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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

Allahabad this the 21st day of March 1995.

Original Application no. 834 of 1994.

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

K.B. Lal, S/O Late Shri Kunj Behari Lal, R/o 398,
Mohatshimganj, Allahabad.

... Applicant

C/A Shri K.S. Saxena.

Versus

- i. The Union of India, through General Manager,
Northern Railway, Baroda House, New Delhi.
- ii. The Divisional Railway Manager, Northern Railway,
Moradabad.
- iii. The Divisional Commercial Supdt./II., N. Rly
DRM Office, Moradabad.

... Respondents.

C/R Shri K.D. Pandey

ORDER

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

This is an application under section 19
of the Administrative Tribunal Act, 1985. It seeks
a direction to the respondents who are officials in

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the Ministry of Railways to make no changes in the posting of the applicant who was working as a conductor under the Inspector of Tickets Northern Railway, Bareilly. It also seeks the setting aside of the order of the DCM, II MB and the remarks in the roster of grounding the applicant from train service and posting on station duty. It also seeks the award of costs to the applicant. The order of the DCM has been challenged on the ground that it was without jurisdiction and malafide because the posts of Conductor on Train Service and Conductor on Station duty were different in nature, responsibility and status and hence not interchangeable, that the order resulted in ^{reduction of} monthly emoluments of the applicant and that the posting of the applicant was bad because no new posts was created.

2. The applicant has claimed in his application that when he arrived at his headquarters after performing passenger train duty on 25.03.94, he found remarks in the roster that he should be utilised on station duty for a period of one year. It is the presumption of the applicant that the remark resulted from the checking of Lucknow Mail on 05.01.94 on which the applicant worked as a conductor by the vigilance Inspector and the official documents of the applicant were found missing. The applicant claims that no new post of conductor on station duty was created

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nor a vacancy existed on which the applicant could have been posted. The DCM II who sent a control message dated 25.2.94/ 1.3.94 for grounding the applicant had acted in an arbitrary and malafide manner as per the ratio of Harbans Mishra and others Vs. Railway Board and others (1989 SCC (1&S) 273) because he had no authority to abolish the post of a conductor on train duty. He has further claimed that the change resulted in reduction of monthly envelopments as the applicant could not get Travelling Allowance and Night Allowance amounting to approximately Rs. 1500 p.m. and his allowances could not have been cut. He has claimed that it was against the ratio of the decision in V.C. L.N. Mithila University Vs. Dayanand Jha (1986 SCC (L & S) 378) which holds that true criterion for equivalence of two posts is not the scale of pay but the status and nature of responsibility and duties attached to two posts. The respondents in their reply have stated that the applicant was subjected to a vigilance check on 4/5-1-94 when he was working as conductor in train no. 4230 Dn. Express New Delhi to Lucknow and it was found that the conductor was carrying three lower class ticket holders in A-3 coach, that a memorandum for major penalty was served on the applicant on 18.07.94 and a Departmental Enquiry has been ordered against the applicant.

3. The cases cited by the applicant are not

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in para materia and ~~do~~ the ratio of the cases ^{does} nothing to advance the arguments given by the applicant. The first case cited of Harbans Mishra and others Vs. Railway Board and others, 1989 (Vol 9) 773, considered the issue whether the subsequent change in rules can change promotions given in the post on regular basis into ad-hoc promotions and it was held that a retrospective amendment of rules taking away ^{rights} vested ^{any} without justification was arbitrary. It is also held that lien is on a post and not on a place. It was further held that the posts of Inspector C and chargeman C were interchangeable as they were of the same rank and scale and the staff of one post was transferable to the other. In the instant case even of nomenclature of the posts is the same and the argument that the post is conductor of a train and conductor at the station is unsustainable and specious. The post is that of a conductor and he can be assigned duties at the station or in the train at the will of the management. The non assignment of the applicant to a train does not require creation of a post of conductor on station duty nor does it entail abolition of the post of conductor on trains. There is a pool of conductors made available to the management and it is the management function to assign them duties. There is no vested right accruing to the applicant to be assigned only on train duties.



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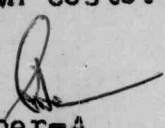
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4. In the case of Vice Chancellor L.N. Mithila University Vs. Dayanand Jha, 1986 SCC (L&S) 378 the post of Prinicipal and Reader were not considered equivalent because of post of principal Carried higher responsibilities although two were carried on the same scale of pay. This was so held not only because of teaching allowance and house allowance but also because the prinicipal had a number of statutory rights as the head of college. Thus it was held that the principal had higher duties and responsibilities. In this case the nature and level of duties is the same besides the designation and scale of pay. The conductor on railway platform or on a train performs similar type of duties. Therefore, this judgement also does not support the plea of the applicant in challenging the impugned order. The travelling allowance is given to the conductors to compensate them for expenses incurred while they are travelling and are away from their pleaces of residence and night allowance is given to compensate them for the time of work. Hence the allowances are not for higher responsibilites.

5. The above discussion makes it clear that the case lackse in merits. The application is, therefore, dismissed.

6. The parties shall bear their own costs.


Member-A

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