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Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 441 of 1995

Allahabad this the 10th day of July, 2001

Hon'ble Mr.S. Dayal, Member (A)
Hon'ble Mr.S.K.I. Naqvi, Member (J)

Sharda Prasad Gupta, aged about 58 years, Son of
Late Sheo Das Prasad Jaiswal, resident of 574 Naie
Basti Near Bechupur ^{Cro}ssing, G.T. Road, Mughalsarai,
District Varanasi.

By Advocate Shri Sajnu Ram

Applicant

Versus

1. General Manager Eastern Railway, Fairlie Place, Calcutta.
2. Divisional Rail Manager, Eastern Railway, Mughal Sarai.
3. Chief Personnel Officer, Eastern Railway, Calcutta.
4. Union of India through Ministry of Railways, Rail Bhawan, New Delhi.

By Advocate Shri A.K. Gaur.

Respondents

O_R_D_E_R (Oral)

By Hon'ble Mr.S. Dayal, Member (A)

This O.A. has been filed for a direction to the respondents to pay to the applicant the difference in salary w.e.f. 07.8.1992 to 31.1.1995 on account of the applicant officiating on the post of Senior Inspector, Telegraph Traffic, Mughalsarai. A direction is also sought to the respondents to treat the applicant as a

confirmed Senior Inspector, Telegraph Traffic w.e.f. 07.8.1992 with all consequential benefits. A further direction is also sought for directing the respondents to compute the applicant's pension by treating Rs.2150/- as the last pay drawn by the applicant and setting aside of the letter dated 28.11.1994 is also sought.

2. The case of the applicant is that while he was working as Head Signaller, on 31.7.1992 Shri J.P. Khshwaha, Senior Inspector, Telegraph Traffic retired from service. The applicant was directed to take charge of the post which was held by Shri Kushwaha, by an order dated 07.8.1992 issued by Station Superintendent, Mughalsarai. The applicant assumed the charge of the post of Senior Inspector Telegraph Traffic (for short S.I.T.T.) , Mughalsarai on 07.08.1992. The applicant was, however, given his pay only in the pay scale of Rs.1400-2300. The applicant claims that he was seniormost as the only person senior to him i.e. Shri A. Samad did not possess the minimum qualification as required for the post of Senior I.T.T. A regular selection was held by respondent no.2 on 07.08.92 and written test of 3 persons namely Shri A. Samad, Shri B.N. Misra and the applicant was taken and Shri B.N. Misra and the applicant were called for interview. The interview was held on 02.03.93. No information was given to the applicant as to result of the interview. The applicant made a representation to Chief Personnel Officer, Eastern Railway on 20/8/94, on which respondent no.2 sent his remark to respondent no.3. The impugned letter dated 28.11.1994 gives incorrect fact in so much as the post of S.I.T.T. earlier held

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by Shri J.P. Kushwaha, was ~~not~~ ^{actually} in existence. The applicant filed representations dated 19.01.1994 and 04.1.1995. He has sought relief in the background ^{of} ~~drop~~ of these facts.

3. The arguments of Shri Sajnu Ram, for the applicant and Shri A.K Gaur for the respondents have been heard.

4. The applicant has been denied promotion on a number of grounds by the respondents. The first is that there was no post of S.I.T.T. after restructuring. The second is that the post was to be filled up by selection and the applicant had never been selected on that post. Third is that the applicant was never appointed on the post of S.I.T.T. by the competent authority and lastly the applicant before this O.A. did not claim to be appointed, but asked only for officiating pay in his representations. As far as the first objection of the respondents is concerned, the impugned letter dated 28.11.1994 states that the number of posts have been reduced from 2 to 1 w.e.f. 01.3.1993 while in the para-11 of the counter-affidavit it has been mentioned that the prior to restructuring of the cadre w.e.f. 01.3.93 there was only one post of Senior I.T.T. at Mughalsarai. The applicant was by order dated 31.3.1998 asked to clarify as to number of posts of Senior Inspector and Traffic Signallers which were existing on 01.1.1993. He has filed a suppl.rejoinder. The applicant was paid salary of Senior Inspector of Telegraph Traffic from 19.7.1994 to 19.10.1994 and 21.10.1994 to 20.01.95

