

**CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW
BENCH, LUCKNOW**

**Original Application No.457/2010
This the 2nd day of December, 2011.**

Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

Suraj Narain Tiwari aged about 55 years, son of Shri Pyare Lal Tiwari address-1-5B, Barha Railway Colony, Alambagh, Lucknow.

...Applicants.

By Advocate: Sri Praveen Kumar.

Versus.

1. Union of India, through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Lucknow.
3. The Senior Divisional Operating Manager, Northern Railway, Lucknow.

.... Respondents.

By Advocate: Sri B.B. Tripathi.

ORDER (dictated in open court)

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for the following relief's:-

"1. To quash the impugned order dated 19.08.2010 contained as Annexure No. 1-1A to this O.A.

2. To pay the difference of salary attached to the post of Head Clerk in grade Rs.5000-8000 as he is posted right since 26.09.2000 till prior to issue of letter dated 12.10.2007, and thereafter as Senior Clerk in grade Rs.4500-7000 alongwith interest @ 18% p.a.

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3. *To pay salary attached to the post on which the applicant is working at present without any interruption.*

4. *Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.*

5. *Cost of the present case."*

2. The case of the applicant is that as per the judgment and order of this Tribunal dated 22.04.2010 passed in O.A.No.3/2009, the applicant has been discharging the responsibilities attached to a post which carries higher pay scale since 26.09.2000, therefore, he is entitled to officiating allowance permissible under the Rules for the period he was discharging the higher responsibilities. This Tribunal also directed him to file a representation containing his claims relying on specific rules /Railway Board Circular within a period of one month and competent authority was to decide the same within a period of two months by passing a reasoned and speaking order in accordance with rules /railway board circulars. It is said that respondents passed and order on 19.08.2010, which is against the spirit of the aforesaid order of the Tribunal and they erroneously rejected his claim of officiating allowance. Hence this O.A.

3. This O.A. was contested by filing a detailed Counter Affidavit, saying that in furtherance of this aforesaid order dated 22.04.2010 a reasoned order has been correctly passed.

4. Rejoinder Affidavit has also been filed reiterating the averments made in the O.A. Moreover, a copy of the representation made by the applicant and also a copy of judgment and order dated 22.04.2010 have been enclosed.

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5. I have heard the learned counsel for both the parties and perused the material on record.

6. At the outset, the operative para-4 of the final order dated 22.04.2010 is required to be extracted below:-

"It is admitted that an employee is entitled to officiating allowances as per rules when ever he is called upon to discharge the higher responsibilities. Admittedly, the applicant has been discharging the responsibilities attached to a post which carries higher pay scale since 26.09.2000; therefore, he is entitled to officiating allowance permissible under the Rules for the period he was discharging the higher responsibilities. The applicant is directed to file a fresh representation containing his claims relying on specific rules/ Railway board circular within a period of one month. The competent respondent authority shall dispose of his claim within a period of tow months thereafter by a passing a reasoned and speaking order in accordance with Rules/railway board circular."

7. Similarly, the relevant para of the impugned order dated 19.08.2010, which has been passed on denying the officiating allowances is also relevant which is as under:-

"With regard to above mentioned alleged claim, it will be appropriate to deal with both the issues separately and accordingly, I have gone through the entire matter on the said points after consulting the all materials available on record and rules thereof. In this context, in reply to your alleged claim as has been cited against item no.1 above, it is stated that your version to this effect that you are working as head clerk is wrong and false as you are working as clerk in pay scale Rs.3050-4590 PB-5200-20200 with GP-1900/- and after completion of ten years service in the said grade pay, you were granted financial benefit under the scale of MACP in Grade pay Rs.2000/. In the final seniority list of clerk (optg) scale Rs.3050-4590/PB-5200-20200 + GP 1900/- as on 01.08.08 was circulated by letter dated 07.07.09, your name stands at s.no. 9 and therefore, there is no occasion to allow you to officiate in higher GP/Posts of Head Clerk Grade Rs.5000-8000 by ignoring the senior staff who were working in GP-2800/- and also in the cadre of Clerk with GP-1900/-. So far as the notice dated 12.10.07 of Sr. DOM is concerned, it is stated that this is an local office arrangement/shifting of Ministerial staff in the same department as per their own requirement and not a promotion/office order for higher grade post issued by the Personnel Branch who has the sole authority and competence to issue promotion orders. As you are not

