

(Open Court) (7)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 6th day of December, 2000

C O R A M :- Hon'ble Mr. V.K. Majotra, Member- A.  
Hon'ble Mr. Rafiq Uddin, Member- J.

Orginal Application No. 1374 of 1994

1. Denis Rutter a/a 44 years s/o Sri W. Rutter  
R/o 677 Tondon Compound behind Central Hotel,  
Sipri Bazar, Jhansi.
2. Basarat Hussain a/a 43 years s/o Sri Bachhan  
R/o 113 Mohalla Allahabadi Pulliya No. 9,  
Jhansi.

..... Applicants.

Counsel for the applicants :- Sri R.K. Nigam

V E R S U S

1. Union of India through the General Manager  
Central Railway, Bombay VT.
2. Divisional Railway Manager, Central Railway  
Jhansi.

..... Respondents.

Counsel for the respondents :- Sri K.P. Singh  
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O R D E R (oral)

(By Hon'ble Mr. V.K. Majotra, A.M.)

The applicant has challenged the act of the respondents in not according the grade of Shunter to the applicant in the scale of Rs. 1200- 2040/- despite the fact that Denis Rutter (applicant No. 1) had been promoted on adhoc basis who continued as Shunter since Nov. 1986 and Basarat Husain (applicant No. 2) had been promoted on adhoc basis as shunter from Feb. 1990. The learned counsel of the applicant has stated that since the applicant No. 2 has already been promoted as Shunter on regular basis, the relief in respect of him <sup>is b</sup> not been pressed. Applicant's case is that applicant No. 1 had passed prescribed test for the post of Shunter w.e.f 14.10.89 (Annex. A-1). He had made an application alongwith applicant No. 2 on 06.07.93 asking for pay scale and arrears in the grade of Rs. 1200-2040/- (RPS) (Annex. A-4). Applicant No. 1 filed O.A No. 91/94. It was allowed in limine vide order dt. 25.01.94 (Annex. A-6) which was disposed of with the following direction to the respondents :-

" We accordingly dispose of the O.A at admission stage with the direction to the respondents to dispose of the representation of the petitioners (Annexure A-4) by passing a reasoned order within a period of three months from the date of communication of this order. There will be no order as to costs."

It has been alleged by the applicant that both the applicants made an application on 14.02.94 enclosing a copy of the aforeslated judgment (annexure A-7). The respondents have not disposed of his representation till date. According to the applicant when he met <sup>11</sup> Sr. D.E.E (TRO) on 16.10.94 he conveyed the

following orders only :-

"The decision dt. 25.01.94 is not a decision worth compliance. I reject your representation but I will not issue any written orders."

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According to the applicant ~~that~~ the applicant has not been paid salary and allowances in the scale of Shunter i.e. 1200- 2040 (RPS) even 15% officiating allowance which was paid to him was disallowed w.e.f. July, 1994 onwards. The applicant has sought direction to the respondents not to revert him from the post of Shunter grade Rs. 1200-2040/- (RPS) to the post of Diesel Assistant grade 950-1500 (RPS) and also to confirm him in the Shunter Gr. with arrears from Nov. 1986 onwards.

2. In their counter reply the respondents have contended that the applicant had never been promoted as regular Shunter w.e.f 1986. He was put to officiate as Shunter as and when required basis against the vacancies due to sick leave of the incumbent. The respondents have also mentioned that the applicant was called for the suitability test. He appeared but was not found suitable in 1997. The respondents have further stated that the representation made by the applicant in pursuance of order of the Tribunal in O.A 91/94 were disposed of by the competent authority. The respondents have also stated that the applicant was given benefit of 15% milage whenever he worked as Shunter.

3. The applicants have filed R.A as well.

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4. Whereas we have heard learned counsel of the applicant, the respondents ~~unrepresented~~ <sup>b</sup> have remained ~~unrepresented~~ <sup>b</sup> unrepresented. We proceed to dispose of the matter under Rule 16 of the C.A.T (Procedure) Rules, 1987.

5. The learned counsel of the applicant has stated that whereas the respondents should have disposed of applicant's representations by passing a reasoned order within a period of 3 months in terms of order dt. 25.01.94 in O.A 91/94, the respondents have not disposed of his representations and on the other hand Sr. D.E.E (TRO) told the applicant "the decision dt. 25.01.94 is not a decision . I reject your representation but I will not issue written orders". Whereas in their counter reply the respondents have stated to have disposed of the applicant's representation they have not furnished any proof and as a matter of fact <sup>in reply</sup> enable to para 4.16 of the O.A wherein the aforesaid verbal order of Sr. D.E.E (TRO) have been alleged to have been passed, in their counter reply the respondents have simply stated " the contents of para 4.16 of the O.A are not disputed." Thus naturally we hold that the representation of the applicant has not been disposed of by the respondents in terms of order dt. 25.01.94 passed in O.A 91/94 <sup>b</sup> and we have to draw an adverse inference against the respondents. b

6. Whereas the respondents have stated in their counter reply that the applicant has been working as a Shunter on adhoc basis, ~~intermittently~~, this claim of the applicant that he has been continuously working as Shunter though on adhoc basis since Nov. 1986 is b held to be proved. b

7. Placing reliance on 1999 LAB/IC 598 (SC), Selva Raj vs. Lt. Governor of Island, Port Blair & Ors. the b

learned counsel mentioned that the applicant having worked on higher post is entitled to salary attached to the higher post. In the aforesated case when an employee was ordered to look after the duties of higher post though temporarily and in an officiating capacity, <sup>he</sup> is entitled to salary attached to higher post, though payment of the higher salary shall not amount to promotion.

8. The respondents have stated that whereas the applicant has been working on adhoc basis as a Shunter, he could not be appointed as such on regular basis <sup>as</sup> <sup>he</sup> has not passed the suitability test. In the light of cited case of Silva Rajo (supra) since the applicant has worked on the higher post of Shunter on adhoc basis for such long time since Nov. 1986, he <sup>is certainly b</sup> ~~suddenly~~ entitled to salary in the scale of Rs. 1200- 2040/- (RPS)

9. Having regard to the reasons given above the O.A is partly allowed and the respondents are directed to accord the pay and allowances to the applicant for the post of Shunter in the scale of Rs. 1200- 2040/- (RPS) notionally from Nov. 1986 and arrears w.e.f 07.09.94 when the O.A was filed. However, the respondents are also directed to consider the claim of the applicant for regularisation as Shunter after he has cleared the suitability test as per rules.

10. There will be no order as to costs.

*D. P. Gudha*  
Member - J.

*V. K. Nayak*  
Member - A.

/Anand/