

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

BENCH AT NAGPUR

ORIGINAL APPLICATION NO. 362 OF 2009

DIST. : BULDHANA

Shri Chandrashekhar s/o Kishan Gawali,
Aged about 54 years, Occ. Sepoy,
Now working as Wireless Machine Operator,
R/o Ambedkar Nagar, Buldhana,
Dist. Buldhana.

--

APPLICANT

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Ministry of Irrigation, Mantralaya,
Mumbai - 32.
2. Chief Engineer,
Irrigation Department,
Sinchan Bhavan, Nagpur.
3. Sub Divisional Engineer,
Irrigation Sub Division,
Khamgaon.
4. Superintendent Engineer,
Akola Irrigation Circle, Akola.
5. Executive Engineer,
Buldhana Irrigation Department,
Buldhana.

--

RESPONDENTS

APPEARANCE : Shri A.B. Bambal, learned Advocate for
the applicant.
: Shri M.I. Khan, learned Presenting
Officer for respondents.



**CORAM : HON'BLE SHRI J. D. KULKARNI,
MEMBER (J)**

DATE :- 7th NOVEMBER, 2016

J U D G M E N T

1. In view of leave granted by this Tribunal vide its order dated 13.4.2009, the applicant has amended the prayer clauses 2 and 3 of the O.A. Vide amended prayer clauses, the applicant has requested for issuance of directions to res. no. 2 to pay wages commensurate with the nature of work actually performed by the applicant in a capacity as 'Wireless Machine Operator' w. e. f. 6.6.1994 and arrears thereon with interest.

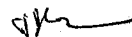
2. The applicant was appointed as a Sepoy vide appointment order dated 3.8.1978 in the of Rs. 2610-4000 (5th pay commission) by the respondents. Vide letter dated 25.10.1993, the res. no. 5, the Executive Engineer, Irrigation Department, Buldhana deputed the applicant for 3 days training of Wireless Machine Operator. The applicant accordingly completed the training of Wireless Machine Operator during the period from 27.10.1993 to 29.10.1993 under the res. no. 3, the Sub-Divisional Engineer, Irrigation Sub-Division, Khamgaon. Vide order dated 6.9.1994, the applicant was deputed to perform the work of Wireless



Operator on each Thursday of the week. Subsequently, by the various orders issued by the respondents, the applicant continued to work as a Wireless Operator from time to time.

3. Vide various representations, copies of which are placed on record at paper book pages 36 to 42, the applicant requested the respondents that he shall be given remuneration of the post of Wireless Operator. It seems that, a proposal for granting remuneration of the post of Wireless Operator to the applicant has been forwarded by the Deputy Executive Engineer, Irrigation Department, Buldhana to the Executive Engineer, Irrigation Department, Akola for passing necessary orders thereon. The Executive Engineer, Irrigation Department, Akola accordingly certified the cases of various Wireless Operators like the applicant and forwarded the same for proper decision to the Superintending Engineer, Irrigation Department, Akola, however, no action was taken thereon and, therefore, the applicant has filed this O.A.

4. The res. nos. 2 to 5 have filed their affidavit in reply and submitted that the applicant rendered the services as Wireless Operator for a limited period and he was not working as such continuously. The applicant was appointed as a Peon and was being paid the salary of the post of Peon. As per the Government orders in a rainy season to keep watch and security on the Dam,



the Govt. has given a training to the employees of Irrigation Department to handle the Wireless Machine in the rainy season and only those employees, who have taken the said training were appointed as a Wireless Machine Operator. The applicant's representation was rejected vide order dated 29.9.2003 and it was duly intimated to the applicant that he was not eligible for the post of Wireless Operator. It is stated that the Govt. Resolution is applicable to those employees, who are appointed on the permanent establishment. It is denied that the applicant was given any higher responsibility.

5. The applicant has filed rejoinder affidavit and denied the claim of the respondents that, he was appointed as a Wireless Machine Operator temporarily in rainy season only and stated that he was continuously appointed as a Wireless Machine Operator. The applicant has also filed chart along with the rejoinder showing the period during which he has rendered his services as a Wireless Machine Operator for the period from 6.6.1994 to 1.6.2006.

6. Heard Shri Shri A.B. Bambal, learned Advocate for the applicant and Shri M.I. Khan, learned Presenting Officer for respondents. I have also perused the affidavit, affidavit in reply

dfh

filed by the respondents, rejoinder affidavit filed by the applicant and various documents placed on record.

7. The material point to be considered in this case is whether the applicant is entitled to pay the remuneration of the post of Wireless Machine Operator from 6.6.1994 as claimed by him ?

