

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.228 of 1999

Allahabad, this the 19th day of November, 2003

Hon'ble Mrs. Meera Chhibber, J.M.
Hon'ble Mr. D.R. Tiwari, A.M.

Ahkilesh Narain Singh,
Son of Shri Sharda Prasad Singh,
R/o Village Koirajpur Pargana Harhuan
District : Varanasi.

...Applicant

By Advocate : Shri M.P.Sarraf)

Versus

1. Union of India through the Secretary,
Ministry of Water Resources, New Delhi.
2. Central Ground Water Board,
Ministry of Water Resources,
Government of India, New Delhi.
3. Central Ground Water Board,
Division No.III, S-18/38-5B,
Patel Nagar Varanasi,
through Executive Engineer. ...Respondents.

(By Advocate : Km. Sadhna Srivastava)

O R D E R

By Hon'ble Mrs. Meera Chhibber, J.M. :

By this O.A. applicant has sought the following
relief(s) :-

- "(a) That by means of suitable order dated 5.8.1998
be quashed.
- (b) That the respondents be directed to declare
the result of the interview held on 20.11.1997
for the post of Electrician.
- (c) That the respondents be directed to pay the
salary of the Electrician to the applicant
less the salary received by him within the
time fixed by the Hon'ble Tribunal.
- (d) -----.
- (e) -----."

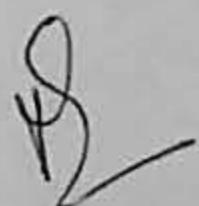
....2.

2. It is submitted by applicant that he was appointed on 29.4.1991 as Temporary Operator Drilling (Annexure-3). He was transferred on 4.2.1994 from Rachi to Varanasi (Annexure-4). Vide letter dated 25.1.1996 he was ordered to take over the charge of Electrician Tools and equipments at Division/^{and} work-Shop till the substitute of Shri R.L.Sharma Electrician Joins (Annexure-5). He, therefore, joined the duty as Electrician w.e.f. 6.2.1996. He was allowed to appear in I.T.I. Examination trade Electrician privately vide letter dated 14.3.1996. He passed the same. ^{also} He kept performing the duties of Electrician which is evident from the certificate annexed as Annexure-6, but was paid salary only of Technical operator (Drilling), even though the post of Electrician carried higher pay scale. In the meantime, selection process started for Electrician in which applicant's name was also forwarded. He appeared in the interview on 20.11.1997, but the result was not declared.

3. Now vide letter dated 5.8.1998 (Annexure-1), respondent No.3 directed the applicant to handover charge to one Shri Moti Lal Baitha (Assistant Foreman), charge is taken on 12.11.98.

4. Grievance of the applicant is two fold. Firstly that since no Electrician had joined, there was no justification to remove him from the said post. specially when interview had already been taken. Secondly, that even though he was made to work on the higher post of Electrician, he has not been paid the salary of higher post.

5. Respondents have opposed this O.A. They have submitted the post of Electrician is to be filled up through direct

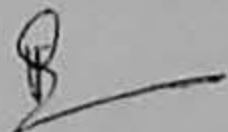


.....3.

recruitment and not by promotion as it is a Grade 'C' post. Shri Sharma was asked to look-after the post of Electrician as per his willingness, therefore, he cannot be paid the salary of Grade 'C' post in the scale of 4000-100-5000 (revised), because his substantive appointment was to a Grade 'D' post as Technical operator. They have further explained that Shri Baitha has been given the charge because he is already in Grade 'C' post.

6. As far as interview for the post of Electrician is concerned, they have explained that after interviews were taken, the result was sent to the Competent Authority, but on scrutiny of papers, no candidate was found suitable for selection, therefore, the said panel was cancelled with further direction to process the recruitment again, which is under process.

7. We have heard both the counsel and perused the pleadings as well. Since applicant was appointed substantively on a Grade 'D' post he cannot claim as a matter of right to be appointed or continued as Electrician for all times to come as that is a Grade 'C' post and the interviews were though conducted, but ultimately no one was found suitable, therefore, the competent authority had cancelled the panel. In these circumstances, if respondents decided to handover charge of Electrician to an Assistant Foreman who had already worked as an Electrician and was promoted to a higher rank, we do not find any illegality in the impugned order. However, it is an admitted fact that from 6.2.96 to 12.11.98, applicant was made to work continuously as an Electrician which carries higher pay scale, therefore, to that extent applicant is right that he should have been paid the higher wages. In Secretary-cum-Chief Engineer Chandigarh vs. Hari Om Sharma & ors. reported in 1998 (5 SCC) 87 it was held while promoting a person on stop-gap arrangement cannot be denied pay for same on the ground that employee had given an undertaking that he would not claim



salary of higher post or any other benefit. Similarly in **Selvaraj Vs. Government of Island Post Blair and ors.** reported in JT 1998 (4) S.C. 500 the Hon'ble Supreme Court held if petitioner was posted against a higher post, he should have been paid the salary in higher pay scale for that period, therefore, respondents were directed to make available the difference of salary in higher pay scale for the period when they were actually made to work on higher post of-course it was not to be treated as promotion.

8. In the latest judgment reported in 2002 SCC (L&S) 9 also Hon'ble Supreme Court has reiterated the same stand when in the case of **Dwarika Prasad Tiwari Vs. M.P. State Road Transport Corporation & another** it was held "for the period for which applicant had discharged the duties attached to higher post they should be paid emoluments as attached to the higher post".

9. In view of the above settled position, this O.A. is allowed partly to the extent that respondents shall ^{as per scale in} pay to the applicant the higher post of Electrician from 6.2.95 to 12.11.98, after adjusting the amounts already paid to him for the lower post alongwith due and drawn statement. This shall be done within a period of three months from the date of receipt of a copy of this order.

10. O.A. partly allowed. No order as to costs.

Dhoni
MEMBER(A)

B
MEMBER(J)