

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

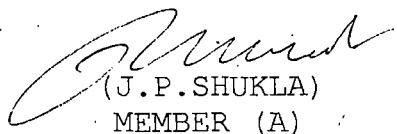
ORDERS OF THE TRIBUNAL

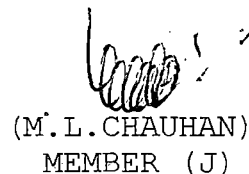
15.01.2008

OA 600/2003

Mr.P.N.Jatti, proxy counsel for
Mr.C.B.Sharma, counsel for applicant.
Mr.Praveen Sharma, proxy counsel for
Mr.S.P.Sharma, counsel for respondents.

At the request of learned counsel for the parties, let the matter be listed tomorrow. It is however made clear that no further adjournment will be granted being a 2003 matter.


(J.P.SHUKLA)
MEMBER (A)

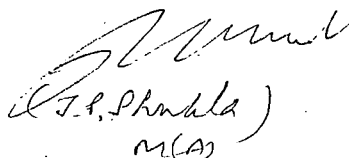

(M.L.CHAUHAN)
MEMBER (J)

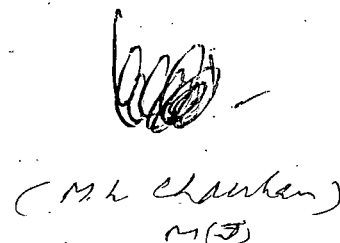
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16/1/08 Mr. C.B.Sharma, counsel for applicant.
Mr. S.P.Sharma, counsel for respts.

Learned counsel for the applicant has produced a copy of the office order dated 14.11.05. The same is taken on record.

Heard the learned counsel for the parties. The OA stands disposed of by a separate order for the reasons detailed therein.


(J.P.Shukla)
M(A)


(M.L. Chauhan)
M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 16th day of January, 2008

ORIGINAL APPLICATION No.600/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. J.P.SHUKLA, ADMINISTRATIVE MEMBER

Ram Chandra N
s/o Shri Narayan,
aged 43 years
r/o Village and Post Sawalpura,
Takron Ki Dhani, Sawalpura
and at present working as
Senior Helper under C.S.E.
Signal Phulera,
North Western Railway,
Phulera.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. The Union of India
through the General Manager,
North Western Zone,
North Western Railway,
Jaipur
2. Sr. Divisional Signal and
Telecommunication Engineer,
North Western Railway,
Jaipur Division,
Jaipur
3. Senior Section Engineer (Signal),
North Western Railway,
Phulera Junction,
Phulera.

.. Respondents

(By Advocate: Shri S.P.Sharma)

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O R D E R (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- i) That the respondents may be directed to release difference of pay and allowances to the post of Driver for the period applicant worked as Driver and further to promote the applicant on the post of Driver with all consequential benefits.
- ii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- iii) That the costs of this application may be awarded.

2. Briefly stated facts of the case are that the applicant was initially appointed as substitute Khallasi on 21.3.1986. He was granted temporary status on 20.3.1987. However, service of the applicant was regularized on the post of Khallasi in the scale of Rs. 750-940 vide order dated 29.7.97 (Ann.A4). The grievance of the applicant in this OA is that though he was engaged as Casual Labour but since 1.3.89 till the year 2003 he has discharged the duties on the post of Vehicle Driver, as such, he is entitled to pay and allowances of the post of Driver and further that case of the applicant for the purpose of promotion to the post of Driver may also be considered.

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3. The respondents have filed reply. The fact that the applicant was appointed as substitute Group-D category and vide office order dated 20.12.1995 the applicant was granted scale of Helper i.e. 2550-3200 and thereafter given regular appointment against Group-D post in the year 1997 has not been denied. The respondents have stated that the applicant was engaged as Helper/Khallasi in the Signal and Telecommunication Department, Jaipur Division, Jaipur and there does not exist sanctioned post of Driver in the Signal Department. It is further stated that the applicant was also regularized in Group-D category and having been transferred from Jaipur to Phulera vide order dated 29.7.1997 has not raised any grievance about his claim regarding pay and allowances of the post of Driver. According to the respondents, it is an after thought based on baseless, untenable and unfounded grounds. The respondents have further stated that in case he has any grievance, he should have approached this Tribunal in the year 1997. The respondents in para 4.4 of the reply have categorically stated that there does not exist any sanctioned post in Signal department in Jaipur division and is still not existing. Thus, according to the respondents, when there is no post how the applicant could have been given appointment pursuant to his representation dated 24.7.98 (Ann.A5). According to the respondents, the post of Vehicle Driver is promotional post which

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requires a necessity of trade test to be passed. The respondents have also stated that the applicant cannot claim any parity with other division which is a separate unit and any action taken by other division cannot be applied in Jaipur Division. It is further stated that the applicant applied in pursuance of the notification dated 20.2.2003 and vide order dated 15.5.2003 four persons were found suitable against the notified vacant posts of Vehicle Motor Trolley Driver Gr.II and one person Shri Babu Khan who has passed the trade test in pursuance of the notification 20.2.2003 was found suitable for the post of Vehicle Motor Trolley Driver. Thus, according to the respondents when there does not exist any post of Driver in the Signal Department in Jaipur Division, there is no provision of granting pay and allowances to the applicant for such post.

