

Court-1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

....

Registration T.A. No. 444 of 1986
(Civil Appeal No. 110 of 1985)

Union of India through Divisional
Railway Manager, Northern Railway,
Allahabad

... ..

Versus

Appellant/
Applicant.

Sri Babu Lal

... ..

Respondent.

Hon'ble Mr. D.K. Agrawal, Member(J)

Hon'ble Mr. K. Obayya, Member (A)

(By Hon'ble Mr. D.K. Agrawal, Member (J))

Civil Appeal No. 110 of 1985, Union of India and others Vs. Sri Babu Lal arising out of Civil Suit No. 315 of 1983 Babu Lal Vs. Union of India and others. This appeal is directed against the judgment and decree dated 22.2.1985 passed by the 16th Additional Munsif, Agra decreeing the suit of the plaintiff/ respondents, quashing the order of the Railway Administration dated 19.8.1982 upholding the applicability of the Railway Board's circular issued in the year 1979 sanctioning upgradation of artisan staff.

2. Briefly, the facts of the case are that the applicant initially appointed as 'Cleaner' on 26.12.1947, was promoted in due course as 'Cleaner Tindal' in the grade of Rs. 210-250 in the year 1956. The Railway Board sanctioned upgradation of Artisan staff in the year 1979. The plaintiff/respondents somehow entertained ^{a belief} ~~believe~~ that he was entitled for upgradation in the grade of Rs. 260-400. However, the Railway Administration turned down his request vide an order dated 19-8-1982. Aggrieved, the plaintiff/respondents filed Civil Suit No. 315 of 1983 in the court

D.K. Agrawal

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of Munsif Fatehabad at Agra for quashing the order of Railway Administration dated 19.8.1982 and declaration to the effect that he was entitled to upgradation in pursuance of the Railway Board's circular issued in the year 1979, The suit was decreed, therefore, Union of India preferred an appeal which on transfer to the Tribunal has been registered as T.A. No. 444 of 1986.

3. We have heard the learned counsel for the appellant as well as plaintiff/ respondent, present in person. We have also gone through the judgment of the learned Munsif under issues no. 2 & 3. The learned munsif has recorded the findings that the Railway Board's circular issued in the year 1979 is applicable to the case of the plaintiff and therefore, proceeded to quash the order of the Railway Administration dated 19.8.1982, whereby, the Railway Administration had ruled that the Railway Board's circular issued in the year 1979 was not applicable to the plaintiff. However, the findings on issues no. 2 & 3 has been recorded not on the basis of the proof rendered by the plaintiff but on the ground that the defendants have failed to prove the non-applicability of the Railway Board's circular issued in the year 1979. Thus, the burden of proof has been wrongly placed on the shoulders of the defendants. The basic principle of burden of proof is that it lies on one but would fail if the facts were not proved. The plaintiff had come forward with an allegation that he ~~challenged~~ belonged to the category of Artisan Staff. Therefore, the plaintiff had to prove that the circular of the Railway Board was applicable to him. The learned Munsif, instead placed the burden on the defendants and proceeded to record a finding in favour of the plaintiff on the basis that the defendants had failed to prove the same. There is no doubt in our mind that the judgment and decree of the learned munsif is

vitiating in law.

4. Our attention has been drawn to the Railway Board's circular dated 28.3.1979 and 29.7.1983. The circular issued in the year 1979 was meant for upgradation to the Artisan Staff. The circular issued in the year 1983 was meant for Non-Artisan Staff. An affidavit of Divisional Mechanical Engineer has also been filed before us in pursuance of our order dated 11.1.1991 which explains the term 'Artisan Staff' and 'Non-Artisan Staff'. Having taken into account the nature of the duties of the plaintiff/respondent, no doubt in our mind that the plaintiff/respondent ^{belonged to} ~~challenged~~ to a non-Artisan Staff category. If so, the plaintiff/ applicant was not entitled for upgradation of pay in pursuance of the circular issued by the Railway Board in the year 1979, consequently, this appeal is liable to be allowed.

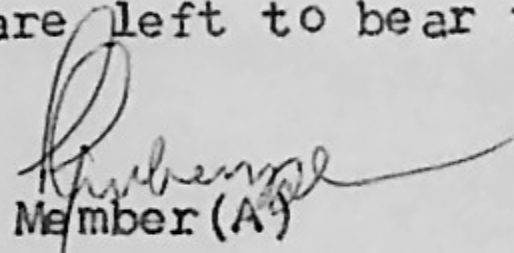
5. Before we part, we may clearly mention^{ed} that according to the statement of the plaintiff/ respondent before us (who appears in person), the benefit of upgradation of pay in accordance with the Railway Board's circular dated 29.7.1983, has not been granted to him. If it be so, the plaintiff can not be said to have been given a fair treatment. The pleadings as contained in para-13 of the written statement also reflect the applicability of the Railway Board's circular dated 29.7.1983 to the plaintiff, therefore, we hereby direct that the plaintiff/ respondent will make a representation to Divisional Railway Manager, Allahabad for grant of upgradation of pay in pursuance of the Railway Board's circular issued in the year 1983 within 15 days hereof. The Divisional Railway Manager, Allahabad will, in term, pass^{ed} an speaking order within 3 months

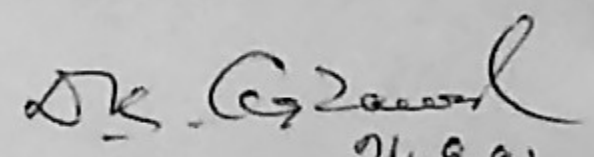
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of the communication of the order of the Tribunal as to whether or not the plaintiff/ respondent has been already granted upgradation and pay in pursuance of the Railway Board's circular issued in the year 1983 providing for upgradation of pay of non-Artisam Staff and if not granted, pass an order of upgradation as the plaintiff/ respondent may be found entitled to in accordance with the Railway Board's circular issued on 29.7.1983. The plaintiff/ respondent if still aggrieved with the order of the Divisional Railway Manager, Allahabad, shall be at liberty to approach us, if so advised.

6. In the result, the appeal is allowed. The judgment and decree of the learned munsif dated 22.2.1985 is set aside in the light of the observations made above in our judgment. Parties are left to bear their own costs.


Member (A)


Member (J) 24.9.91

Dated: 24.09.1991

(n.u.)