8. From the affidavit in reply filed by the respondents, it seems that, there is no dispute of the fact that the applicant was working as a Wireless Machine Operator from time to time. According to the respondents, the said work was not continuous, but it was seasonal i. e. the applicant was rendering such work in rainy season only. It is admitted fact that the applicant has undergone the training of Wireless Machine Operation during the period from 27.10.1993 to 29.10.1993. The various orders issued by the respondent authorities, by which the applicant was directed to perform the work of Wireless Machine Operator, are placed on record at paper book page 18 onwards.

9. The applicant along with rejoinder has filed a chart showing the period during which he had performed the work as Wireless Machine Operator. It seems from the said chart that initially in the years 1994, 1995, 1996, 1997, the applicant was given the work of Wireless Machine Operator for certain period such as 3

dm

days, 4 days, 8 days, 15 days etc. in the rainy season only. In the years 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005 and thereafter in the year 2006, the applicant was given the work as Wireless Machine Operator 5 or 6 days in a week in rainy season. However, in January, 1998, the applicant was directed to perform the work as a Wireless Machine Operator for 6 days in a week vide order dated 6.1.1998. Vide order dated 18.10.2002, the applicant was directed to work as a Wireless Machine Operator for 5 days in a week from 15.10.2002 to 1.6.2003. It seems that the applicant has definitely worked as a Wireless Machine Operator during the given period.

10. The applicant has filed a representation as per Annex. A.24 paper book page 41 dated 11.1.2008. In the said representation the applicant has stated that, he was service as a Peon from 1978 and from 1994 he was given the work of Wireless Machine Operator and, therefore, he is entitled to claim the pay scale of the post of Wireless Machine Operator. From the said representation, it seems that, the applicant has a grievance because his case was not referred for grant of pay scale of the post of Wireless Machine Operator, whereas the cases of other similarly situated employees likely the applicant, have been considered therefor. It is the contention of the applicant that the yardstick of the G.R. dated

mm

29.9.2003 is not properly applied for considering his case for grant of pay scale of Telephone Machine Operator.

11. The applicant himself has placed on record his salary slips at paper book pages 68 & 69 from which it seems that the applicant was appointed as a Peon. Vide order dated 28.12.2005, copy of the same is at paper book page 44, the cases of the employees, who complete the yardsticks of the G.R. dated 29.9.2003, was submitted to the Superintending Engineer, Irrigation Department, Akola by the Executive Engineer, Irrigation Department, Buldhana. The applicant's name was not considered as an employee on regular employment.

12. Admittedly, the applicant has been appointed as Peon and not as a Wireless Machine Operator. Even for the sake of argument it is accepted that the applicant was given work as a Wireless Operator, even from the chart filed by the applicant, it seems that, he was given temporary appointment on 2 occasions to work as Wireless Machine Operator and mostly the applicant was directed to work as a Wireless Machine Operator during the rainy season and that too for a particular days in a week. Only on two occasions, the applicant was given this work of Wireless Machine Operator i. e. vide order dated 6.1.1998 for 6 days in a week and vide order dated 18.10.2002 for 5 days in a week from

vob

15.10.2002 to 1.6.2003. There is nothing on record to show that the applicant was performing the work of Wireless Machine Operator continuously i. e. on day to day basis or in addition to his duties as a Peon.

13. The learned Advocate for the applicant has placed reliance on the judgment of the Hon'ble Supreme Court reported at **AIR 1999 SC 838 {SELVA RAJ VS. LT. GOVERNOR OF ISLAND, PORT BLAIR AND OTHERS}**, wherein it has been observed that an employee worked on higher post, though temporarily, and in an officiating capacity, is entitled to salary attached to higher post and payment of higher salary, however, shall not amount to promotion.

14. From the various orders placed on record by the parties, it seems that, on most of times the applicant's services were used as a Wireless Machine Operator for a limited period say for some hours in a week and particularly in rainy season. Merely because on one or two occasions the applicant was directed to look after the work of Wireless Machine Operator, it cannot be said that the applicant has gained any right to claim higher pay scale of that post. In order to run the administration smoothly and properly, the Peons are given short duration training to work as Telephone

v/m

Machine Operator to handle the emergency situation, but that does not mean that the said employees are given any right to claim the higher scale. The applicant could not place on record any document to show that he was required to share the responsibilities of higher post and, therefore, in such circumstances, the applicant is not entitled to any monetary benefits also. Hence, I pass the following order :-

ORDER

The Original Application stands dismissed. There shall be no order as to costs.

sd/-

MEMBER (J)

ARJ-OA NO.362-2009 JDK (NAGPUR BENCH) (PAY SCALE OF HIGHER POST)