in the grade of Rs.1600-2660, but was denied the benefit of the same for the remaining period in the total period from 07.08.92 to 20.01.95. Along-with supplementary rejoinder, we find from annexure-4 to the supplementary rejoinder showing that Shri B.N. Misra was asked to take over the charge of S.I.T.T. Mughalsarai on 31.1.1995 on retirement of Shri S.P. Gupta. Thus, there is no denial of the fact that Shri S.P. Gupta worked on the post of S.I.T.T. and there orders show that the post existed till the date of retirement of the applicant, hence first ground on which Shri S.P. Gupta was denied payment of the scale of Rs.1600-2660, is not correct. The second ground on which he is denied the pay scale of S.I.T.T. is that he was not selected. It is not denied that the selection process was started on 07.08.92 but for the reason of restructuring , it was not completed and after interview, no appointment orders were issued. Since the post continued to exist even beyond restructuring w.e.f. 01.3.93 there was a requirement to fill up this post on regular or on ad hoc basis. There was no justification for making the applicant work on this post without giving him appointment on regular or ad hoc basis. In restructuring method of promotion on the basis of scrutiny of record had been followed by the Railways in most of the cases. We do not know whether the same method would have been followed in the case of S.I.T.T. but there is no justification for not making any selection for the post of S.I.T.T. and continuing to take work from the applicant on this post.

5. The objection of the respondents that the applicant was never appointed on the post is again in the context of findings in the first two objections

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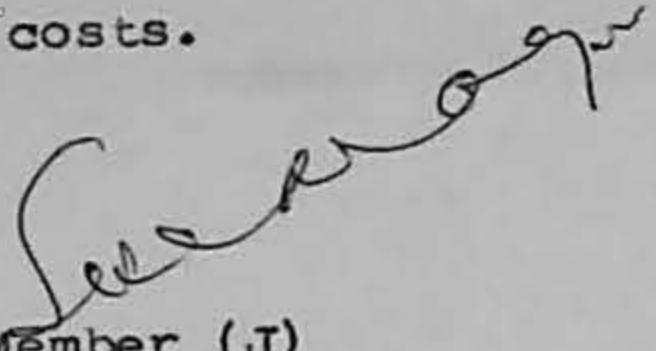
of little consequences. The action of appointment or ad hoc appointment of the applicant was required to have been taken by the respondents as the applicant continued to perform his duty on the post of Senior I.T.T. It was not the fault of the applicant that he was not appointed. The applicant has shown that he has made a number of representations and the respondents at one stage had themselves sought information for consideration of one such representations dated 20.08.94, which was however, decided against the applicant by a letter dated 28.11.94 on a ground which we do not consider was available to the respondents that only one post existed and the post for the applicant was not available. The respondents have themselves stated that Shri Musafir Ram was the regular incumbent of this post at Mughalsarai and the applicant has shown that he was working as Chief Inspector of Telegraph Traffic on ad hoc basis.

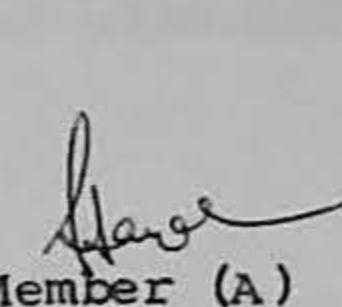
6. Learned counsel for the respondents has pointed out that the applicant sought only officiating allowance and he was entitled only to officiating allowance, but we find from the representation that the applicant sought benefit of pay scale of Rs.1600-2660 and, therefore, it cannot be said that the applicant sought only officiating allowance. Thus, we find that the applicant has wrongly been denied the benefit of pay scale of Rs.1600-2660 for bulk of the period from 07.08.92 to 31.01.1995.

7. The respondents are, therefore, directed to grant the benefit of pay of Rs.1600-2660 as the applicant worked on the post of Sr.I.T.T., Mughalsarai from 07.08.92 to 20.01.95 and give arrears as

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well as pensionary benefits as admissible under rules on the basis of his fixation of pay in the pay scale of Rs.1600-2660. The respondents are further directed to take this action within a period of three months from the date of communication of this order. No order as to costs.


Member (J)


Member (A)

|M.M.|