

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

~~O.A./A. /CCA No.~~ 673/02

Date of decision 1.5.2006

V.K. Singh & Ors. Applicant(s)

Sri R.C. Pathak Counsel for the applicant(s)

Versus.

V.O.I & Ors. Respondents(S)

Sri K.P. Singh counsel for the respondent(s)

CORAM

Hon'ble Mr. K.R.S. Rajan V.C./Member(G)

Hon'ble Mr. A.K. Singh Member (A)

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether their Lordship wish to see the fair copy of the judgment?
4. Whether to be circulated to all Benches?


SIGNATURE

Manish/-

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.673 of 2002.

Allahabad, this the 15.2.06 day of April ,2006.

**Hon'ble Mr. K.B.S. Rajan, Member-J
Hon'ble Mr. A.K. Singh, Member-A**

1. Vijay Kumar Singh, S/o late Sri Shiv Bali Singh, Aged about 35 years, R/oF-36, Shastri Nagar, Izatnagar, Bareilly.
2. Deepak Kishore Bisaria, S/o late Anand Kishore Bisaria, Aged about 33 years, R/o D-5/88, Shastri Nagar, Izatnagar, Bareilly.
3. Sanjay Gupta, S/o late Sri Surya Prakash Gupta, Aged about 30 years, R/o T-6/G, City Railway Colony, Bareilly City, Bareilly.

....Applicants.

(By Advocate : Shri R.C.Pathak)

Versus

1. Union of India, through the General Manager (P), N.E.R., General Manager (P), Office N.E. Railway, Gorakhpur.
2. The D.R.M. (P), N.E.R., D.R.M. (P) Office N.E. Railway Izatnagar, Bareilly.
3. The Senior Divisional Commercial Manager, N.E. R. Izatnagar, Bareilly.
4. The Divisional Railway Manager (Commercial), D.R.M. ©, N.E. R Office, Izatnagar, Bareilly.
5. The Senior Divisional Personnel Officer, D.R.M. N.E.R Office, Izatnagar, Bareilly.

.....Respondents.

(By Advocate : Shri K.P. Singh)

O R D E R**BY K.B.S. RAJAN, MEMBER-J**

The facts of the case as per the OA

(a) The applicant nos. 1,2 and 3 were appointed as Commercial Clerk with Pay scale of Rs. 975-1540 in N.E.R. at DRM's office, Izatnagar, Bareilly on 29.4.1988, 17.10.1988 and 15.12.1994 respectively.

(b) The Chief Reservation Supervisor, N.E.R, Kathgodam issued a letter on 24.4.1996 to the Station Manager NER, Izatnagar that the applicant no.2 has gone under Computer Training from 15.4.1996 to 23.4.1996 and he is able to perform duties independent on Computer Counter.

(c) The respondent no.4 i.e. D.R.M. issued order on 26.5.1996 for the applicant no.3 and 2 to perform the duties of PRS, Izatnagar i.e. ^{Passenger} ~~Parcel~~ and Reservation Supervisor in the pay scale of Rs. 4500-7000 and also submitted their charge report on 26.5.1996.

(d) The D.R.M. (P), Izatnagar, Bareilly issued a letter on 26.11.2001 for the selection of the EC/RC in the pay scale of Rs. 4500-7000. The applicant nos. 1 and 2 were shown at Sl. nos.7 & 8.

(e) The D.R.M. (P), Izatnagar, Bareilly issued a letter on 6.12.2001 for interview for the post of EC/RC including the applicant nos. 1 & 2.

Corrected by
order dated
23/8/2006

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(f) The applicant nos. 1 & 2 made representations on 27.12.2001 to respondent nos.1 and 5 for granting the pay scale of EC/RC Rs. 4500-7000 on the vacant post of EC/RC, working on the said post since 10.6.1996, the said representations are still pending.

(g) The respondents failed to comply the order issued on 23.6.1964 and did not confirm the applicants on the post of EC/RC in the pay scale of Rs. 4500-7000.

