

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A.No.717 of 1997

Date of Order : 21-03-2005

Present : Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. M.K.Mishra, Administrative Member

Mahim Kr. Dey
VS.

Union of India & Ors.

For the Applicant : Mr. Shaikh Elahi Baksh, Counsel

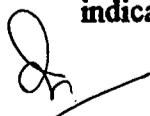
For the Respondents : Mr. K. Chakraborty, Counsel

ORDER

Mr. J.K. Kaushik, JM:

Shri Mahim Kr. Dey has invoked the jurisdiction of this Bench of the Tribunal under Section 19 of the Administrative Tribunals Act with the prayer for direction to the respondents to make payment of the officiating allowance for the period from 23-3-1985 till date as a Jr. Clerk in the scale of Rs.950 – 1500/- and also regularization of his ad-hoc promotion on regular basis.

2. We have heard Ld. Counsel for the parties in two spells and have carefully perused the pleadings and records of this case.
3. The factual matrix of this case is that the applicant came to be appointed in Group –D on the post of Khalasi on 3.1.1978 on compassionate ground since he lost his father who died in harness while serving the respondents' department. The applicant possesses the requisite qualification for the post of Class-III; but he was given appointment in Class-IV category. It is averred that vide order dated 28-8-1985 in place of Sri R.N. Dey, Jr. Clerk, who took on leave, he was prompted to officiate and subsequently retired from service. But the applicant has not been paid due officiating allowance while working on the higher post. The applicant continues to work on the higher post and certain correspondence has been incorporated which is followed by numerous grounds as indicated in the pleadings of the application.



4. Per contrary, the Ld. Counsel for the respondents resisted the claims of the applicant and has submitted that the matter regarding ad-hoc promotion of the applicant is factually incorrect. Sr. DEN only sent a proposal for local arrangement for engaging the applicant in clerical job in a vacancy arising out long absence of the regular incumbent. Sr. DEN is not empowered to give any ad-hoc promotion and it is only the Chief Personnel Officer, who is empowered to give such appointment. He has further stated that the applicant's name was not recommended by the Sr. DEN to the Chief Personnel Officer for officiating promotion. The applicant had already availed two opportunities for appearing at the test held for the post of Clerk, but he did not succeed. The original application is without any merit. No rejoinder has been filed controverting the factual aspects and defence of the respondents as set out in the reply.

5. Both the Ld. Counsel have reiterated the facts and pleadings. The Ld. Counsel for the applicant was specifically questioned as to whether the competent authority has passed any specific order whereby the applicant has been promoted to officiate or to work on ad-hoc basis on the promotional post of Jr. Clerk. Our attention has been drawn to the order dated 28-8-1985 (Annexure-A/1 PAGE 16) and it has been submitted that this was the only order which has been passed in the matter. On the contrary, the Ld. Counsel for the respondents has submitted that though the applicant was looking after the additional work of Clerk, but it was not recommended by the Chief Personnel Officer.

6. We have considered the rival submissions put forth on behalf of both the parties. The factual position is that the applicant appeared twice for selection held to the post of Jr. Clerk; but he did not succeed and inasmuch as no rejoinder has been filed to refute the same. Thus, there is no question to regularize the applicant on the post of Jr. Clerk since the said post is a selection post and the applicant does not have right for the same. Therefore, his case for regularization was not considered.

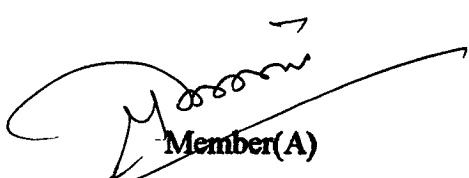
7. As regards the payment of officiating allowance, we have minutely gone through the order dated 28-8-85 (Annexure-A/1) and we find that it was only a proposal to the



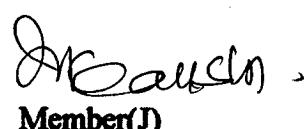
competent authority in respect of promotion to the post of Jr. Clerk. But no specific order has been passed by the appointing authority as required under FR 49 for granting officiating allowance. One cannot be paid any officiating allowance until one is put to officiate through a specific order passed by the competent authority under FR 49. In this view of matter, we refer to the verdict of Hon'ble Apex Court settling the identical controversy in a case of Md. Ali – vs – Union of India & Ors. Reported in 1998(2) page 11 where it has been stated that a Deputy Registrar who was officiating as Registrar under Section 28 of the AT Act for over a period of 4 years; but it was held that no specific order was passed by the appointing authority and hence, it was held that one cannot be paid officiating allowance until the appointing authority has passed the specific order under FR 49. Hence claim of the applicant is not sustainable.

8. Before parting with the case, we observe that no doubt the application is not squarely covered by the law but otherwise we find that once the respondents are admittedly taking the work of the applicant for a long time, they should have some consideration or some reasonableness to review the matter. However, we are unable to give any direction since the case of the applicant is admittedly not covered under rule. But this order shall not come in the way of the respondents to consider the case of the applicant sympathetically at their own level regarding compensating the applicant in view of work done by him.

9. The result is very unfortunate, but we are left with no option but to dismiss the original application and we do order accordingly with no order as to costs.



Member(A)



Member(J)