

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 12th day of December 1996.

Original application No. 548 of 1995.

Hon'ble Dr. R.K. Saxena, JM
Hon'ble Mr. D.S. Baweja, AM

Nanhuo, S/o Sheo Bhodhan,
 presently posted as Pump
 Operator at Solesh Pump House,
 under I.O.M., Northern Railway,
 Fatehpur.

..... applicant.

C/A Sri Satish Dwivedi
 Sri Anil Dwivedi

VERSUS

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Allahabad.
3. D.S.E. (II), Northern Railway, Allahabad.
4. Divisional Engineer, Northern Railway, Fatehpur.
5. Sri Rama Shanker, Assistant Engineer, Northern Railway, Allahabad.
6. Sri Vakeel Chandra, Inspector of Works, Northern Railway, Fatehpur.
7. Sri Nagendra Singh, Supervisor, Northern Railway, Fatehpur.

..... Respondents.

C/R Sri A.K. Gaur

ORDER

Hon'ble Mr. D.S. Baweja, AM

This application has been filed praying for the following reliefs/directions:-

(i) Regularise the service of the applicant on the post of Pump Operator from 30.3.89 and be given all the benefits attached to this post.

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(ii) Respondents to be directed to give the statement of the account of the payment of Rs. 8273/- made to the applicant on 15.3.95.

(iii) To give salary of the post of Pump Operator from 7.4.1994 till date with interest of 18 per cent per annum.

(iv) Quashing of the proceedings of inquiry initiated against the applicant as per chargesheet dated 3.10.94.

2. The applicant has stated the facts of the case as follows. The applicant states that while working as Helper Khalasi (Rs.750-940) under Inspector of Works (IOW), Northern Railway, Fatehpur, Allahabad Division, he was promoted from 30.3.89 to work on the post of Pump Operator (Rs.950-1500) as per the order of Divisional Engineer. Since then he has been continuously working on the said post. However the applicant was not paid the salary of the Pump Operator. The applicant kept representing for regularisation of his service against the post of Pump Operator but no action was taken. Being aggrieved, he filed O.A. No. 356/1991 in this Bench with a prayer to issue directions to regularise his services on the post of Pump Operator and to pay the salary of Pump Operator. Apprehending reversion during the pendency of the application, the applicant prayed for stay against his reversion. This was allowed vide order dated 27.8.92 with the direction to maintain status quo and this order was extended from time to time and continued till the final disposal of the O.A. The applicant continued on the post of the Pump Operator till 10.12.1993 but thereafter he was not allowed to perform duties of Pump Operator. The applicant filed a Misc. application under Section 24 vide order dated 11.1.1994. On the Misc. applicati

the respondents were directed to comply with the interim order dated 27.8.92 in O.A. No. 356/1991. Thereafter the respondents did not allow him to perform duty of Pump Operator but marked him present on duty upto 6.4.94 and thereafter it was started to mark him absent. O.A. No. 356/1991 was finally decided on 5.7.94 with a direction to decide the pending representations for regularisation of the services of the applicant on the post of pump Operator within three months and to pay the applicant the salary of the post of Pump Operator. After submission of the copy of the judgement to Divisional Railway Manager, Allahabad Division vide letter dated 5.7.94, the applicant represented to allow him to perform duty of Pump Operator. The applicant kept representing at various levels and finally he received letter dated 3/4.1.1995 in reply to his representations in compliance with order dated 5.7.94 in O.A. 356/91. On 15.3.95, the applicant was paid Rs. 5/- as difference of salary of Pump Operator but no details were furnished as to the period for which the payments was made inspite of making requests for the same.

3. The applicant also filed a Contempt application No. 198 of 1994 for non-compliance of order dated 5.7.94 in O.A. 356/1991. This contempt application was dismissed vide order dated 10.4.95 stating that the order in the judgement had been complied. The applicant alleges that respondents have considered his case for transfer from the post of Khalasi to the post of Pump Operator. The matter with regard to regularisation has not been considered. The present application is now seeking the reliefs as detailed in para 1 before

4. The applicant has advised that he has

grounds in support of his reliefs:-

(1) The post of Pump Operator is still available and applicant has sufficient experience for the same and he is entitled for regularisation in terms of the circulars issued by Railway Board.

(ii) He has not been given any order of reversion to the post of Khalasi and therefore is entitled to continue on the post of Pump Operator and payment of salary from 7.4.94.

(iii) Respondents No. 5, 6, 7 have become prejudiced and biased against the applicant because he has made complaints against them to higher authorities and therefore he is not being regularised.

(iv) Judgement dated 5.7.1994 in O.A. 356/1991 has still not been complied with.

(v) The chargesheet has been issued on the basis of false and concocted facts for unauthorised absence although the applicant has been reporting for duty regularly.

