

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 847 of 2005

Allahabad this the 18th day of _____ 2011

Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

Mahmood Alam Ansari Khalasi, at present Box-Khalasi Helper under Senior Section Engineer LOCO East Central Railway, Mughal Sarai, District Chandauli.

Applicant

By Advocate: Mr. Shamimul Hasnain

Vs.

1. Union of India, through General Manager, East Central Railway (E.C.R.), Hajipur, Bihar.
2. Divisional Railway Manager, East Central Railway, E.C.R. Mughal Sarai, District Chandauli.
3. Divisional Mechanical Engineer (operating and Fuel) (O&F), East Central Railway, E.C.R. Mughal Sarai, District Chandauli.
4. Senior Section Engineer (S.S.E.) Loco East Central Railway Mughal Sarai, District Chandauli.

Respondents

By Advocate: Mr. A.K. Pandey

ORDER

By Hon'ble Mr. Justice S.C. Sharma, Member (J)

Instant O.A. has been instituted for the following relief (s): -

"A. That the order dated 9.3.2005 (Annexure-1 to the compilation No. 1) be passed by Divisional Mechanical Engineer (O&F), E.C. Rly Mughal Sarai be quashed and applicant be given designation and pay of Booking Clerk since 27.3.1999,



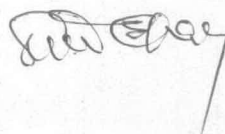
and onwards also and arrears of difference of salary be paid to the applicant.

B. Any other suitable order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.

C. Award the cost of the petition."

2. The pleadings of the parties, in nut shell, are as follows: -

It has been alleged by the applicant that he was appointed as substitute and confirmed as Substitute/Box Khalasi on 01.05.1981. It is stated that the designation of applicant remained as Box Khalasi but as he was High School passed hence w.e.f. 27.03.1991 he had been working as Telephone/Booking Clerk and the respondent No. 4 was taking this work from him. But the salary has been paid to him of the Box Khalasi, and not of Telephone/Booking Clerk. Numerous documents have been filed in support of this contention of the applicant in which he has been designated as Booking Clerk by the respondents, and it has been alleged that these documents prove that the applicant had been working as Telephone/Booking Clerk (for short T/B Clerk). The charge sheet was served upon him and thereafter punishment order was passed. Appeal was also preferred



and the order was passed by the Appellate Authority. In all these proceedings, applicant has been designated as Booking Clerk. As salary of T/B Clerk was not given to applicant, hence he filed O.A. No. 351/2000 before this Tribunal, and the O.A. was disposed of with direction to the respondents for deciding the pending representation of the applicant. It is stated that the direction was given to the respondents to treat the applicant as Booking Clerk (for short B. Clerk) w.e.f. 04.06.1991 and pay arrears of salary of B. Clerk. But the representation made by the applicant was illegally rejected by the respondents without application of mind. Hence, the impugned order, passed by the respondents, is liable to be quashed.

3. The respondents contested the case, and filed Counter Reply and denied specifically the allegations made in the O.A. It has been alleged that the O.A. No. 351 of 2000 was disposed of by this Tribunal vide Order dated 28.09.2004, and by the impugned order representation of the applicant was decided by the respondents, as per direction of this Tribunal, and a speaking and reasoned order was passed. There is no iota of evidence to show that the applicant was working as Booking Clerk. The documents filed by the applicant, where his designation has been mentioned as Booking Clerk, were issued in

general and routine manner. In absence of regular B. Clerk, applicant was utilized to work as B. Clerk. It is alleged that when the applicant delivered the documents, he mentioned his designation as B. Clerk. But no order was passed to post the applicant as B. Clerk. The applicant is not entitled for salary of the B. Clerk as he was neither appointed nor promoted as B. Clerk at any point of time. The applicant was promoted as Box Khalasi and used to sign on the Attendance Register as Box Khalasi. Due to certain lapses and omissions, applicant was issued charge sheet, and in that charge sheet applicant was mentioned inadvertently as a Booking Clerk. This mistake was not noticed even by the superior officers while issuing the punishment as well as appellate order. The charge sheet was served on the applicant for the lapses committed by him while working as a Box Khalasi, and not as B. Clerk. No benefit can be given to the applicant due to this inadvertent mistake. No rule or policy has been framed by the Railway Board to appoint the Box Khalasi to the post of B. Clerk directly in the grade, which is a higher grade. The applicant was never considered or promoted as B. Clerk at any point of time. In the representation submitted by the applicant, he mentioned his designation as Box Khalasi, and not as B.



Clerk. It is alleged that the O.A. lacks merit and is liable to be dismissed.

