

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH**  
**ALLAHABAD**

**HON'BLE MR. A.K. GAUR , MEMBER (J)**  
**HON'BLE MR. S.N. SHUKLA, MEMBER (A)**

Original Application Number. 801 OF 2007.

ALLAHABAD this the 5<sup>th</sup> day of June , 2009.

Vivekanand Jha, aged about 54 ears, son of Late Satya Narain Jha, resident of Village and Post Sonaili, District- Katihar (Bihar). At present posted on the post of Junior Engineer-II (Signal) at Padrauna Railway Station under the Divisional Signal & Telecommunication Engineer, North Eastern Railway, Varanasi.

.....Applicant.

**VERSUS**

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. The General Manager (P), North Eastern Railway, Gorakhpur.
3. The Divisional Railway Manager, North Eastern Railway, Varanasi Division, Varanasi.
4. The Divisional Signal & Telecommunication Engineer, North Eastern Railway, Varanasi Division, Varanasi.

.....Respondents

Advocate for the applicant: Sri S. Dwivedi

Advocate for the Respondents: Sri P.N. Rai

**ORDER**

**Delivered by Hon'ble Mr. A.K. Gaur, J.M.**

By this O.A. filed under section 19 of the Administrative Tribunals Act, 1985 the applicant has prayed for quashing the order dated 12.12.2006 passed by respondent no.2 communicated vide letter dated 31.5.2007 (Annexure-1 to the O.A.) coupled with a direction to the

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respondents to treat the appointment of the applicant as Signal Inspector Grade-III/ Junior Engineer-II (Singal) w.e.f. 25.06.1990 in place of 22.07.2002 and other consequential relief(s).

2. Factual matrix of the case is that the applicant is an Ex-Army Personnel. In pursuance of advertisement dated 10.07.1988 issued by Railway Recruitment Board Muzaffarpur, for selection for the post of Signal Inspector Grade-III (Pay Scale Rs.1400-2300) the applicant appeared in the written test and was declared successful. Thereafter, the applicant appeared in Vivo Voce test held on 14.12.1989 and was declared successful and was appointed on the post of Signal Inspector Grade-II vide order dated 5.6.1990 (Annexure-3 of the O.A.). According to the applicant in terms of appointment letter dated 5.6.1990, the applicant deposited Rs.12/- with F.A. & C.A.O. N.E. Railway, Gorakhpur as medical examination fees on 25.6.1990 (Annexure-4 of O.A.). Learned Counsel for applicant would contend that although the applicant fulfilled all the eligibility criteria, his salary was not charged by the General Manager (P), N.E. Railway, Gorakhpur, on the ground that the same will be charged after getting verification of testimonials. The applicant represented to competent authority for allowing duty and payment of salary, but no action was taken. To the utter surprise of the applicant, he received a letter dated 5.5.1999 issued by respondent no.2 stating that on account of expiry of life time of panel it is not possible to give him appointment on the post of Signal Inspector Grade-III (Pay Scale 1400-2300).

3. Aggrieved, the applicant filed O.A. No. 411 of 2000 (Vivekanand Jha Vs. Union of India and others) before Patna Bench of this Tribunal challenging the order dated 5.5.1999, which was disposed of vide

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judgment and order dated 13.3.2002 (Annexure-6 to the O.A.) in following terms:-

*" In view of the above facts and circumstances of the case, the letter dated 5.5.1999 (Annexure-A/8) is quashed with the direction to concerned respondent to consider the case of the applicant for the post of Signal Inspector Grade -III on the basis of offer letter already issued on 5.6.1990 and in the light of clarification given by concerned authority vide letters at Annexure A/10, A/11 and Annexure -R-1 and pass appropriate order in accordance with law within three months from the date of communication of this order. So far as consequential relief are concerned, the applicant is at liberty to make representation before concerned authority in the light of the order to be passed by concerned respondent as per above direction. .... "*

4. In compliance of order dated 13.3.2002 (quoted above) the applicant was appointed on the post of Signal Inspect Grade-III/Junior Engineer Grade-II (Signal) vide order dated 24.6.2002. Thereafter, the applicant completed 18 months training and finally vide order dated 19.7.2002 he was posted in drawing office Gorakhpur, as Trainee Junior Engineer Grade-II (Signal) in pay scale Rs.4500-4625). The applicant as per letter dated 19.7.2002 passed the examination of Training Course and vide order dated 6.2.2004 he was posted on the post of Junior Engineer Grade-II (Signal) in pay scale of Rs.5000-8000. After successfully completing the period of probation, the applicant was confirmed on the said post.

