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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A.No.708 of 1986

Jhunni Lal Plaintiff

Versus

Union of India & Another.... Defendants

Hon.S.Zaheer Hasan,V.C.
Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, AM)

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Suit No. 704 of 1984 Jhunni Lal Versus Union of India & Another has been received on transfer from the Court of Munsif Ist Jhansi under Section 29 of the Administrative Tribunals Act XIII of 1985. The plaintiff was working as a semi skilled Driller in the Jhansi Workshop of Central Railway since 8.5.76 and worked in this capacity till 9.11.82. In terms of Railway Board's letter No. P&A/1-82/JC dated 13.11.82 persons who were working as semi skilled Drillers earlier than 1978 were entitled to a lump sum payment of Rs. 400/- alongwith the benefits of upgradation/reclassification as skilled Artisan in the grade Rs. 260 - 400. The plaintiff was aggrieved ^{on account of} ~~by~~ not being given the benefits in terms of the Board's letter while his other counter parts who were in similar circumstances were extended those advantages. He therefore felt discriminated and filed the suit praying for a declaration and

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issue of mandatory injunctions that he is entitled to the benefits of upgradation and payment of lump sum amount of Rs.400/- as laid down in the Railway Board's letter of 13.11.1982 and for quashing the decision dated 24.4.1984 given by the Additional Chief Mechanical Engineer Jhansi Workshop not giving him the benefit of upgradation. He has also claimed arrears of salary and allowances on this account with effect from 1978.

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2. The defendants' case is that, according to the Railway Board's letter of 13.11.1982, certain posts in semi skilled category were upgraded to the skilled category on proforma with effect from 1.8.78 on the basis of existing cadre strength as on 1.12.82. As there was no post of semi skilled Driller within the sanctioned strength of Workshop on 1.12.82, according to the defendants, the plaintiff was not entitled to any benefit. This benefit was to be extended to only those semi skilled workers who were within the sanctioned strength of the cadre as on 1.12.82. According to the defendants there has thus been no discrimination or arbitrariness or high handedness in their action on this account in regard to the plaintiff.

3. We have heard the learned counsel for both parties. According to Annexure 'B' a statement showing the trades designated as semi skilled as indicated in the lists (i) & (ii) of Railway Board's

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letter of 13.11.1982 the number of posts to be upgraded in each trade as they existed on 1.8.78, 1.3.82 and 1.12.82 were as follows :-

Driller	1.8.78	7
	1.3.82	4
	1.12.82	4

This statement was filed by the plaintiff. When the learned counsel for the defendants could not explain how ^{at when} ~~a~~ four posts of semi skilled category existed on 1.12.82, the plaintiff was denied the benefits of upgradation, a statement was produced before us saying that from January, 1978 to January, 1981 there were 7 posts of semi skilled Drillers in the cadre of Drillers Jhansi Workshop but from February, 1981 to December, 1982 the number of posts was Nil as the 7 posts of semi skilled Drillers which existed were kept in abeyance since February, 1981 and were subsequently offered as matching surrender for creation of 319 posts to meet with the shop requirements in terms of HQrs. letter of 16.2.1982. When it could not be explained as to how the semi skilled Drillers who were on the Roll of the Workshop were kept engaged and which were the post against ^{which} they were paid, as obviously ^{they} have not been discharged from the Workshop, The defendants' explanation was that 7 Drillers who were working in the Jhansi Workshop ~~were~~ ³¹ continued to do the same work but they were shown against other vacancies in the semi skilled grade and not against the posts of semi skilled Drillers which had ceased to exist. We were not convinced with this explanation in respect

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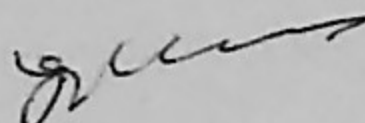
of utilization of the semi skilled Drillers who were on the Roll of the Jhansi Workshop. In any case since they were regular employees and they were absorbed against certain other semi skilled posts of the Shop ^{and} they worked as semi skilled Drillers upto February, 1981, the action of the defendants to deny them the benefits of the upgradation and fixation of pay on proforma basis w.e.f. 1.8.78 was not correct. If the posts of semi skilled Drillers had been surrendered and the semi skilled Drillers were utilized in continuity against other semi skilled posts and the employee was actually on duty ^{they} will be entitled for fixation of ~~their~~ pay as well as payment of arrears for the period 1.4.80 to January, 1981 against the post of semi skilled Driller which existed at the material time and against the other posts against which ^{they} were utilised from February, 1981 to December, 1982. The very fact that the plaintiff could be utilised against certain vacant posts and he continued to work as a Driller because obviously he could not have been utilised as a Mason or Grinder or ⁱⁿ any other new trade in the Workshop, ^{the better course to adopt} for the defendants would have been to surrender those vacant posts rather than surrender the posts which were current and occupied and on which the person continued to work though he was shown against same other semi skilled posts. We do not accept the explanation given by the defendants in this regard. The action

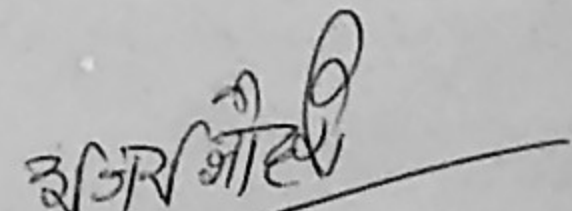
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of the defendants was definitely not based on rationale criteria and it ignored the basic fact that the plaintiff continued to work as a semi skilled Driller even though the post was surrendered . It was more in the nature of homage being paid to the exercise of matching surrender done in a haphazard manner instead of basing it on proper grounds. The defendants should have exercised proper discretion. If an employee is required to continue to work in the same capacity, he should not be made to suffer for some decisions which are taken in a routine manner. We were given to understand that the plaintiff alongwith other semi skilled Drillers who were with him is now working in the skilled grade.

4. In the result we order that the plaintiff will be entitled to lump sum arrears for the period 1.4.80 to 31.12.81 and also for proforma fixation from 1.8.78. The petition is accordingly allowed. Parties will bear their own costs.


V.C.


A.M.

Dated the 6th Feb., 1987

RKM