4. After filing of the Counter Reply on behalf of the respondents, applicant filed Rejoinder Affidavit reiterating the facts which have been alleged in the O.A.
5. We have heard Mr. Samimul Hasnain, Advocate for the applicant and Mr. A.K. Pandey, Advocate for the respondents, and perused the entire facts of the case.
6. From perusal of pleadings of the parties, it is established fact that the applicant had never been appointed or promoted as T/B Clerk. It has also not been alleged by the applicant that he was promoted or appointed as B. Clerk. It has also not been alleged by the applicant that there ^{is} ~~has~~ any provision of promotion as B. Clerk from the post of Box Khalasi. It is a known fact that the post of Box Khalasi is a Group 'D' post whereas the post of B. Clerk is Group 'C' post. There are entirely different yardsticks and parameters for appointment of a Group 'C' employee as well as Group 'D' employee. Although there are provisions in the Railway Rules also that a Group 'D' employee can be promoted as a Group 'C' employee but, there are separate provisions for that.

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Applicant has never qualified any test, which is required for promotion from Group 'D' to Group 'C'. It is not the case of the applicant that he participated in the examination for promotion from Group 'D' to Group 'C'. It has only been alleged by the applicant that w.e.f. 27.03.1991 he worked as T/B Clerk but the salary was not paid to him of T/B Clerk rather respondents paid him the salary of Box Khalasi. It has also been alleged by the applicant that on 23.11.1992, a charge sheet was served on him and in that charge sheet he was designated as a B. Clerk. The Disciplinary Authority passed the order of punishment against the applicant presuming that the applicant is a B. Clerk. Even the Appellate Authority disposed of the appeal of applicant and in that appellate order, applicant had been designated as a B. Clerk. It is alleged by the applicant that these are the ample documents to prove that the applicant had worked as a B. Clerk. It has been alleged by the respondents in the Counter Reply that inadvertently in the disciplinary proceedings, applicant has been designated as a B. Clerk, and this mistake was not detected either by the Disciplinary Authority or by the Appellate Authority. It has also been alleged by the respondents that the charge sheet was served on the applicant regarding the misdeeds committed by him while discharging the duties of a Box

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Khalasi, and not as B. Clerk. In the documents, the word 'Booking Clerk' has been mentioned in general and routine manner without noticing this fact. In emergent circumstances, applicant orally was required to discharge the duty of a B. Clerk, and while submitting the documents relating to B. Clerk, he addressed himself as B. Clerk hence, mistake committed at that point of time. No order was passed by the respondents requiring the applicant to work as a B. Clerk. Illegally or otherwise, applicant was permitted for a short period to work as a B. Clerk.

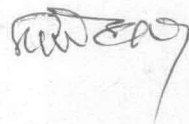
7. It has not been alleged by the applicant that he was appointed or promoted as a B. Clerk rather it is an admitted fact to the applicant that he was initially appointed as a Substitute on 01.03.1976 and thereafter promoted as Substitute/Box Khalasi on 01.05.1981. It has been alleged that w.e.f. 27.03.1991 applicant had been discharging duty of T/B Clerk. But it has not been alleged by the applicant that prior to this date, respondents passed an order directing the applicant to work as a T/B Clerk. In what circumstances, applicant had been designated as a 'Booking Clerk', is not clear. But there are certain documents in which applicant has

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been designated as a B. Clerk. The contention of the respondents appears most justified that no order at all has been passed in favour of the applicant in order to work as a B. Clerk. Through out applicant remained posted as a Box Khalasi, and in the attendance register, he put his signatures in the capacity of Box Khalasi, and not as B. Clerk. There is no denial of this fact but, because there are certain documents issued by the respondents in which applicant has been designated as B. Clerk, applicant started calling himself as B. Clerk, and this O.A. has also been filed for directing the respondents to designate him and pay salary of a B. Clerk since 27.03.1991 and onwards along with arrears. We have also stated above that no order was passed in favour of the applicant to work as a B. Clerk. Moreover, there was no promotion order in favour of the applicant to work as a B. Clerk. Under these circumstances, applicant cannot be designated as a B. Clerk. Learned counsel for the applicant has not pressed this prayer but the main thrust of learned counsel was that as applicant had worked as B. Clerk hence he is entitled for the salary of the B. Clerk irrespective of the fact that he had not been promoted as B. Clerk and no order was passed in his favour to work as B. Clerk.

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8. For few days a person has been permitted to work as B. Clerk then he cannot be designated as a B. Clerk without following the procedure. There is no documentary evidence that any order was passed by the respondents in favour of the applicant to work as a B. Clerk from specific date and it is also not evident that from which date and up to which date applicant had worked as a B. Clerk. It appears that applicant started calling himself as B. Clerk hence the mistake was committed by the respondents without noticing its consequence. If it might have been detected by the respondents then the same could have been corrected. Without any order if a person started calling himself on a higher post then it cannot be presumed that he is holding that post. There must be some specific order in favour of that person to work on that higher post or there should be order for promotion on the higher post of B. Clerk. But no procedure has been adopted in that manner. Hence, we are of the opinion that the applicant cannot be designated as a B. Clerk without any order of promotion or without adopting the legal recourse for promotion, provided in the railway rules. A prayer in this connection of the applicant cannot be accepted.



