

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD

Original Application No. 669 of 2002

Allahabad this the 22nd day of December 2004.

Hon'ble Mrs. Meera Chhibber, Member-J.

1. Suleman S/o Lal Mohammad.
2. Mahangi S/o Chhannu.

Employed as Cook U/CTER/E.Rly. Mughalsarai.

.....Applicants.

(By Advocate : Sri S.K. Dey/

Sri S.K. Mishra)

Versus.

1. Union of India
through the General Manager,
E.Rly. Calcutta-1.
2. The Senior D.P.O. E. Rly.
Mughalsarai.

.....Respondents.

(By Advocate : Sri K.P. Singh)

ORDER

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

"(i) That this Hon'ble Court may be pleased to direct
the respondents to make payment charge allowance
for working as Cook to applicant No.1 from
02.06.1984 and 5.9.94 and 1.12.84 to 12.8.96
to the applicant No.2.

(ii) Any other relief or reliefs to which they are
entitled may also be awarded".

2. It is submitted by the applicants that they were
posted as Assistant Cook in the pay-scale of Rs.800-1150/-



on 02.06.1984 and 23.07.1985 respectively under CTR/ER/MGS and since 06.09.1994 and 13.08.1996, They are posted as Cook respectively. However, due to transfer of Baleshwar Prasad Cook and Gaya Prasad Cook from Mughalsarai to Gaya, two posts of cook came into existence, which were lying vacant and no regular cook was posted but the work of cook was taken from the applicant w.e.f. 02.06.84 to 23.07.1985 respectively in running room No. 555 Mughalsarai where they worked up to 05.09.1994 and 12.08.1996 continuously but they are not paid wages of the post of Cook.

3. To substantiate their claim, they have annexed number of documents to show that they were even charge-sheeted and given penalty for working as Cook, which is evident from the order dated 13.10.1984, 16.05.1985, 26.06.1986, 30.11.1988, 24.06.1989, 30.11.1988 and 26.06.1989. Being aggrieved they filed O.A. No. 1398/92, which was disposed off on 28.04.2000 by observing as follows:—

" We do not find any justification in the claim of the applicants to be promoted as Cook w.e.f. the date they have joined on promotion as an Assistant Cook specially in view of the fact that there were others who were senior to the applicant and were working as Assistant Cook. The applicant may, however, prefer a specific claim before the respondents for grant of charge allowance for days when they worked as Cook and the respondents are directed to consider their claim as per rules within a period of three months. "

4. It is submitted by the applicants that they preferred their claim along with copy of the judgment but that was rejected vide order dated 22.05.2001 on the ground that prior to the date of their promotion as Cook they were never allowed to work as Cook. It is this order, which has been challenged by the applicants in the present O.A.

5. Respondents on the other hand have submitted that both the applicants were appointed as Running Room Bearer on 26.06.1979 and 27.06.1979 and they have worked as Assistant Cook up to 05.09.1994 and 12.08.1996 respectively. Both the applicants were promoted to the post of Cook w.e.f. 06.09.1994 and 13.08.1996 respectively. They have submitted that applicants ^{never} performed the duties of cook for the period claimed by them and they have further explained that Shri Baleshwar Prasad and Shri Gaya Prasad were also working as Assistant Cook when they were transferred in administrative exigencies. Therefore, there was no vacancy of cook at the time of transfer of the above said persons. They have reiterated that applicant have performed duties as Assistant Cook in the pay-scale of Rs.210-270/-, therefore, they have paid ^{their} salaries in the said scale.

6. As far as the order annexed by the applicant are concerned, they have submitted that punishment order or charge-sheet are not a proper authority to asses the capacity of staff or actual post hold by them. They have thus, prayed that the O.M. may be dismissed.

7. I have heard both the counsel and perused the pleadings as well.

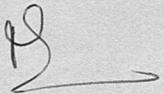
8. On 28.06.2004 after hearing both the counsel, respondents were directed to produce the relevant records to show in what capacity applicants were ^{indeed B} working during the relevant period. Inspite of that, till date no such records have been produced by

B

the respondents but counsel for the respondents has produced the order dated 06.09.1994 to show that both the applicants and 1996 respectively. B were promoted as Cook only in the year 1994. In the instant ^{applicant B} case, it is admitted position by ^{themselves that they were} and 96 B promoted as Cook only in the year 1994 but their claim is that they were made to work as cook from 1984 to 1994 and 96 respectively. Therefore, court wanted to see from the records as to in what capacity applicants had indeed work^{during the} B said period, this direction was given because applicants have annexed charge sheet dated 13.10.1984 against Shri Suleman wherein he was shown as Cook. Similarly, the order dated 16.05.1985 whereby Shri Suleman was given penalty of stopping of 3 sets of passes and 3 sets of PTOS. Even in the said order Shri Suleman ^{was B} is stated to be working as Cook under TMR/MGS. They have annexed another charge-sheet dated 28.06.1986 against Shri Suleman where again his designation has been shown to be a cook and charge-sheet dated 30.11.1988 wherein again Suleman has been shown as Cook and the order dated 24.6.99 wherein Suleman was again given penalty and was shown as Cook. All these orders were passed by the competent authority ^{or ignored totally. B} therefore, these orders cannot be ever looked. It is correct that simply because somebody is made to work on the higher post, he cannot be promoted but none-the-less law is well settled that if a person is made to work of higher post on a higher pay-scale, he has to be given wages for the said period in the higher scale. From the number of documents which have been annexed by the applicants, ^{it is clear that B} ~~then~~, there is applicant no 1 had atleast worked as a Cook from B 1984 to 1989. B

// 5 //

though there is nothing on record, As far as Shri Mahangi is concerned but as far as Shri Suleman is concerned, orders right from 13.10.1984 to 24.06.1989 clearly show that he had been working as a Cook. Therefore, this O.A. is partly allowed by giving direction to the respondents to give wages to the applicant No.1 in the pay-scale of Cook for the period from 13.10.84 to 24.06.89 within a period of 3 months from the date of receipt of a copy of this order. This however, would not mean that he would be promoted as a Cook from any earlier date because the order placed by the respondents on record ~~to~~ shows that both the applicants were promoted as Cook w.e.f. 1994 and 1996. The O.A. is accordingly disposed off with above directions. No order as to costs.



Member (J)

shukla/-