

(M)

CENTRAL ADMINISTRATIVE TRIBUNAL: ALLAHABAD

REGISTRATION NUMBER 845 OF 1986(T)

Chaturgoon. v. Union of India and others.

Hon'ble Justice Shri K.S. Puttaswamy, Vice-Chairman
Hon'ble Mr. L.H.A. Rego, Member(A).

(Delivered by Hon. Justice K.S. Puttaswamy, VC)

This is a transferred application and is received from the Court of Munsif, South Lucknow under Section 29 of the Administrative Tribunals Act, 1985.

2. The applicant joined service some time in 1951 as a Kalasi, a Grade-IV Post. On 3-10-1955 he was promoted as a Break Down Steam Crane Driver ('Driver'), a Class III post and he continued to serve in that capacity till 6-9-1960. On 6/7-9-1960 the Divisional Mechanical Engineer, North Eastern Railway, Lucknow ('DME') posted the applicant and 7 others with whom we are not concerned as fitters. That order which is material reads thus:

" N.E. RAILWAY
D.M.E's Office/LJN
Dated 6/7-9-1960.

OFFICE ORDER

Consequent on abolition of the following posts, the surplus staff are absorbed against the post as shown against each in the same scale and pay with immediate effect:

Sl.No.	Name	Present Design.	Absorbed as	Scale	Station
1.	Sri Chaturgun	SC Driver	Fitter	60-130	CB shed
	xx	xx	xx	xx	

In one of his representations made on 29-10-1966 (Document No.4), the applicant admits his appointment as a fitter by the DME on 6/7-9-1960.

3. On 1-12-1980 the applicant was again promoted as Driver and he continued to work in that capacity till he retired from service on 30-6-1984.

4. As early as on 21-10-1982 the applicant commenced Regular Suit No.502 of 1982 in the Court of the Munsif, South Lucknow for a declaratory decree that he had worked as a Driver from 18-12-1959 to 30-11-1980 and his emoluments should be regulated on that basis.

5. Among others, the applicant asserted that though he had been posted as a fitter by the DME on 6/7-9-1960 he had actually performed the duties of a driver from 18-12-1959 to 30-11-1980 and, therefore, he was entitled for the reliefs sought in his application.

6. In their written statement filed before the Munsif, the respondents resisted the claim of the applicant, inter alia on the ground that he had been posted as a fitter and had worked only in that capacity during the entire period of the claim.

7. Sri Z.K.Hassan, learned counsel for the applicant, contends that his client had actually worked as a Driver which carried a higher time scale of pay of Rs.80-160 and, therefore, he was entitled for the emoluments attached to that post and the denial of the same as if he had worked in a lower post of fitter was illegal, improper, unjust and was violative of Article 14 of the Constitution.



8. Sri A.V.Srivastava, learned counsel for the respondents, contends that in the face of the order made by the DME on 6/7-9-1960 and the admission made by him on 29-10-1966 (Document No.4) the applicant had only performed the duties of a fitter carrying a lower time scale of pay from 18-12-1959 to 30-11-1980 and therefore, he was not entitled to the reliefs sought by him.

9. We have earlier set out the material portion of the order made by the DME on 6/7-9-1960. For the reasons stated in that order namely abolition of posts and other factors, the DME had posted the applicant as a fitter in the time scale of Rs.60-130. At no point of time the applicant had challenged the said order and got the same annulled before any Court or Tribunal that was then competent to decide the same.

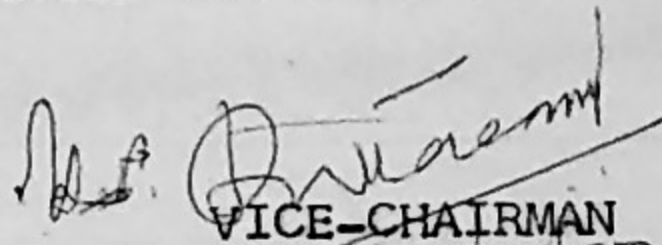
10. When the applicant had not challenged the order made by the DME posting him as a fitter on 6/7-9-1960 it passes our comprehension as to how he can justifiably claim that he had not worked as a fitter but had worked as a Driver for the period from 18-12-1959 to 30-11-1980. As long as the order made by the DME on 6/7-9-1960 had remained in force, the applicant can only claim the emoluments sanctioned in that order as revised from time to time and cannot claim any higher time scale of pay than the one sanctioned by the DME. On this short ground, the claim of the applicant for a declaration and for direction for payment of difference of salary for the period from 18-12-1959 to 30-11-1980 cannot be upheld.

11. Even otherwise, the representation made by

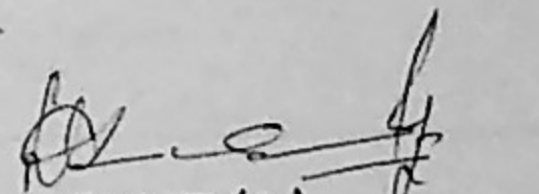
by the applicant on 29-10-1966 (Document No.4) conclusively establishes that he had been posted as a fitter in 1960 and had worked as a fitter at any rate from 6-9-1960 to 30-11-1980. In the Court of the Munsif or before us, the applicant has not placed any material evidence on which we can hold that he had worked as a Driver from 18-12-1959 to 30-11-1980. When that is so, the claim of the applicants for a declaration that he had worked as a Driver for the period from 18-12-1959 to 30-11-1980 and for payment of difference of emoluments cannot be accepted by this Tribunal. On this view also, the claim made by the applicant is liable to be rejected.

12. We have only dealt with the case of the applicant as claimed in his application only. We should not be understood to have expressed our opinion on the claims of the applicant, if any for the periods earlier to 18-12-1959 or later to 30-11-1980.

13. In the light of our above discussion, we hold that this application is liable to be dismissed. We, therefore, dismiss this application. But, in the circumstances of the case, we direct the parties to bear their own costs.


VICE-CHAIRMAN

MARCH 19, 1987.


MEMBER (A) 9.2.87