

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 158 of 2010

This, the 21st day of November, 2013.HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Jagroop son of Sri Ram Dularey, resident of Village-Peyam Khera Majrey Gaura Katherwa, Post-Jaitpur, District-Unnao.

Applicant**By Advocate Sri U. Gupta****Versus**

1. Union of India through its Secretary, Ministry of Railway Board, Government of India, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj Lucknow.
3. A.D.E.N. IIInd Northern Railway, Lucknow.
4. Divisional Engineering Circle (C) 1st Northern Railway Lucknow.

Respondents**By Advocate Sri S. Verma.****(Reserved on 12.11.2013)
ORDER****By Hon'ble Mr. Navneet Kumar, Member (J)**

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:

- "(a) the Hon'ble Tribunal may kindly be pleased to set aside the impugned order dated 15.3.2010 passed by opposite party No. 3 as contained in Annexure No. 1 to the O.A.
- (b) The Hon'ble Tribunal may kindly be pleased to pass as order directing the opposite parties to regularized the services of the applicant on the post of driver w.e.f. 2.3.2004 and salary for the post of driver may also be paid to him w.e.f. 2.3.2004 along with arrear.
- (c) any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case is also passed.
- (d) to direct the respondents to pay the cost of this application."

2. The brief facts of the case are that the applicant was initially appointed on Class IV on the post of Gang Man in 2001. Since, the applicant was having a valid driving license of heavy vehicle, he was assigned duties of the driver of a Truck. Since, 2nd of March, 2004, and in 2009, he was orally asked not to perform his duties of driver and hand over the key to the officer concerned. The Learned counsel for the applicant has pointed out that the applicant made a representation to the authorities as to what was the reason for not allowing him to perform the duties of a Truck driver while he was performing the same w.e.f. March 2004. When the respondents have not given any reply to the applicant, he preferred O.A. before this Tribunal and this Tribunal while deciding the O.A., directed the respondents to decide the applicant's representation. In pursuance of the said direction, the respondents decided the applicant's representation and passed an order dated 15.3.2010. Feeling aggrieved by the said order, he preferred the present O.A.

2. The Learned counsel, appearing on behalf of the respondents, filed their reply and through reply, it was pointed out by the respondents that mere possession of a

driving license and utilization of his services as Motor Vehicle Driver in Group 'C' without the selection to the said post. It cannot be said that the applicant is promoted as driver. The learned counsel for the respondents has also relied upon Paragraph 237 of the Indian Railway Establishment Code, Volume-I and it is also pointed out that the applicant is substantively appointed in Gang Man/Gate Man, which is a Group 'D' post and since, he was having the driving license for Heavy Motor Vehicle, as such, in the exigency of work, he was asked to perform the work of a driver which will not entitle him for being posted or deemed to have been posted as Heavy Motor Vehicle driver in Group 'C'. Apart from this, it is also pointed out by the learned counsel for the respondents that mere utilizing the services of the applicant it does not give him right to claim for additional remuneration accept admissible under the relevant rules and when there was no need for Heavy Motor Vehicle Driver, the key was asked to be handed over.

3. Learned counsel for the applicant filed rejoinder and through rejoinder, mostly, the averments made in the O.A. are reiterated.

4. Heard the learned counsel for the parties and perused the record.

5. Undisputedly, the applicant was initially appointed as a Gang Man/Gate Man on Class IV Post in 2001 and he was also having the valid driving license for driving the Heavy Motor Vehicle, as such, in the exigency of services, the respondents asked the applicant to perform the work of driver and was given the work to drive the heavy vehicle. When in 2009, the respondents were not in need of driver or when the respondents were not in the need of applicant as a driver, they asked the applicant to hand over the keys. The applicant at that point of time, requested the respondents not to take keys from him and also allow him to perform the work of driver. Feeling aggrieved of the inaction of the part of the respondents when he was asked orally to hand over the keys, applicant preferred the O.A. and the Tribunal directed the respondents to consider and decide the representation in accordance with law and rules and in pursuance thereof, the respondents have taken a decision on his representation in which it is pointed out by the respondents that he was initially appointed as Gang Man and since, he was having a driving license, therefore, he was asked to perform the work of driver and was also paid salary for that period and w.e.f. 6.12.2009, the services of the applicant as driver were not required and the keys were also taken from him. Now, by means of this O.A., applicant prays that direction be issued to pass an order to regularize the services of the applicant on the post of Driver w.e.f. 2.3.2004 since he was performing the work of the driver and the salary is also paid to him. Needless to say that the avenue of promotion from Group D to Group C is absolutely clear for that purpose a person is required to undergo with a selection or to undergo with an examination and should have also passed the suitability test. In the

eventually, the department can take work from a particular person and the work which was taken from the applicant was also paid accordingly. Para 237 of the Indian Railway Establishment Code, Volume-I is reproduced below:-

"237.Whole time of railway servant at the disposal of Government- Unless in any case it be otherwise distinctly provided, the whole time of a railway servant is at the disposal of the Government which pays him, and he may be employed in any manner required by proper authority without claim for additional remuneration, whether the services required of him are such as would ordinarily be remunerated from the Consolidated Fund of Government of India, from a local fund or from the funds of a body incorporated or not, which is wholly or substantially owned or controlled by the Government."

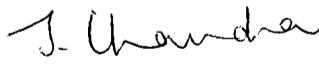
5. Apart from this, the term "Pay" has been defined in clause (35) of Paragraph 103 of Chapter-1 of the Indian Railway Establishment Code, Volume-1 which is reproduced below-

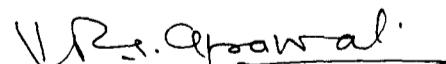
"(35) Pay means the amount drawn monthly by a railway servant as

- (i) The pay other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre;
- (ii) Overseas pay, special pay and personal pay; and
- (iii) any other emoluments which may be specially classed as pay by the President."

6. The learned counsel for the applicant also fail to indicate any order which may say that he was given an appointment to the post of driver and only for the exigency of the work, he was asked to perform the work of driver for which he has also been paid. Undoubtedly, the applicant was initially appointed as Gang Man/Gate Man and was given promotion by the respondents in Group C post only the work for driver was taken from him and for that the required pay was also made to the applicant. Since the applicant was not given any regular promotion to the post of driver and he has also not passed any examination or the suitability test, as such, merely performing the work of a driver only a stop gap arrangement for the time being does not entitle him for regularization on the post of driver.

7. Considering the averments made by the learned counsel for the parties, we do not find any justified reason to interfere in the present O.A. As such, the O.A. is fit to be dismissed and is accordingly dismissed. No order as to cost.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)