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. From the facts as stated above, it is evident that the applicant was engaged as substitute against Group-D post. Admittedly, services of the applicant were regularized on 29.7.97. When attention of the

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learned counsel for the applicant was invited to Para 27 of the judgment of the Apex Court in the case of S.C.Chandra and ors. vs. State of Jharkhand and ors., (2007) 2 SCC (L&S) 897, the learned counsel for the applicant fairly submitted that his case for grant of equal pay for equal work should be considered w.e.f. 29.7.97 when services of the applicant were regularized on the post of Khallasi/Helper and admittedly, when the applicant has attained the status of railway servant and thus was not a casual employee. At this stage, it will be useful to quote para 27 of the judgment, which thus reads:-

"27. Thus, in State of Haryana, v. Tilak Raj, it was held that the principle can only apply if there is complete and wholesale identity between the two groups. Even in the employees in the two groups are doing identical work they cannot be granted equal pay if there is no complete and wholesale identity e.g. a daily rated employee may be doing the same work as a regular employee, yet he cannot be granted the same pay scale. Similarly, two groups of employees may be doing the same work, yet they may be given different pay scales if the educational qualifications are different. Also, pay scale can be different if the nature of job, responsibilities, experience, method of recruitment, etc. are different."


Thus, in view of what has been stated above, the question which requires our consideration is whether the applicant has made out a case for grant of pay as is admissible to regular Vehicle Driver on the principle of equal pay for equal work on and after 29.7.97 when his services were regularized on Group-D

post by the railway authorities and thus became a railway servant. At the outset, it may be stated that the applicant has not placed on record any contemporaneous record on the basis of which it can be inferred that the applicant has worked on the post of Vehicle Driver even after 29.7.97 till 2003. The respondents have categorically stated in the reply that there was no sanctioned post of Vehicle Driver in the Signal and Telecommunication Department, Jaipur Division, Jaipur even till filing of the reply in the year 2004. Further, from the material placed on record, it is also evident that the post of Vehicle Driver is promotional post which has to be filled in from the employees of Group-D category after qualifying the trade test. Even as per own showing of the applicant, the applicant has not qualified the trade test prior to 15.5.2003. This fact is clear from representation of the applicant dated 24.7.98 (Ann.A5) whereby the applicant has requested the Divisional Railway Manager (Estt.), Jaipur to conduct separate test for Driver so far as Signal Department is concerned to enable the applicant to appear in the said trade test. In fact there is no positive material on record to suggest that the applicant has qualified the trade test for the post of Driver although his name was included for that purpose in the eligibility list dated 5.12.2002 (Ann.R1) and another list dated 20.2.2003 (Ann.R2). Even from perusal of the order

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dated 1.2.2005 (Ann.A11) with the rejoinder, it is evident that the applicant was not found fit for appointment to the post of Vehicle Driver Grade-III in the scale Rs. 3050-4590 as he was found unfit on medical grounds having failed to obtain A-I medical category. Thus, even if for arguments sake, it is admitted that the work of Vehicle Driver was taken from the applicant whether he can be granted regular pay scale of the post of Vehicle Driver on the principle of equal pay for equal work in view of the latest pronouncement made by Apex Court.

Be that as it may, the learned counsel for the applicant submits that he will be satisfied at this stage if direction is given to the respondents to consider his case for grant of pay scale of the post of Vehicle Driver for the period w.e.f. 29.7.97 till 2003 when such work was taken from him and for that purpose he will make a comprehensive representation to the authorities and the authorities may be directed to consider the same by passing speaking and reasoned order. Without expressing any opinion on the merits of the case, we are of the view that it will be open for the applicant to make detailed representation to the respondents thereby indicating the period during which work of the Vehicle Driver was taken from the applicant giving details and particulars and it will be open for the respondents to consider the said claim of the applicant in accordance with law.



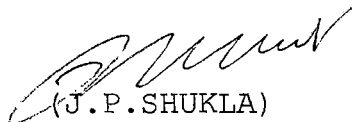
7. Accordingly, the present application is disposed of with direction to the applicant to make detailed representation thereby giving instances and annexing the documents, if any, on the basis of which he is subsisting his claim for grant of pay and allowances of the post of Vehicle Driver on the principle of equal pay for equal work. Such representation shall be made within a period of two months from today. Upon receipt of such representation, the Senior Divisional Signal and Telecommunication Engineer, North Western Railway, Jaipur Division, Jaipur shall dispose of the same within four months from the date of receipt of such representation by passing speaking and reasoned order in accordance with law.

At the cost of repetition, we wish to make it clear that we have not expressed any opinion on merit of the case and the matter will be examined independently by respondent No.2.

The learned counsel for the applicant has also placed on record copy of the order dated 14.11.2005 and argued that by the said order the applicant has been promoted against work charge post till 12.5.2006 and he is working as Vehicle Driver, as such, direction may be given to the respondents to consider the case of the applicant favourably in future when the post of Vehicle Driver is filled on regular basis. We have perused the office order dated 14.11.2005. Perusal of this order reveals that the applicant

holding the post Senior Khallasi in the pay scale of Rs. 2650-4000 has been transferred to Senior Section Engineer (Signal), Rewari. This order though indicates that the applicant was promoted as Vehicle Driver on work charge basis, but no such direction can be given. However, it will be open for the respondents to consider case of the applicant for the post of Vehicle Driver in future when the vacancy may arise and that too in accordance with law and for that purpose no specific direction is required.

7. With these observations, the OA is disposed of with no order as to costs.



(J.P. SHUKLA)

Admv. Member

R/



(M.L. CHAUHAN)

Judl. Member