

(2024) 03 CAT CK 0052

In the Central Administrative Tribunal

Case No : Transferred Application No. 61, 305 Of 2020

Surinder Singh

APPELLANT

Vs

Union Territory Of Jammu And Kashmir Through
Commissioner/Secretary To Govt., Forest Department, Civil
Secretariat, Jammu & Others

RESPONDENT

Date of Decision : 28-03-2024

Acts Referred:

Citation : (2024) 03 CAT CK 0052

Hon'ble Judges : Rajinder Singh Dogra, Member (J)

Bench : Single Bench

Advocate : Karman S. Johal, Sudesh Magotra

Final Decision : Dismissed

Judgement

Rajinder Singh Dogra, Member (J)

1. The SWP/WP(C) No. 450/20 was transferred from the Hon'ble High Court of Jammu and Kashmir at Jammu and was registered as T.A. No. 61/305/2020 by the Registry of this Tribunal.

2. The present matter was earlier filed before the Hon'ble High Court with following reliefs:

"i. the order impugned may kindly be quashed to the extent it deprives the petitioner of charge allowance of the post of Dozer Operator w.e.f., May, 2005 till date along with interest @ 12% p.a contrary to the final direction dated 16.9.2014 passed by this Hon'ble Court in writ petition bearing SWP No. 2269/2007

ii. the official respondents be commanded to release the charge allowance in favour of the petitioner for the post of Dozer Operator held by him till now and continue to pay the charge allowance till the charge of the Dozer Operator is taken away from the petitioner by the respondents."

3. The facts of the case, in brief, are as follows:

That the petitioner was engaged as a Daily Wager in February, 1988 in Bellani Project Jammu in the Forest Department of the Government of Jammu and Kashmir. After completing 7 years of continuous service, the petitioner was regularized as Orderly in the pay scale of Rs. 750-940 vide Forest Order No. 33 of 1996 dated 16.3.1996 with effect from 1.4.1995.

4. The petitioner was the holder of National Trade Certificate having passed the trade test in the trade of Tractor Mechanic conducted by the National Council for Vocational Training run by Ministry of Labour Government of India, he showed his willingness for Dozer Operator Training since the post of Dozer Operator was stated to be lying vacant in the Department. The petitioner was deputed to the Mechanical Division Jammu for Dozer Operator Training for six months at the first instance vide its letter dated 17.05.2001 which was further extended twice for three months each and the petitioner successfully completed the one year training in May 2005. The Executive Engineer, Mechanical Division, Jammu has issued the certificate to this effect vide its letter No. MDJ/Estt/183 dated 09.05.2002.

5. After the successful completion of the Dozer Operator Training, the respondent No. 5 vide Forest Order No. 36 of 2002 dated 18.06.2002, transferred the petitioner from Billani Project, Jammu to Urban Forestry Division, Jammu from where the respondent no. 5 directed the petitioner to report in Estate Range, Sidhra for assisting in operation/maintenance of D-80 A-8 Dozer.

6. The petitioner reported in the Estate Range, Jammu and the Estate Officer, Estates Range, Jammu vide its Order No. 182-83/Estt dated 12.08.2002 directed the petitioner to report at Sidhra for operation/maintenance of D-80 A-8 Dozer stationed at Forest Protection Force, Sidhra and take charge of the same from Babu Singh. The petitioner took the charge of the Dozer on 14.08.2002.

7. The petitioner made a representation to the Department for considering him for promotion against the post of Dozer operator being the only available trained Dozer operator in the Department where upon the respondent no. 5 sought the report from respondent no. 4 in this regard and the respondent no. 5 vide its letter no. 430/48/Estt/J dated 26.05.2003 recommended the name of the petitioner for promotion against the vacant post, which is available on the sanctioned strength of the division.

