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Court No.1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.1331 of 1986

{Original Civil Suit No.378 of 1985 of the }  
(Court of Munsif, Gorakhpur)

Ram Chandra and Others ..... Plaintiffs-Applicants  
Versus

Union of India ..... Defendant-Opposite Party

Hon. Justice K.Nath, V.C.  
Hon. K.J. Raman, Member(A)

(By Hon. Justice K.Nath, V.C.)

Regular Civil Suit described above is before us under Section 29 of the Administrative Tribunals Act XIII of 1985 for declaration that the plaintiffs are entitled to the classification as skilled Workmen in the scale of Rs.260-400 with effect from 1.11.78 and for arrears of salary on that basis.

2. The four plaintiffs were appointed as Khalasis in the Bridge Workshop of N.E. Railway, Gorakhpur. They were trade tested for the posts of Hand Crane Operators and having been found fit, were promoted by order dated 29.11.78, Annexure-A with effect from 1.11.78 in the scale of Rs.210 - 290. The plaintiffs case is that although they were appointed as Hand Crane Operators, which was a Semi Skilled Workmen post, they were required to work on the electrically operated Crane which was a Skilled Workmen post in the scale of Rs.260 - 400. However, they were actually promoted to the post of electrically operated Crane Operators post after another

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trade test by an order dated 28.7.84, Annexure-C. The claim therefore is that during the period from 1.11.78 to 28.7.84 they were entitled to be treated to be electrically operated Crane Operators in the scale of Rs. 260 - 400 and consequently they ought to have arrears of difference of pay between that scale and the Hand Crane Operators' scale of Rs. 210 - 290.

3. The defendant-opposite party case is that when the plaintiffs were appointed as Hand Crane Operators by an order dated 29.11.78, the posts of Hand Crane Operators were in existence and posts of electrically operated Crane Operators were not in existence. The classification of skilled and unskilled Artisan staff was examined by the Railway Board and by a decision contained in Annexure-D dated 13.11.82, some relief was given to the semi skilled and skilled staff but till then the post of Hand Crane Operators which <sup>was</sup> a Semi Skilled Workmen post, had not been classified as skilled Workmen post. This classification, it is said, was brought about <sup>by</sup> circular of 4.8.86 only, while in the meantime the plaintiffs had already been promoted on 28.7.84 by Annexure-C.

4. The defendant has explained that by an order dated 7.7.84, Annexure-B, the Chief Bridge Engineer Gorakhpur had sanctioned four posts of electrically operated Crane Operators with immediate effect but simultaneously had surrendered the four posts of Hand Crane Operators. It was thus that since after 7.7.84 it became possible for the Railway Administration to appoint the plaintiffs as electrically operated Crane Operators which was done by Annexure-C.

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5. It is further argued by the defendant that the appointment on the post of electrically operated Crane Operators is not a matter of course from the post of Hand Crane Operator; it has to be done after the candidate passes through a trade test for the purpose. On this basis it is urged that even if the plaintiffs may have been operating the electrically operated Cranes while they <sup>were</sup> held posts of Hand Crane Operators, they could not be promoted to the former post in the scale of Rs. 260 - 400. It is lastly said that the plaintiffs never represented against the so-called anomaly in their actual performance of duties and the posts which they held and that the institution of the Suit as late as on 25.2.85 is highly belated.

6. The contentions raised on behalf of the defendant are not rebutted factually by the learned counsel for the plaintiffs except that the plaintiffs, according to the learned counsel, had made representations. There is however nothing on the record to show that the plaintiffs did make any representation.

7. It is well settled that an employee is entitled to the pay of a post which he holds and not to the pay of post on which he works. The Service Jurisprudence is aware of those cases where employees appointed to one post are required to work on another post but it is not always that the benefits and emoluments of the other post accrue as of right. There are provisions in the Fundamental Rules which have been substantially adopted by the Railway Administration

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e.g., Rule 2013

in the Railway Establishment Code Volume II, which will indicate this situation. Since this is established that the posts to which the plaintiffs were appointed were that of Hand Crane Operators, so even if they worked on electrically operated Crane Operators they could not get benefit of pay of that post so long as they are not actually appointed to that post. Such appointment was not possible because those posts did not exist till 7.7.84, when the posts of Hand Crane Operators were surrendered in lieu of the creation of electrically operated Crane Operators.

8. One of the points stated in the grounds for the relief sought is that there were other Workshop of the N.E. Railway e.g. Mechanical Workshop where Hand Crane Operators had been given benefit of the classification of the skilled workmen and therefore the plaintiffs were also entitled to a similar treatment. This stand is not acceptable for two reasons. Firstly, no specific instance of this sort of discrimination is set out in the statement of case in the body of the plaint; the defendant has no opportunity of meeting any such case. Secondly, the requirements of personnel may differ from Workshop to Workshop and therefore it cannot be said affirmatively that workmen in the Bridge Workshop to which the plaintiffs belong, stand in the same class as the workmen in the other Workshops.

9. There is also no doubt that there has been delay in filing the Suit. If the plaintiffs claim

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their rights since 1.11.78, the institution of the Suit on 25.2.1985 was certainly beyond the prescribed period of limitation for a Suit of declaration under <sup>Art 58 of</sup> the Indian Limitation Act of 1963.

10. For reasons stated above, the Suit cannot succeed. The Suit is therefore dismissed. Parties shall bear their costs.

*(Signature)*

Member (A)

*(Signature)*

Vice Chairman

Dated the 12th Jan., 1990.

RKM