

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 25th day of November, 2008

ORIGINAL APPLICATION No.416/2006

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR.B.L.KHATRI, MEMBER (ADMINISTRATIVE)

Vinod Kumar Bhardwaj
s/o Shri Heeralal Sharma,
r/o 1/80 (A), Railway Loco Colony,
Phulera, Jaipur

.. Applicant

(By Advocate: Mr. M.P.Rathi)

Versus

1. Union of India
through General Manager,
North Western Railways,
Opposite Railway Hospital,
Jaipur
2. The Senior Divisional Personnel Officer,
Divisional Office,
North Western Railway,
Jaipur
3. The Senior Section Engineer (Diesel),
Diesel Shed, Phulera Junction,
Distt. Jaipur
4. The Deputy Chief Chemical and Metal Lurgist
(Estt.), Carriage Workshop,
North Western Railway,
Ajmer.

... Respondents

(By Advocate: Mr. S.C.Purohit and Mr. R.G.Gupta)

O R D E R

Per Hon'ble Mr. M.L.Chauhan

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

- i) by an appropriate order or direction, the Hon'ble Tribunal may kindly call for entire record and after examining the same, be pleased to instruct the respondents while issuing directions to make fixation of pay of the applicant in the pay scale Rs. 5000-8000 wherein the promotion of applicant is made on the post of CMA II with effect from 15.12.2003 alongwith all the benefits attached therewith and make the payment of the amount of arrears of pay and allowances accrued on the fixation of pay in that pay scale.
- ii) any other order prejudicial the rights of the applicant is passed during the pendency of the O.A. the same may kindly be taken on record and be quashed and set aside.
- iii) any other order or direction which may be considered just and proper in the facts and circumstances of the case may be passed in favour of the applicant.
- iv) Cost of the O.A. may kindly be awarded in favour of the applicant.

2. Brief facts of the case are that the applicant was working as Laboratory Assistant in the Diesel Shed, Phulera in the scale of Rs. 4000-6000 from 31.3.1995. It is the case of the applicant that he is working against the post of CMA-II in the pay scale of Rs. 5000-8000 from 15.12.2003 and he was sanctioned officiating allowance in the pay scale of Rs. 5000-8000 by the Dy. Chief Mechanical Engineer (Diesel)

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Phulera by downgrading the post of CMA-I. It is further averred that on 14.12.2004 the respondent No.3 sent a letter to respondent No.2 to issue sanction of officiating allowance in the pay scale of Rs. 5000-8000 to the applicant and also pay rolls for sanctioning the basic pay of Rs. 5000/- per month in the scale of Rs. 5000-8000 w.e.f. 15.12.2003 but nothing was done. As such the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have categorically stated that there was no cadre post of CMA-II at Phulera in Ajmer Division. According to the respondents, the post of CMA-I in the grade of Rs. 5500-9000 is a sanctioned post at Phulera and it is filled by regular promotion from CMA-II pay scale Rs. 5000-8000 and the posts of CMA-I and CMA-II are controlled by Deputy CCMT, Ajmer. Thus, according to the respondents, any orders regarding promotion/demotion and transfers of the cadre of the applicant is controlled by the Dy. CCMT, Ajmer only. The respondents have also taken objection that the applicant wants reifixation of pay in the scale of Rs. 5000-8000 of CMA-II w.e.f. 15.12.2003, as such, the application is time barred. The respondents have further stated that the applicant was never promoted on the post of CMA-II in the pay scale of Rs.

5000-8000 w.e.f. 15.12.2003 on ad-hoc basis. According to the respondents, pay roll as prepared by respondent No.3 was sent vide letter dated 27.2.1994 for issuing sanction by Sr. D.P.O. (E.M.), Jaipur but it was found that the said pay roll was not according to rules as there was no sanction for officiating by any competent authority, as such, no sanction and payment was granted. The respondents have categorically stated that in fact there is no cadre post of CMA-II at Phulera and the Senior Dy. Mechanical Engineer (Diesel) has no authority to sanction ad-hoc promotion to the applicant. Since there is no promotion order in favour of the applicant, as such, the applicant is not entitled to fixation of pay on higher post.

4. The applicant has filed rejoinder reiterating the submissions made by him in the OA. Alongwith the rejoinder, the applicant has annexed pay roll at Ann.A9 as well as noting sheet dated 18.12.2003' and responsibility matrix (Ann.A11), which show designation of the applicant as CMA-II (Officiating).