5. According to the applicant he preferred representation dated 29.9.2005 followed by reminder dated 27.7.2006 along with several documents before General Manager N.E. Railway Gorakhpur, with regard to antedating of his appointment w.e.f. 25.6.1990 in place of 22.7.2002 on the post of Junior Engineer Grade-II including benefit of seniority and other consequential benefits, which the General Manager (P) N.E. Railway Gorakhpur, considered and rejected the request vide order dated 12.12.2006. The grievance of the applicant is that while passing the order dated 12.12.2006 the General Manager (P) N.E. Railway failed to consider

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the points raised by the applicant in his representation/s and has illegally passed the impugned order mentioning therein that no candidate of the concerned panel ever reported for duty.

6. On notice the respondents denying the claim of applicant filed Counter Affidavit. In Para-8 it is specifically stated that the diploma certificate produced by the applicant was not genuine and he submitted the certificate of Radio Fitter issued by Indian Air Force, whereas, as per Indian Railway Establishment Manual, the essential qualification for the post of Signal Inspector-II was diploma in Mech./Electrical/Electronics Engineer or equivalent or B.Sc. (Physics). According to the respondents, the mistake with regard to submission of wrong Diploma Certificate was detected during the verification of testimonials and that too before issuing the medical memo for examination and finally he was not appointed. Learned counsel for the respondents further contended that in compliance of judgment and order dated 13.3.2002 passed in O.A. No. 411 of 2000 the applicant was sent for medical examination and after being found fit in prescribed medical examination on 17.7.2002 he was sent for training for one and half year for the post of Signal Inspect-III and after successful completion of training he was posted vide order dated 28.1.2004.

7. The applicant filed rejoinder affidavit denying the contentions of the respondents made in para 8 of Counter Affidavit. In para 5 of Rejoinder Affidavit, it has been stated that the Diploma Certificate in Radio Fitter Grade given by Indian Air Force to the applicant in the year 1987 has been recognized as Diploma in "Electronics /Radio/Communication Engineering" for recruitment to the subordinate posts and service under the Central Government vide Office Memorandum No. F-18-19-75-T-2

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dated 26.05.1976 issued by Govt. of India, Ministry of Education and social Welfare (Department of Education). Learned counsel for the applicant would further contend that the Railway administration treating the said Diploma of the applicant as valid qualification for appointment on the post of Signal Inspector Grade-III gave appointment to the applicant. It has further been contended by learned counsel for the applicant that the name of trade of Wireless Operator Mechanic was changed as Radio Fitter by the government of India, M/o Education and Social Welfare, Department of Education vide O.M. No. F-18-29/79/T-7 dated 10.10.1979 and applicant was given Diploma in the trade of Radio Fitter in the year 1987, and in that view of the matter, in compliance of the judgment and order dated 13.03.2002 (quoted above), the Railway administration, on the basis of selection conducted in pursuance of the advertisement No. 1/88-89, appointed the applicant on the post of Signal Inspector Grade-III/Junior Engineer-II (Signal).

8. Learned counsel for both sides have filed their respective Suppl. Counter Reply and Supplementary Rejoinder Reply reiterating the contents enumerated in Counter Reply as well as in Rejoinder Reply. Counsel for both sides have also filed their respective Written Arguments.

9. We have heard learned counsel for both sides, perused the pleadings alongwith relevant documents as well as the Written Arguments.

10. Learned counsel for the applicant vehemently argued that on account of negligence and fault of the Railway administration, the applicant was not allowed duties although he was fulfilling all the requisite conditions of regular appointment. Had he been given

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appointment as per the order dated 05.06.1990, he would have get entire benefit of service of the said post from the year 1990. It has also been argued by the learned counsel for the applicant that without any fault of the applicant, he has been deprived of the benefit of service of about 12 years and the General Manager vide its order dated 12.12.2006 has illegally rejected the claim of the applicant. It has further been argued by the learned counsel for the applicant that the respondent No. 2 has utterly failed to consider the factum of initial appointment of the applicant and also the submissions of the applicant that for none of his fault, the applicant has been penalized, therefore, the order passed by the respondents dated 12.12.2006 is wholly illegal and arbitrary.

