

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCHALLAHABAD.

Allahabad this the 26th day of February 1997.

Original Application no. 519 of 1994.

Hon'ble Mr. S. Dayal, Administrative Member.

Jogendra Singh, S/o Sri Jaleshwar Singh, R/o Barrack No. 1426, Indian Institute Colony Moghalsarai, Distt. Varanasi.

... Applicant.

C/A Sri V.K. Srivastava.

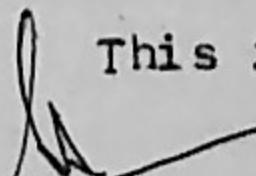
Versus

1. Union of India, through the General Manager, Eastern Railway Netaji Subhash Road, Calcutta.
2. Divisional Rail Manager, Es\$tern Railway, Moghalsarai, Distt. Varanasi.
3. Senior Divisional Personnel Officer, Eastern Railway, Moghalsarai.

... Respondents.

C/R Sri D.C. Saxena.

Hon'ble Mr. S. Dayal, Member-A

 This is an application under section 19 of

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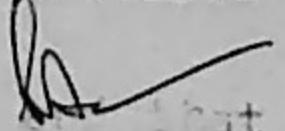
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Administrative Tribunals Act, 1985.

2. The applicant seeks following reliefs through this application:-

- i. Setting aside of order dated 01.02.94 passed by the respondents.
- ii. A direction to the respondents to make posting of the applicant from Air Conditioning Control Room to any vacancy in Moghalsarai in the cadre of P.W.I.
- iii. A direction to the respondents to pay cost of the application to the applicant.

3. The case of the applicant is that he joined Railways as Survey Khalasi on 05.05.71. He was posted as Gangman under P.W.I, Moghalsarai on 01.01.73. He was further promoted to the next higher scale of Rs. 210-270 on the post of Storeman w.e.f. 27.05.76. Again he was promoted to the post of Material Chaser in the scale of Rs. 260-400 around July 1980. After about 18 months he was designated as Gangman arbitrarily instead of material chaser. The applicant challenged this downgradation in Civil Suit Appeal ~~against~~ which was transferred to Central Administrative Tribunal which gave direction on 28.02.92 that if the applicant was working on higher post he may not be reverted unless two chances for getting his suitability has judged are given to him. He claims that he was working on the post material chaser in the scale of Rs. 260-400 for years


that

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and that he was permitted to work in the higher scale of Rs. 380-560. But he was not paid higher scales nor was his suitability ~~was~~ judged in pursuance of the Tribunals direction. He was selected in the scale of Rs. 1200-1800 as Permanent Way Mistry on 18.03.92, and the fourth pay commission allowed the scale of Rs. 1400-2300 to Permanent Way Mistry, Bridge Way Mistry, Work Mistry and Mistry in open line work shop, w.e.f. 01.01.86. The applicant sought transfer from Air Conditioning Control Room to post of Permanent Way Mistry, as working in Air Conditioning Control Room was adversely effecting to his health. It was certified by railways as well as private medical authorities. He made several representations for transfer from Air Conditioning Control Room but with no result. All of sudden on 01.02.94 the applicant was transferred to Anugrah Narayan Road and the transfer was considered as having been made on applicant's request. He represented against his transfer on the ground of his ^{medical} treatment in Varanasi and the mid session of his school going childrens. He was not paid any salary nor was he ^{considered} entitled to transfer allowance. Transferred was resorted to distant place of 200 Km. away even ~~there is~~ ^{when} vacancies in the cadre existed in ~~the~~ Moghalsarai itself.

4. Arguements of Sri D.C. Saxena learned counsel for the respondents were heard. Learned counsel who appeared subsequently was allowed to file written arguement which he did and which have been considered

in the ensuing part of this judgment. He has claimed that he was on leave from 03.02.94 to 04.04.94. He had joined the post on 09.04.94 with fitness certificate and worked upto 15.4.94. The operation of the impugned order was stayed by the Tribunal on 02.04.94. This stay order was served on the respondents on 02.04.94. The applicant claimed that he was not relieved till 27.04.94. He claims that his name was scored out from the attendance register and he made representations against that on 18.04.94 and 29.4.94. He states that he joined the post at Anugarh Narayn Road on 04.04.95. The applicant was again relieved on 21.06.96 for joining at Moghalsarai on 24.06.95. He has produced a photo copy of attendance register to show that he had worked till 27.04.94.

5. Although the applicant filed RA after serving it on the learned counsel for the respondents on 19.05.95. He does not mention that he joined at Anugarh Narayn Road on 04.04.95 in this RA. He gave this information later in his RA filed on 02.11.95 to the Misc. Stay vacation application no. 14/95. In this application he has also mentioned that he was again relieved from Anugarh Narayn Road on 22.06.95 and that he submitted his joining report at Moghalsarai on 24.06.95. In view of these facts the prayer for relief no. 1 has become infructuous and does not survive. His prayer for posting out side Air Conditioning Control Room made in clause 8 (ii) also does not survive.

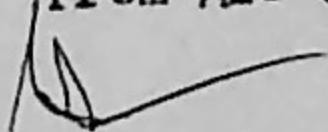
6. The only question which remains, is ^{his} prayer for payment of arrears of salary. As far as his claim that

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he was given promotion in number of intermediate scales before he was selected as Permanent Way Mistry, The applicant has placed no material to show that he was permitted to these intermediate scales. The respondents in their CA have denied that the applicant was promoted from the post of Gangman to Storeman and the Storeman to material chaser. Hence the applicant's entitlement to any arrears for the period before his transfer is not established.

7. The applicant has mentioned in his RA to the OA that he had worked from 05.04.94 to 09.04.94. He has not produced a copy of attendance register to substantiate his presence in the office on these days. The respondents have stated in their CA that the applicant could not be paid because he had not joined at the place of his posting and that they were willing to make payment of all dues which were admissible to the applicant. The applicant, can, therefore, make a representation to the respondents for any payment which is due to him for the period prior to his joining at Anugrah Narayan Road.

8. The applicant has also requested that he should be allowed transfer allowance for posting at Anugrah Narayan Road. The respondents have denied the claim of the applicant on the ground that the transfer was made on his request. The annexures to the OA in which the applicant has sought transfer show that he seeks transfer from Air Conditioning Control Room, Moghalsarai, to

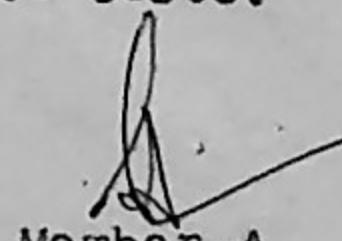


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Permanent Was Mistry at Moghalsarai. The transfer of the applicant, out side Moghalsarai can not be considered on his request. Thus the transfer is to be considered as having been made in public interest for which the transfer allowance is payable to the applicant and not the transfer has been made on the request of the applicant

9. The application, therefore, ~~succeeds~~ partly succeeds. The applicant shall be entitled to make representation ^{including transfer allowance} to the respondents for arrears, relating to period from 01.02.94 to 04.04.95, within one month of receipt of copy of this judgment and the respondents are directed to consider the claim of the applicant within three months ^{of receipt of above representation} and make any payment due to him within a period of 3 months from the date of receipt of ^{the representation} application.

10. There shall be no order as to costs.



Member-A

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