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allowed to officiate in higher grades by the competent authority as such, there is no occasion arises for payment of any officiating allowance as mere forwarding of your application with regard to your alleged claim by any authority, who is not competent to make any officiating arrangements, it not required to be taken into account for payment of officiating allowance being illegal and against the rules. It is trite law that nothing can be given or granted de-hors the rules. The previous office order no. PG /8/ Safety/ Staff/99 dated 26.09.2000 is also an internal/local office arrangement and made by the AOM/G without involving the Personnel Branch and not is a promotion or officiating order as there is no pin pointed seat/post up to the level of Supdt. Grade 5500-9000. Even, your seniors are also waiting for their promotion as Sri. Clerk/Head Clerk as per their seniority position and as such, your claim is totally based on assumption and presumption and against the departmental rules issued for this purpose.

Now with regard to your alleged claim as noted against item no.2 above, it is stated that upon perusal of material available on record, it is gathered that the rule quoted by you in your representation dated 22.07.10 also demonstrates that the approval of the Head of the Department to the officiating arrangements is sought prior to issuing the officiating orders against a short term vacancy with a clear stipulation/condition that "the incumbent had held the full charge of the duties of the higher grade post from the commencement of the arrangement and a certificate to this effect is recorded and incorporated in the office order which may be issued subsequently by Divisional Superintendent (now Divisional Railway Manager) concerned and the vacancy lasts over 30 days and is caused by factors that could not be foreseen." The said rule is not applicable at all in your case as you have never been ordered to officiate on the higher post by the competent authority i.e., Head of Department/Divisional Railway Manager as all the transfer/shifting order were issued as a matter of local arrangements by the authorities of Operating department from seat to seat and not by the Personnel Department for officiating arrangement.

In view of the above mentioned facts, reasons and circumstances coupled with the fact of events and eventualities taken place in the matter, it is clear that your alleged claim for payment of officiating allowance is neither feasible nor entertainable either in terms of extant rules or in the eyes of law and as such, the same is decided accordingly as it do not tantamount to shouldering of higher or lower responsibility by any of the staff involved. In this way, your representation dated 06.05.1010 is disposed of in compliance of the judgment and order dated 22.04.10 passed by the Hon'ble Tribunal." 

8. From the comparative perusal of the relevant para of the order of the Tribunal vis-à-vis aforesaid para contained in the impugned order dated 19.08.2010 passed by the respondents, it clearly transpires that the respondents have probably reiterated their stand which they had taken in the C.A. in the aforesaid O.A. No.3/2009, as submitted by the learned counsel for the applicant. Whether they have reiterated their earlier stand or not the fact of the matter is that inspite of clear finding recorded by this Tribunal that the applicant has been admittedly discharging the responsibilities attached to a post which carries higher pay scale since 26.09.2000 therefore, he is entitled to officiating allowance permissible under the rules, a converse finding has been arrived at by the Senior Divisional Personnel Officer, Northern Railway, Lucknow, in the impugned order dated 19.08.2010. Therefore, this impugned order deserves to be set-aside with a direction to the respondents to pass an appropriate order afresh in the light of the order of this Tribunal dated 22.04.2010 passed in O.A.No.03/2009 as discussed hereinbefore and accordingly, it is so ordered. The O.A. stand disposed of. Before parting with the O.A., it is also provided that the order shall be passed afresh preferably within a period of three months from today. No order as to costs.

Alok Kumar Singh
 (Justice Alok Kumar Singh) 2-12-11
 Member (J)