the applicant was appointed upon Group 'D' post of Chowkidar on 4.7.1996. Aggrieved, by the same, the applicant filed contempt application no. 82 of 1996. While, the contempt petition was pending, the applicant was offered the post of Lower Division Clerk (in short LDC) vide order dated 13.1.1997 in the pay scale of Rs. 950-1500 fixing his pay at Rs. 950/-, the minimum of the scale. The applicant filed a representation on 1.4.1997 and again on 26.8.1997 before respondent no. 2 for fixing his pay at Rs. 1200/- permonth with suitable increments w.e.f. 5.12.1992 and also that the applicant was assigned proper seniority position. The representations of the applicant have been rejected by respondent no. 2 by passing the impugned order dated 2.9.1997. Aggrieved by the same the applicant has filed this OA which has been contested by the respondents by filing CA.

3. Sri M.P. Gupta, learned counsel for the applicant submitted that the applicant was illegally removed and, therefore, this Court granted the relief to the applicant by order dated 3.11.1995 in OA no. 1839 of 1992. Learned counsel for the applicant also submitted that the applicant was illegally reinstated against a Group 'D' post but when they found that the sword of contempt was hanging on them, the respondents appointed the applicant <sup>by</sup> on a group 'C' post i.e. LDC vide order dated 13.1.1997.

4. Learned counsel for the applicant further submitted that the case of fixation of pay of the applicant is covered

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under FR 22(I) (a) (2).

5. Opposing the claim of the applicant, Km. Sadhna Srivastava, learned counsel for the respondents submitted that the appointment of the applicant as a LDC is a fresh appointment because the post of a LDC is basic category while the post of Electrician is an Industrial post. Learned counsel for the respondents further submitted that as per order of this Tribunal dated 3.11.1995, the intervening period from the date of termination to the date of reinstatement has been counted as qualifying services for the purpose of terminal benefit. This Tribunal never ordered regarding protection of the pay of the applicant which he was drawing on the date his services were terminated.

6. We have heard learned counsel for the parties, considered their submissions and perused records.

7. A very minor controversy is involved in this case i.e. whether the applicant is entitled for fixation of his pay at Rs. 1200/- on his reinstatement or not. In order to appreciate the controversy, for convenience sake, we would like to re-produce FR 22 (I) (a) (2) :-

"When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis :"

Admittedly, the applicant on the date of termination of his

...4/-





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services on 5.12.1992 was drawing Rs. 1200/-. It is also established beyond doubt that the applicant has been offered an alternative employment pursuant to the direction of this Tribunal dated 3.11.1995. Since, the applicant was working in the same department, it cannot be held by the respondents that his appointment is a fresh one and he is not entitled for fixation of his pay at the stage which he was drawing on the date of termination. Even otherwise a careful reading of FR 22 leaves no doubt that the case of the applicant is covered by the same. Therefore, the action of the respondents in rejecting the applicant's representation by impugned letter dated 2.9.1997 is liable to be quashed with suitable direction.

8. In the facts and circumstances, the OA is partly allowed. Order dated 2.9.1997 is quashed. The applicant shall be entitled to draw the pay of Rs. 1200/- permonth in the pay scale of Rs. 950-1500 w.e.f. the date he joined the alternative post of LDC. The applicant shall be entitled for payment of arrears accruing after the fixation of basic pay at Rs. 1200/- permonth on 13.1.1997. However, the applicant shall not be entitled for any seniority except that the intervening period shall count as qualifying service for the purposes of terminal benefits as ordered by this Tribunal on 03.11.1995 in OA no. 1839 of 1992.

9. There shall be no order as to costs.

  
Member (J)

  
Member (A)

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