2. The main prayer made by the applicants in the O.A. are as under :-

(i) Issue suitable order or direction by way of Mandamus commanding the respondent no.4 to pay the salary in the pay scale of Rs. 4500-7000 instead of Rs. 3200-4900 to the applicants as their other colleagues as per their work and job on the post of EC/RC and according their training on the said post since 10.6.1996 with arrears and 18% penal interest on the principle of 'Equal Pay for Equal work' as shown in the pay slip of AnnexureA-18 to A-20 and A-10 of this petition.

(ii) Issue suitable order or direction by way of Mandamus commanding the respondent no.4 to implement order of respondent no.1 dated 23.6.1964 and confirm the applicants on the post of EC/RC in the pay Scale of Rs. 4500-7000 as they are officiating on the post of EC/RC since 10.6.1996 continuously without any break and not revert them as they have worked more than 18 months on the post of EC/RC on the lower pay scale of Rs. 3200-4900 since 1.6.1996.



(iii) Issue suitable order or direction by way of Mandamus commanding the respondent no.4 not to make discrimination by violating Article 14 and 16 of Indian Constitution as the colleagues of the applicants are getting higher pay scale of Rs. 4500-7000 on the post of EC/RC and the applicants are getting pay scale of Rs. 3200-4900 on the post of EC/RC since 1.6.1996.

3. The contention on behalf of the respondents is as under :-

(a) EC/RC in the grade of Rs. 4500-7000 is a promotion post alongwith direct recruitment post. The applicants were working as Commercial Clerks in the Grade of Rs. 3200-4900 on 26.5.1996. D.R.M. (P) is only competent to issue such office order to promote or revert any staff of his Division. The said order dated 26.5.1996 is not a promotion order.

(b) The applicants were deputed to look after the work of PRS. The post of ECRC in the pay scale of Rs. 4500-7000 is promotional post and is filled by "Selection" amongst the Group 'C' staff of different pay scales of Commercial Branch. So without passing the selection, the applicants were not entitled to be granted the grade of Rs. 4500-7000 of ECRC.

4. Arguments were heard. By and large the parties have stuck to their stand as per the pleadings. The counsel for the applicant relied upon the Respondents' order dated 23-06-1964 (Annexure A-1) to contend that the same applies to the case of the applicants also and the applicants are entitled to the pay in the scale attached to the post of Enquiry cum Reservation



Clerks in which post the applicants were directed to function by the respondents.

5. We have given our anxious consideration to the entire case. The law laid down by the Apex Court in regard to this aspect as contained in the decisions of the Apex Court identical cases would be highly useful

Jaswant Singh v. Punjab Poultry Field Staff Assn.,(2002) 1

SCC 261, at page 264 :

In that case, the appellant originally appointed as Bird Attendant, was later appointed as Chick Sexer which he held for a substantial period. His claim for the pay scale as of Chick Sexer was dismissed by the Court in the suit filed by him. In the appeal, the Additional District Judge held, "... the Department is ordered to consider the fact as to whether the plaintiff was working as Chick Sexer and if so his request for other benefits may also be considered according to law." In the meanwhile, one Gobind Singh (whose case was substantially similar to the appellant's case) also filed a suit. The suit ultimately culminated in an order passed by the High Court in second appeal by which the High Court directed that since Gobind Singh had been discharging the duties of a Chick Sexer, he was entitled to get the pay and allowances of that post. As far as the appellant was concerned, in purported compliance with the direction of the Additional District Judge and the decision of the High Court in Gobind Singh case, an order was passed promoting the appellant as Chick Sexer. This order was challenged under Article 226 by the Punjab Poultry Field Staff Association (Respondent 1 herein). The Association claimed that the appellant was a Class IV staff member and was not qualified nor eligible to be promoted to the post of Chick Sexer which was a Class III post. The Association's writ application was allowed by the High Court holding that the appellant was not qualified to hold the post of Chick Sexer. The Apex Court has, however, held that in Gobind Singh case what was directed was the payment of salary and allowances of the post of Chick Sexer since Gobind Singh had been discharging the duties of that post. Therefore, ... given the fact that the appellant had discharged the duties of a Chick Sexer, he was at least entitled to the pay and other allowances attributable to that post during the period he carried out such duties.

