

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Order dated 26.3.2002

Heard Shri B.Pujari, learned counsel for the Applicant and Shri A.K.Bose, learned Senior Standing Counsel for the Respondents.

Applicant joined as Fireman, Gr.II in the year 1990 and received promotion as Fireman Grade-I in the year 1995. Although he was discharging the duties and responsibilities of a Leading Hand Fire since from the beginning of his service career, and since such a promotional post was lying vacant, the applicant had approached this Tribunal in O.A.360/97, with a prayer to regularise/treat him to be a Leading Hand Fire from 1990. This Tribunal, on examination of the matter, found that the applicant had not possessed the requisite experience to be regularised/absorbed as a Leading Hand Fire and in the said premises, his prayer for being regularised/absorbed as a Leading Hand Fire from 1990 was dismissed on 10.11.1998. However, his case received due consideration of his authorities and in view of his experience, he was granted promotion as a Leading Hand Fire w.e.f. 15.6.1999. Since then (15.6.1999) the applicant is continuing to draw his salaries in the higher scale of pay/grade of pay, meant for Leading Hand Fire. Thereafter the applicant made a representation to his authorities to get extra remuneration/minimum of the scale meant for Leading Hand Fire, w.e.f. 1990; because of he ⁷having discharged the ~~the~~ duties and higher responsibilities of the post ⁷a of Leading Hand Fire. His prayer to the

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authorities having been turned down/not heeded the applicant has filed the present Original Application (O.A.No.13/01) *for redressal of his grievances.*

Respondents have filed a counter in this case; wherein they have raised a question of resjudicata/constructive resjudicata, because in the earlier round of litigation (O.A.No.360/97) he lost the case.

In the earlier round of litigation the Applicant had prayed for being regularised/absorbed as a Leading Hand Fire w.e.f. 1990. The said prayer was rejected by this Tribunal because, statutorily he could not have been absorbed as a Leading Hand Fire from 1990, in the absence of any required experience. In the present case, his prayer is simple, i.e., although he was in a lower post, he was discharging the higher responsibilities and therefore, he is entitled to be compensated. This prayer, in view of the above discussions, cannot be said to be hit by resjudicata/constructive resjudicata. A man having discharged the duties of a higher post/^{discharged} having higher responsibilities must be paid for the work/job performed by him and therefore, the Respondents ought to pay him the differential amount, i.e., salary in the minimum grade of a Leading Hand Fire minus the remuneration/salaries/wages, he has already received as a Fireman Gr.II and/or as Fireman Gr.I. *between 1990 and 1999.*

For the reasons discussed above, Respondents are directed to make payment of the differential amount to the applicant for the

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Free copy of
the order dt. 26.3.02
given to the both
counsel.

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entire period from 1990 to 15.6.1999,
by calculating the minimum of the Grade
prescribed for Leading Hand Fire minus
the salaries already received by him for
the said period.

This exercise shall be completed
within a period of three months hence.

The O.A. is accordingly allowed,
but no order as to costs.

Jahel
26/03/2002
MEMBER (JUDICIAL)

Placed herewith a copy
of order dt 24.6.2002
passed by Honble High Court
in OJC 5964/2002 arising
out of order dt. 26.3.2002
in OA 13/2001 on the title of
Cuttack Bench.

May be placed before
Honble member for kind perusal.

17/7/02

S.O.
R
17/7

DR May kindly be placed before
Honble member (T) for
kind perusal.

Registrar

17-7-2002

AI
17/7/2002