

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 29th day of April, 2004.

Original Application No. 991 of 1999.

Hon'ble Mr. Justice S.R. Singh, Vice-Chairman.

Hon'ble Mr. D. R. Tiwari, Member - A.

Aditya Narain Shukla S/o Sri Sidh Nath Shukla
R/o Railway quarter No. 38-B, Meja Read,
Distt. Allahabad.

.....Applicant

Counsel for the applicant :- Sri Sajnu Ram

V E R S U S

1. Union of India through General Manager,
Northern Railway, Baroda House, New Delhi.

2. Divisional Railway Manager,
Northern Railway, Allahabad.

3. Senior Divisional Electrical Engineer (TRD),
Northern Railway, Allahabad.

.....Respondents

Counsel for the respondents :- Sri Amit Sthalekar

O R D E R

By Hon'ble Mr. Justice S.R. Singh, V.C.

The applicant herein was initially appointed as E. Khalasi in Group 'D' staff on 24.03.1976 and later on after qualifying the requisite test he was promoted to the post of Motor Vehicle Driver Gr. III against 25% talented quota w.e.f 06.02.1985. The applicant, it appears, was required to undergo training for Tower Wagon Driver and for that purpose medical examination was held and he was declared medically fit in A-1 category and accordingly directed for P- 17A course w.e.f 30.12.1996. P-17 A course, it may be observed, is a course for Tower Wagon Driver. The applicant

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took training for transportation course from 17.02.1997 to 01.04.1997 at Electric Training Centre, Kanpur. Subsequently from 10.04.1997 to 15.04.1997 he had undergone training at Sanrakha Shivir, Kanpur. The case of the applicant is that he had been working and discharging the duties of Tower Wagon Driver occasionally from time to time but the respondents are neither paying the allowances admissible to Tower Wagon Driver nor they are considering him for promotion to the said post.

2. The case of the respondents is that the training was imparted to the applicant under a scheme which visualises that Meter Vehicle Drivers "in case of any exigencies of service" may be deployed as Tower Wagon Driver. The applicant, it is further stated in the CA, had given undertaking that he would not claim any monetary gain or benefit which is otherwise admissible to Tower Wagon Driver. It is further stated in the CA that post of Tower Wagon Driver is filled from amongst the Meter Vehicle Driver Gr. II and the applicant being Meter Vehicle Driver Gr. III is not yet eligible for being promoted to the post of Tower Wagon Driver.

3. Learned counsel for the applicant was asked during the course of arguments to show the rules under which he may be held eligible for promotion to the post of Tower Wagon Driver without first being promoted to the post of Meter Vehicle Driver Gr. II. It may be that the scale of pay admissible to Meter Vehicle Driver Gr. II and Tower Wagon Driver are the same but that by this will not entitle the applicant to claim promotion directly from Meter Vehicle Driver Gr. III to the post of Tower Wagon Driver without first being promoted to the post of Meter Vehicle Driver Gr. II. It is well settled that mandamus can be issued to the respondents to consider for promotion to the post of Tower Wagon Driver only in case he has a legal/statutory right for being

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considered for promotion to the post of Tower Wagon Driver. Learned counsel has not been able to show any statutory provision or executive order under which the Motor Vehicle Driver Gr. III may be held eligible for promotion to the post of Tower Wagon Driver without first being promoted to the post of Motor Vehicle Driver Gr. II. Learned counsel for the applicant then submits relying on the provisions in para 211 of I.R.E.M Vol.I that promotion includes promotion from a lower grade to a higher grade or from one class to another class or from one group to another group and, therefore, the applicant must be held eligible for promotion to the post of Tower Wagon Driver because he is working in a grade just below a grade of Tower Wagon Driver. Learned counsel for the applicant also placed reliance on para 180 of I.R.E.M in support of his contention that all Railway servants in the lowest grade should be eligible for consideration for promotion to the post in both the Transportation and Commercial Branches. The provisions relied on in para 211 of I.R.E.M is a definition clause whereas para 180 contains general provisions that all Railway servants should be eligible for promotion to a higher grade in both the Transportation and Commercial Branches does not mean that the applicant took jump from Motor Vehicle Driver Gr. III to Tower Wagon Driver without first being promoted to Motor Vehicle Driver Gr. II. The provisions, in our opinion, has no relevance to the facts of the present case.

4. Sri S. Ram, learned counsel for the applicant further placed reliance on Randhir Singh Vs. U.O.I and Ors (1982) 1 SCC 618 and submitted that non-payment of salary admissible to the applicant for the post of Tower Wagon Driver is violative of fundamental rights guaranteed by Articles 14 and 16 of the Constitution. The applicant, it has been submitted, has prayed for equal pay for equal work. We are not inclined to accept the submission of the counsel as the judgment relied on has

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no effect to the present case because of the allegation made in the CA that training was imparted to the applicant under a scheme with a view that in case of any exigencies of service Meter Vehicle Drivers may be deployed as Tower Wagon Drivers in their absence. There is no evidence that the applicant was given any adhoc or temporary appointment to the post of Tower Wagon Driver and as such it is difficult to issue any direction to the respondents to pay the applicant salary admissible to the post of Tower Wagon Driver that apart annexure CA-1 is an under-taking given by the applicant that he would not claim any financial gain or benefit on account of being sent for training as Tower Wagon Driver and would continue to draw the wages admissible to Meter Vehicle Driver. Another judgment of D. Chameli Vs. U.O.I and Ors. relied on by the learned counsel to is not applicable to the fact of the present case.

5. As stated supra the applicant was only imparted training on his giving under-taking that he would not claim the wages and benefits of Tower Wagon Driver, we are of the view, the O.A has no merit and is accordingly dismissed with no order as to costs.

Haran
Member - A.

Paranjpy
Vice-Chairman.

/Anand/