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

6. It is not in dispute that no promotion order either on ad-hoc or officiating basis promoting the applicant w.e.f. 15.12.2003 as CMA-II in the grade of

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Rs. 5000-8000 has been issued either by the competent authority or by the authorities at Phulera, who were not competent to issue such orders. The case of the applicant is that he was asked to officiate against the post of CMA-II in the scale of Rs. 5000-8000 by the order of Senior Dy. Mechanical Engineer (Diesel) Phulera. The stand taken by the respondents is that there was no sanctioned post of CMA-II available at Phulera. At Phulera there is one post of CMA-I in the scale of Rs. 5500-9000 which post is controlled by Deputy CCMT, Ajmer. Thus, according to the respondents since the Deputy CCMT is controlling authority for the post of CMA-I and CMA-II, as such it was not permissible for the authorities including the Sr. Dy. Mechanical Engineer (Diesel), Phulera to make alternative arrangement in the nature of officiating promotion.

7. We have given due consideration to the submissions made by the learned counsel for the parties. We are of the view that the applicant has not made out any case for our interference for the reasons stated hereinunder.

The learned counsel for the applicant placed reliance on Ann.A5, A6, A7 of the OA and A9 to A11 appended to the rejoinder to substantiate his claim that the applicant was working against the post of CMA-II on officiating basis. Ann.A5 is letter dated

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13.4.2007 which has been passed by the Sr. DME (Diesel), Phulera which indicate that the applicant is not entitled to any officiating allowance and he should work against his substantive post of Laboratory Assistant. Ann.A6 is the letter which has been written by the Dy. CCMT, Ajmer to Senior Divisional Mechanical Engineer (Diesel), Phulera whereby Sr. Divisional Mechanical Engineer (Diesel), Phulera has been advised to deal with the case of the applicant at their own level as no concurrence/approval was obtained from the competent authority i.e. the Dy. CCMT, Ajmer. He was also apprised that the post of CMA-I in the grade of Rs. 5500-9000 was sanctioned vide letter dated 13.1.2005 against which one Shri Sudarshan is working and the post of CMA-II in the grade of Rs. 5000-8000 has not been sanctioned. Ann.A7 is the letter whereby the Sr. Section Engineer has been informed by the DRM (Estt.), Jaipur that there is no post of CMA-II sanctioned for Phulera Shed, as such, the applicant is not entitled to the officiating allowance w.e.f. 15.12.2003. Thus, on the face of these three documents, we fail to understand how the applicant is entitled for any relief. Regarding Ann.A9 to A11, it may be stated that Ann.A9 is pay roll prepared by the Sr. Section Engineer (Diesel), Phulera at his own level and below note-3 it has been stated that the order of officiating promotion has been given by the competent authority in the file of Phulera Shed. We are of the

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view that the applicant cannot draw any assistance from this document, inasmuch as, there was no post of CMA-II grade Rs. 5000-8000 existing at Phulera Shed. The only post which was sanctioned for Phulera Shed was that of CMA-I~~II~~ that too w.e.f. 13.1.2005, as can be seen from Ann.A6, which post is being manned by one Shri Sudarshan. Thus from the material placed on record, it is evident that there was no post either of CMA-I or CMA-II existing w.e.f. 15.12.2003 and the only post of CMA-I was created and sanctioned on 13.1.2005 which post has already been occupied by Shri Sudarshan. As such, it was not permissible for the authorities at Phulera to post the applicant on officiating basis against the post which was not in existence and also that the authorities at Phulera were not competent to make such officiating promotion. Further reliance placed by the applicant to noting at Ann.A10 is of no consequence as this noting also shows that on account of officiation of the applicant as CMA-II the arrangement for distribution of work of the post of the applicant was made by the authorities at Phulera and similarly, the responsibility matrix of the applicant as CMA-II on officiating basis is also of no consequence. The facts remain that the applicant was substantive holder of the post of Laboratory Assistant. There was no post of CMA-II in Phulera Shed on 15.12.2003, as such, the applicant could not have been asked to officiate against the non-existent post.

that too by the order issued by the incompetent authority.

It is also borne out from the record that no order of promotion of the applicant on officiating basis or otherwise has been issued by the competent authority. The cadre controlling authority of the aforesaid post was Dy. CCMT, Ajmer, who was never taken into confidence and the whole illegal action was taken at the level of the authorities at Phulera. Even the DRM, Jaipur vide his letter dated 4.10.2006 has specifically stated that no post of CMA-II was sanctioned for Phulera Shed, as such, the applicant was not entitled to officiating allowance. Thus, according to us, in the absence of any sanctioned post and in the absence of any order promoting the applicant on officiating basis by the competent authority, the applicant cannot claim any higher scale, simply on the basis that he has been asked by his superior authority who was not competent to make promotion against the higher post to look after the work of other post.