5. The respondents have filed counter reply opposing the application. It is submitted by the respondents that the judgement dated 5.7.94 has been fully complied with. It is denied that the applicant was ever promoted as Pump Operator. The applicant was posted as a Khalasi only to switch on and off the electrical pump. The post of the Pump Operator belongs to the Electrical Department and promotion/appointment to the post of the pump Operator is to be done by the ~~said~~ department. As regards, the chargesheet and the inquiry proceedings, it is submitted that the chargesheet has been issued for unauthorised absence from 7.4.1994. The applicant has been paid upto 6.4.94 and thereafter he is absent and therefore not entitled for any payment. He is not working as a Pump Operator and therefore the question of payment as Pump Operator does not arise. Further the applicant has

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claimed plural reliefs in the same application and therefore the application is not maintainable on this account alone. In view of these facts the respondents submit ^{that} the application deserves to be dismissed.

6. The applicant has filed rejoinder reply countering the averments in the counter reply and reiterating the grounds in the application.

7. We have heard the counsel of the parties. We have given careful thought to the material placed on record and the arguments made during the hearing.

8. First we will take up the plea made by the respondents that the application is not maintainable on account of plural reliefs included in the same application. The reliefs prayed for are detailed in para 1 above. On examination of the facts averred in the application, we find that relief (IV) with regard to quashing of the proceedings of inquiry is not arising out of the common cause of action of the other reliefs. Chargesheet has been issued for unauthorised absence while the other three reliefs are concerning regularisation of the services as a Pump Operator. The applicant has sought to make out a case that charges are not sustainable as the applicant has been reporting to office but he has not been allowed to work as pump Operator. We are not convinced of this contention of the applicant that the chargesheet is related with the issue of regularisation. It is quite clear that there is a misjoinder of causes. Rule 10 of the Administrative Tribunals (Procedure) Rules 1987 does not permit plural remedies to be agitated in the same application. The present application is therefore not maintainable or

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this account alone. However since the matter of regularisation has been agitated again, we are not dismissing this application to avoid further litigation. Further in respect of quashing the inquiry proceedings the details furnished are sketchy. Even the copy of the chargesheet has not been brought on record. No documentary evidence has been also brought on record to support this contention that he was not unauthorisedly absent and reporting for duty. In such a situation, we are also unable to go into the merits of this relief.

9. As regards the main relief of regularisation of services as a Pump Operator, the judgement dated 5.7.94 in O.A. 356/1991 directed to dispose of the representations dated 20.2.91 and the same have been replied vide letter dated 3.5.95. The present O.A. has been filed thereafter. Aspart from the other grounds, the main plea is that the judgement has not been complied with as the issue of regularisation has not been considered and the matter considered refers to transfer to Electrical Department. This argument of the applicant is not tenable from the facts on record. The applicant had filed a Contempt application No. 198/1994 for non implementation. This application was dismissed vide judgement dated 16.4.95 holding that with the reply dated 3.5.95 given to applicant with reference to his representations referred to in the judgement, compliance of the order had been done. No. review application had been also filed. In view of these facts, the judgement becomes final.

10. On going through the judgement dated 5.7.94, we find that the grounds advanced for regularisation as

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Pump Operator in the present application are more or less the same in the earlier O.A. 356/1991. Since the earlier O.A. was disposed of with the direction to consider the representations without going into the merits, we will now go into the merits of ^{the} reliefs prayed for.

11. The applicant submits that as per the order of Divisional Engineer he was promoted to officiate as Pump Operator from 30.3.89. However he was not paid the salary of the post of pump Operator. The applicant has not brought on record the copy of the order according to which he was promoted. Further the applicant has not averred whether he was subjected to any selection by way of trade test for promotion to the post of pump Operator in Group C from Group D post. The respondents also deny that the applicant was promoted as Pump Operator. The respondents have submitted ^{that} the post of the Pump Operator is a selection post subject to trade test. Further the post of the Pump Operator is under the control of Electrical Department while the applicant belongs to the Engineering Department. From these rival averments, the admitted facts are that there is no written order of promotion and the applicant has not been subjected to any selection process. Keeping this position in view, granting that the applicant was asked to work as Pump Operator as a purely adhoc or local stop gap arrangement, such an arrangement cannot entitle such an appointee to claim regularisation of the service on the higher post. If a person is promoted to a post without following the prescribed rules, such a person can be reverted. In the present case the applicant would not even be eligible for consideration if the post is on the cadre of Electrical Department. Further such an

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arrangement without considering all the eligible staff is discriminatory and not sustainable. In this view of the matter, we find contentions made by the applicant are not tenable. He has no case for regularisation and accordingly not entitled for the other reliefs prayed for.

12. In consideration of the above facts, we are unable to find any merit in the reliefs prayed for. The application is accordingly dismissed with no order as to costs.

S. B. M.
Member - A

P. D. D.
Member - J

Arvind.