6. In the case of *Selvaraj v. Lt. Governor of Island, Port Blair*, (1998) 4 SCC 291 the order states as under:-

2. A limited notice was issued in the SLPs which has resulted into these appeals. It was to the effect "whether the petitioner is entitled to draw the salary attached to the post of Secretary (Scouts) during the time he actually worked on that post pursuant to the order at Annexure 'E' dated 28-1-1992 at page 32 of the Paper-Book. And if so, what was the scale of pay for the said post according to him". When we turned to the order dated 28-1-1992 under which the appellant was called upon to look after the duties of the Secretary (Scouts) we find the following recitals as per Order No. 276, dated 28-1-1992.

"The Director of Education, A & N Islands is pleased to order the transfer to Shri Selveraj, Primary School Teacher attached to Middle School, Kanyakumari to Directorate of Education (Scouts Section) to look after the duties of Secretary (Scouts) with immediate effect. His pay will be drawn against the post of Secretary (Scouts) under GFR 77."

3. It is not in dispute that the appellant looked after the duties of Secretary (Scouts) from the date of the order and his salary was to be drawn against the post of Secretary (Scouts) under GFR 77. Still he was not paid the said salary for the work done by him as Secretary (Scouts). It is of course true that the appellant was not regularly promoted to the said post. It is also true as stated in the counter-affidavit of Deputy Resident Commissioner, Andaman & Nicobar Administration that the appellant was regularly posted in the pay scale of Rs 1200-2040 and he was asked to look after the duties of Secretary (Scouts) as per the order aforesaid. It is also true that had this arrangement not been done, he would have to be transferred to the interior islands where the post of PST was available, but the appellant was keen to stay in Port Blair as averred in the said counter. However, in our view, these averments in the counter will not change the real position. Fact remains that the appellant has worked on the higher post though temporarily and in



an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground.

4. *..... The appeals are allowed to the limited extent that the respondents will be called upon to make available to the appellant the difference of salary in the time scale of 1640-2900 during the period from 29-1-1992 to 19-9 1995 during which time the appellant actually worked."*

7. In yet another case of *Jeet Singh v. M.C.D.*, 1986 Supp SCC 560 the Apex court's verdict is as under:

".... Petitioners claim that they have been in continuous employment ever since the year 1979 and that they are entitled to the salary and allowances are paid to regular and permanent employees on the principles of equal pay for equal work. Following the order made in the Writ Petition Nos. 3077-3111 of 1985 we direct that these petitioners shall be entitled to the salary and allowances on the same basis are paid to regular and permanent employees from the date of their continuous employment. Respondent will ascertain the date of their continuous employment and payment as aforesaid will be made to the petitioner within 3 months from today. The matter is disposed of accordingly."

8. All the above decisions of the Apex Court go to show that the law laid down by the Apex Court is that if an individual has been asked to perform the duties of a higher post which he performs for a substantial period, he is entitled to the pay scale of that higher post for the period he had carried out the higher responsibility attached to that post, albeit, he cannot claim on

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account of such holding of higher responsibility either regular promotion or seniority or the like. In other words, pay the individual for the work he has done as asked for to do.

9. In the instant case, the admitted position is that the applicants have performed the duties of ECRC for a substantial period. As such they are entitled to the pay in the scale of Rs 4,500 - ~~9000~~ ⁷⁰⁰⁰ attached to the said post for the period they had so worked. It is immaterial that it is only DRM who was competent to pass the orders. Doctrine of indoor management would come into play in this regard.

*Corrected
wide order
dated
23.8.2006
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10. The OA is allowed. The respondents are directed to pay the salary in the pay scale of Rs 4500 - 9000 to the applicants for the periods the applicants have worked as Enquiry cum Reservation Clerk. It is made clear that the applicants are NOT entitled to any other benefits such as promotion on the basis of their service as ECRC, seniority etc., whatsoever.

11. Time calendared for compliance of the above order is six months from the date of communication of this order. Costs easy.

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MEMBER-A

Girish
MEMBER-J

GIRISH/-