11. Learned counsel for the respondents on the other hand merely argued that the competent authority has rightly granted the benefit to the applicant after completion of training and the applicant has been posted vide order dated 28.01.2004. No other points has been argued by learned counsel for the respondents.

12. The arguments advanced by the learned counsel for the respondents that since the applicant was appointed as J.E Gr. Rs. 5000-8000 vide order dated 19.07.2002 and as such he is entitled to get all the benefits from the date of his substantive appointment w.e.f. 19.07.2002. Learned counsel for the applicant has placed reliance on the decision rendered by Hon'ble Supreme Court reported in **2008 Vol. II SCC (L&S) 399 - U.O.I Vs. B.M. Jha**. It has been argued by the learned counsel for the applicant that the applicant is entitled to get appointment from retrospective date and once he has given appointment from retrospective date, he would be entitled to all benefits flowing there from. Learned counsel for the

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applicant has also placed reliance on a decision of Hon'ble Supreme Court reported in **1997 SCC (L&S) 113 - U.O.I Vs. Mohan Singh Rathore and another** and submitted that the applicant is entitled to get all consequential benefits. In order to appreciate the controversy involved in the present case, para 7 of the judgment rendered in Mohan Singh Rathore's case (Supra) is being reproduced herein under: -

"7. However, the question is what would be the relief that could be granted to the respondent. It is seen that the State Government did not forward the "no deterioration certificate" in relation to the respondent and after the retirement of the respondents the State Government had written a letter to the Union of India on 21.2.1989 stating therein that the respondent was not entitled to appointment as he was a "well-deserving" candidate. Nothing had prevented the State Government from sending the "no deterioration certificate" of the respondent along with certificates in relation to other candidates when he was due to retire. It is seen that they forwarded the select list on 11.04.1988 to the government of India and the respondent was due to retire on 31-5-1988. When such was the incumbency nothing would have prevented the State Government from forwarding the letter. Consequently, the respondent had to lose the chance for being appointed to the IPS Cadre though he was found suitable and approved by the UPSC. Under these circumstances, we think that appropriate direction would be that the Union of India may include his name in the appointment notification dated 4-10-1988 as a select list candidate and give him the order of appointment letter. Consequently, the respondent would be entitled to all the retiral benefits on that basis.

13. In the instant case, <sup>what</sup>~~that~~ would be the relief, which should be granted to the applicant. It is seen from the record that for no fault of his own, the applicant has been deprived of his valuable rights for appointment in pursuance of the order dated 05.06.1990. The applicant has been running from pillar to the post and ultimately his certificate was found to be genuine and bonafide. In any view of the matter, the applicant is entitled to get notional benefit of seniority and other consequential benefits from the date when he was given initial appointment i.e.

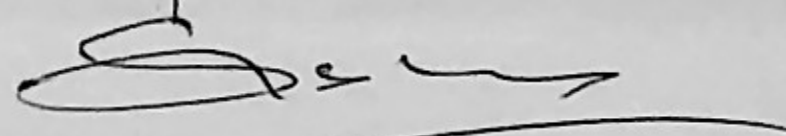
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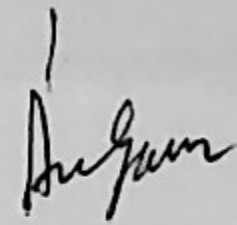
05.06.1990. However, Hon'ble Supreme Court in the case of **A.K. Soumini Vs. State Bank of India - 2003 (7) SCC 238 and 1996 SCC (L&S) 636 - State of Haryana Vs. O.P. Gupta** has clearly held that even in a case of notional promotion from retrospective date, it cannot entitle the employee to arrears of salary as the incumbent has not worked on the post. This decision relates to the principle of "No work no pay".

14. In view of the observations made above, the O.A is allowed. Impugned order dated 12.12.2006 is hereby quashed and set aside. The applicant is entitled to notional benefit of seniority from the date of his initial appointment and all other consequential benefits except arrears.

15. There will be no order as to costs.



MEMBER- A.



MEMBER- J.

/Anand/