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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

(25)

Original Application No. 428 of 1987

Allahabad this the 13th day of May 1997

Hon'ble Dr. R.K. Saxena, Member (J)
Hon'ble Mr. D.S. Baweja, Member (A)

Mohammad Muqtiba Khan, S/o Late Mohammad Mustafa Khan,
H/o 131/28 Begam Purva, Transport Nagar, Kanpur.

APPLICANT

By Advocate Sri Arvind Kumar

Versus

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway,
Allahabad.

RESPONDENTS

By Advocate Sri A.K. Gaur.

O R D E R

By Hon'ble Dr. R.K. Saxena, Judicial Member

The applicant - Mohammad Muqtiba Khan has come to the Tribunal for seeking the relief that the applicant be placed in the pay scale of Tower Wagon Driver w.e.f. 03.11.1975, annual increments be allowed, and promotion be also allowed thereafter. The difference of pay by placing in the pay scale of Tower Wagon Driver is also claimed and competency certificate on the completion of his training as Tower Wagon Driver, is also sought.

[Signature]

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2. The brief facts of the case are that the applicant was posted as Motor Trolley Driver-cum-Mechanic^l in the grade of Rs. 260-400 in the year 1968. In the year 1975, the applicant^l were invited for the post of Tower Wagon Driver and the applicant had applied therefor. After undergoing the suitability test, he claimed to have been declared successful. Thereafter the applicant further claimed to have been sent on training from 22/5/75 to 04/6/75. On the completion of the training, no competency certificate, as was the practice, was issued to the applicant. The applicant had been expecting posting as Tower Wagon Driver which was in the higher grade of Rs. 330-460. On 09.12.1975, the respondent no. 2 passed the order whereby the applicant was posted at Chunar and thus, he was shifted from Kanpur. It is stated that he was required to work on the post of Tower Wagon Driver but the directions were that he would get the salary for the post of Motor Trolley Driver-cum-Mechanic. The assumption of the applicant was that the said order of promotion minus higher scale and shifting from Kanpur to Chunar was actually an order of punishment. He, therefore, made a representation but nothing was done. It appears that the applicant did not join^l the post at Chunar. Consequently, he was served with a charge-sheet for his unauthorised absence.

The inquiry proceeded ex parte and ultimately, the

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applicant was removed from the service on 17.2.1976.

3. It appears from the contention of the respondents that the order dated 17.2.1976 was challenged by the applicant by filing a writ petition in the High Court but the same was dismissed. He moved for a grant of certificate of fitness to appeal before the Hon'ble Supreme Court but the said misc.application was also rejected on 22.9.1977. The applicant, however, preferred S.L.P. before the Hon'ble Supreme Court. The said appeal was decided on 15.4.1985 vide annexure-7. A perusal of the judgment of the Hon'ble Supreme Court indicates that the order of removal from service of the applicant, was taken back by the department on 24/9/1979 but he was not given any posting until 15.1.81. The Hon'ble Supreme Court, therefore, held that the petitioner (the present applicant) was entitled of arrears of salary and allowances for the period from 17.2.1976 (the date of removal from service) upto 22.6.1981 (the date of joining the service). The direction was, therefore, given to the respondents to pay to the petitioner within 4 weeks all the arrears of salary and allowances for the same period. It was further directed that the petitioner should be entitled to continue in service during the said period. What appears that an amount of Rs.38,945-30 was paid to the applicant on 14.3.1986. Since there was delay in

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payment of salary of the period from 17.2.1976 to 26.2.1981, the applicant had moved another petition (annexure -8) before the Hon'ble Supreme Court, in which direction was given to pay the interest at the rate of 12% on the said amount of Rs.38,945-30 from 30.5.1985 till 14.3.1986.

4. It appears that despite the payment of the salary, the grievance of the applicant for having not been posted as Tower Wagon Driver, continued. Feeling aggrieved by the said inaction of the respondents, this O.A. has been filed with the afore-mentioned reliefs.

5. The respondents have contested the case on the grounds that the O.A. was barred by limitation and that the Hon'ble Supreme Court had also observed in annexure-7, the posting of the applicant as Motor Vehicle Driver. It is therefore, claimed that the applicant was never entitled to be posted as Tower Wagon Driver. It is further contended that the applicant had not earned a competency certificate and thus he was not entitled to be posted as Tower Wagon Driver. The contention of the respondents is also to the effect that the same point was raised by the applicant before the High Court by filing a writ petition no. 930 of 1976 but the same was rejected on 03/9/97 and

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thus the applicant was estopped from raising the same question again.

6. The applicant has filed rejoinder, in which it is asserted that there was no practice to obtain the competency certificate after the training for the post of Tower Wagon Driver was successfully conducted by a selectee. The grounds which were taken in the O.A, were also reiterated.

7. We have heard the learned counsel for the parties and have perused the record.

8. The main question which falls for determination is whether the applicant was entitled to get the pay scale of Tower Wagon Driver or he continued as Motor Vehicle Driver. The facts which have been disclosed above go to show that the applicant was transferred from Kanpur to Chunar and he was directed to get the salary of Motor Trolley Driver-cum-Mechanic. It further appears from the facts that the applicant did not join the post and for that reason the charge-sheet was served on him for absence from duties. It is further revealed that the inquiry proceeded ex parte and ultimately the applicant was removed from service.

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A writ petition was filed by the applicant in the High Court. What relief was sought in the said writ petition, has not been averred anywhere by the applicant. The respondents on the other hand have come with the assertion of the fact that the applicant had challenged the order of posting at Chunar and of getting the salary of Motor Trolley Driver-cum-Mechanic. It is further contended that the plea of the applicant was rejected by the High Court. It is important to note that the applicant did not controvert the said facts in the rejoinder. Besides, it was ordered on 04.12.95 by the Tribunal that the applicant ^{should} ~~to~~ file the copy of the Judgment of High Court but he did not comply with. Thus, we are deprived of the important material to ascertain if the writ petition was related to the transfer of the applicant on the post of Motor Trolley Driver-cum-Mechanic or to the removal from service or both.

9- The applicant has filed the copy of the Judgment annexure-7 of the Hon'ble Supreme Court in which it was mentioned that the order of removal was withdrawn by the respondents vide order dated 24.9.79 and no posting was given to the present applicant till 15.1.81. Their Lordships, therefore, held that the petitioner before them (the applicant here) was entitled to all