9. As we have stated above that much has been argued by learned counsel for the applicant that as he has worked in the capacity of B. Clerk hence he is entitled for salary of the B. Clerk. It has not been established by the applicant that within which period applicant had worked as B. Clerk, mentioning as B. Clerk in certain documents by the respondents will not entitle him for salary of the B. Clerk because it is a fact that even during this period applicant continued to put his signature in the capacity of Box Khalasi, and not as B. Clerk. He ought to have ~~been~~ put his signature as B. Clerk ^{while} ~~when~~ he was working as a B. Clerk, and not as Box Khalasi. Moreover, the charge sheet was also served on him for the misconduct by the applicant while discharging the duties of Box Khalasi, and not as B. Clerk. The applicant himself started calling himself as B. Clerk in certain documents, and the respondents were misguided by this fact but when the question comes of designating a person with the post, then we have to ascertain that whether the rules and procedures were followed and any order has been passed in this connection. In the present case, no order has been passed in favour of the applicant either directing him to work as B. Clerk or promoting him as B. Clerk. All the circumstances established that the applicant had worked in the capacity of Box Khalasi and only for few days, as

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alleged by the applicant, applicant worked as B. Clerk and due to this reason applicant is not entitled for the salary. Reliance has been placed by the learned counsel for applicant on the Judgment of Hon'ble High Court of Allahabad, reported in **1991 FLR (62) page 583 National Textile Corporation (U.P.) Ltd. Vs. The Presiding Officer, Labour Court, Kanpur and others**. But it is a case of Workman, decided by the Labour Court. However, in the present case, we have to ascertain whether the applicant had been illegally permitted or ordered to work as B. Clerk and there is no order in favour of the applicant hence he is not entitled to be designated as B. Clerk, and also he is not entitled for the salary of B. Clerk. Learned counsel for the respondents also placed reliance on the Judgment of the Hon'ble High Court reported in 2006 (1) ESC 227 (All) Ashagar Ali Vs. Administrator, Nagar Mahapalika, Kanpur Nagar and others. In this Judgment, reliance has been placed by the Hon'ble High Court on the several Judgments of the Hon'ble Apex Court. The Hon'ble High Court held, as under: -

"Now applying the law laid down by the Hon'ble Apex Court on the facts of the case, it is necessary to point out again, that it is nowhere case of the petitioner that he has ever been appointed on the post of driver, rather it is alleged that while working on the post of Beldar he was asked to drive the vehicle since 1984, since then he is continuously discharging the duties of driver, but salary in the pay scale of driver is not being paid to

Signature

him. Contrary to it the respondents have taken stand in their counter and supplementary counter-affidavits that although the post of Beldar and driver both are class-IV category posts, but the post of driver carries slightly higher pay scale. The petitioner has never been selected and appointed on the post of driver. Since he knew the driving and holding driving licence, therefore, he was occasionally asked to drive the vehicle for which period extra-allowances of Rs.200/- per month was paid to him and he accepted the same, therefore, he cannot claim same pay scale admissible to the post of driver."

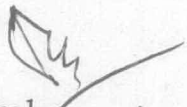
Hence, in view of the Judgment of the Hon'ble High Court, as there is no order in favour of the applicant either of promotion or any order to work as B. Clerk hence, he is not entitled for the salary of B. Clerk. The applicant cannot be equated with that of regular Booking Clerk because to make out a case for parity, certain conditions are required to be fulfilled but applicant in the present case cannot be equated to that of similarly situated person like that of B. Clerk. Applicant had always worked in the capacity of Box Khalasi and putting his signature in the attendance register as Box Khalasi and if he in self style manner started calling himself as B. Clerk then he cannot get that status or title.

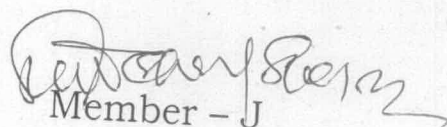
10. For the reasons mentioned above, we are of the opinion that the applicant was never appointed or promoted as B. Clerk. No order was passed in his favour to work as B. Clerk at any point of time. He was

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appointed as a substitute, later on confirmed as substitute /Box Khalasi. In certain documents, if respondents called him as 'Booking Clerk', it will not entitle the applicant to claim the designation of 'Booking Clerk' or claim the salary of that post. There must be certain order in his favour in order to claim this relief. As the applicant himself started calling him as B. Clerk, and the respondents were also misguided and they inadvertently mentioned his designation as B. Clerk in the charge sheet and in the subsequent orders but the fact is that the applicant has been working as Box Khalasi, putting his signatures on the attendance register as Box Khalasi, and charge sheet was also served upon him while discharging the duties of Box Khalasi, and not as B. Clerk. Applicant cannot be designated as 'Booking Clerk', and he is not entitled for the salary of 'Booking Clerk'. O.A. lacks merits and is liable to be dismissed.

11. O.A. is dismissed. No order as to cost.


Member - A


Member - J