The learned counsel for the applicant has placed reliance upon the decision of the Rajasthan High Court in the case of Ram Rakh Bishnoi vs. Jodhpur Vidhyut Vitran Nigam Ltd. Jodhpur, 2003 Western Law Cases (Raj.) 742, to contend that where a person has been asked to work against a post, he is entitled to salary of that post. According to us, the ratio laid down by

the Rajasthan High Court is not applicable in the facts and circumstances of this case. That was a case where specific order was issued by the authorities to the petitioner therein to work as Lineman Grade-II. The issue whether such order has been passed by the competent authority or not was not under consideration before the High Court. The Hon'ble High Court held that since there are two orders issued by the authorities directing the applicant to work as Lineman Grade-II, as such, the petitioner therein was entitled to the said pay scale. Thus, the ratio laid down by the Rajasthan High Court in the aforesaid case is not applicable in the instant case.

Another decision relied upon by the applicant is of Rajasthan High Court in the case of Kalu & 12 ors. vs. Union of India and Ors., 2003 (2) Western Law Cases (Raj.) 8. We fail to understand how this judgment is applicable in the facts and circumstances of this case. That was a case where the petitioners were serving on ad-hoc basis in Group-C posts which were promotional posts from Group-D. The petitioners had worked against the promotional post for a period from 5 to 25 years. The Hon'ble High Court has held that they cannot be promoted or regularized against the higher posts but their cases for absorption can be considered in the light of the railway circulars. This is not a case of such nature.

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According to us, the matter is squarely covered by the decision of the Apex Court in the case of Ramakant Shripad Sinai Advalpalkar vs. Union of India and ors., 1992 SCC (L&S) 115. That was a case where the appellant before the Apex Court was asked to work on higher post of Treasurer on the basis of the order passed by the competent authority and to absorb him against that post. By virtue of the said order, the appellant was held entitled to the allowances of Rs. 100/- p.m. besides monthly salary of his substantive post. The Hon'ble Apex Court held that asking an officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as promotion. In such a case he did not get salary of the higher post but gets only what is called a 'charge allowance'. It was further held that for all practical purposes the person continued to hold the substantive lower post and discharged the duties only as a stop gap arrangement and that officiating arrangement of working on higher post for long period gives no right, equities or expectations for the higher post.

Further, the Hon'ble Apex Court in the case of Mohd. Swaleh vs. Union of India and Ors., 1998 (1) SLJ 1, has held that only the competent authority can promote a person to higher post and pay of higher post is only given by the competent higher authority. That was a case whereby the appellant was working as Deputy

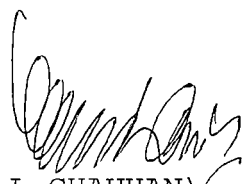
Registrar (Admn.) in Rajasthan High Court. He was appointed as Deputy Registrar in Central Administrative Tribunal, Jodhpur Bench on deputation basis for a period of one year. By the order of the Vice Chairman of the Tribunal, he was conferred powers of Head of Office and also he was permitted to exercise powers and functions of Registrar as envisaged by Rule 28(3) of the Central Administrative Tribunal (Procedure) Rules, 1987 as the post of Registrar was lying vacant at that time. The appellant therein made representation for additional remuneration for discharging duties of the post of Registrar. The case of the appellant for grant of remuneration of the higher post in the light of FR-49 was turned down by the Principal Bench as the person can be paid remuneration only when he is formally appointed on the post by the orders of the competent authority and conferment of powers under Rule 28(3) of CAT (Procedure) Rules cannot be construed as formal order as envisaged under FR-49. It was held that the Chairman and Vice Chairman of the Central Administrative Tribunal are not appointing authority of the post of Registrar of the Bench of the CAT. As such, delegation of power by the Chairman or Vice Chairman is of no consequence as no promotion can be made by the Chairman to the post of Class-I, as such higher pay cannot be allowed. According to us, this

matter is also squarely covered by the decision of the Hon'ble Supreme Court as noticed above.

8. In view of what has been stated above, the applicant has not made out a case for our interference. Accordingly, the OA is dismissed with no order as to costs.


(B.L. KHATRI)

Admv. Member


(M.L. CHAUHAN)

Judl. Member

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