8. The respondent no. 2 instead of considering the case of the petitioner, issued a Notification No. PCCF/NG/Estt/Dozerop/1524-90 dated 14.10.2003 notifying that after the closure of the Akhnoor Log Boom Project, posts available in the said project have not been included in the sanctioned strength of Forest Department as per SRO 335 of 1991 as such these posts cannot be filled up by either direct recruitment or otherwise which is illegal and without jurisdiction as it was both factually and legally wrong. The respondent no. 2 was firstly having no legal sanctity to issue the said notification and secondly the post of Dozer

Operator is available on the sanctioned strength of Urban Forestry Division (Akhnoor Boom) of the Forest Department and the said Division is still in existence and even after the year 1991 i.e. after passing of the SRO-335 of 1991, the posts available on the sanctioned strength of the Urban Forestry Division (Akhnoor Boom) are being constantly filled by promotion.

9. The petitioner is a trained Dozer Operator and the Forest Department has a Dozer which is operational and put to use in Eco Task Force and Forest Protection Force for massive work and the department is always in need of the Dozer. It is also pertinent to mention here, though the SRO-335 of 1991 does not provide the post of Dozer operator but the said post is available on the sanctioned strength of Urban Forestry Division (Akhnoor Boom) and Sh Charan Singh was working as Dozer Operator in substantive capacity and continued to work against the said post till his retirement in the year 2000 from whom Sh. Babu Singh took charge of the said post and after the retirement of Sh. Babu Singh in August 2002, the petitioner took charge of the said post from him and continue to hold charge of the said post till date and the post of Dozer Operator is very much in existence and available on the sanctioned strength of Urban Forestry Division (Akhnoor Boom).

10. The petitioner claimed in a writ petition earlier filed by him being SWP No. 2269/2007 that he be permanently absorbed and given the promotion to the post of Dozer Operator on substantive basis, yet the respondents refuted this on the ground that the post of Dozer Operator does not exist in the cadre strength of the service as per the service rules of Forest (Subordinate Service Recruitment) Rules, 1991 and schedule attached herewith. The petitioner, therefore, alternatively also asked for the charge allowance of the post of Dozer Operator for which he had been performing his duties. This post was on a higher grade. The petitioner, therefore, asked for the grant of charge allowance from the date of taking charge of the post as provided by Article 87(b) of the J&K Civil Service Regulations of 1956.

11. The writ petition aforestated was contested by the respondents and the same came to be finally disposed of vide judgement and order dated 16.9.2014. The petition was allowed partly for the grant of charge allowance of the post of Dozer Operator. However, to the extent, the petitioner claimed promotion to the post of Dozer Operator, the writ petition aforestated was allowed to be withdrawn with liberty to the petitioner to approach the court if the fresh cause of action arises.

12. The petitioner is aggrieved of the order dated 10.9.2018 inasmuch as it has been passed contrary to the mandate of the directions passed by this Hon'ble Court in SWP No. 2269/2007 and contrary to the admitted facts. The same is passed arbitrarily, illegally and without appreciating the true legal position.

13. Learned counsel for the petitioner submitted that the order impugned is passed contrary to the mandate of the determination of issues determined in the petition aforestated while disposing it of vide judgment and order dated

16.9.2014. What is held in this petition was that the continuance of the petitioner, holding the charge of the post of Dozer Operator w.e.f., 14.8.2002 till the disposal of the petition was not disputed.

14. Learned counsel further submitted that the respondents gave the limited compliance of the order passed by this Hon'ble Court on 16.9.2014 by giving charge allowance to the petitioner w.e.f., August, 2002 to May, 2005 by passing the order impugned. From May, 2005, the charge allowance as per the direction passed by this Hon'ble Court is required to be given to the petitioner. The order impugned therefore, determines the right of the petitioner accrued to him. The judgment passed by this Hon'ble Court has been wrongly implemented.

15. Learned counsel further contended that merely because of the reason the dozer remained grounded as per the report of the Range Officer, Estate Range, Jammu vide No. 53/ER/J dated 05.05.2015, the petitioner cannot be deprived of the charge allowance of the post of Dozer Operator when the petitioner was the incharge of the Dozer, during which time, he was not working anywhere but only working against the post of Dozer Operator. The communication of the Range Officer therefore also cannot become the basis for grant of charge allowance w.e.f., August 2002 to May, 2005.

16. Learned counsel for the respondents submitted that the claim of the applicant for grant of charge allowance w.e.f. year 2002 to till date, is not at all sustainable as it is very clear from the communication issued by Respondent No. 5 i.e. The Divisional Forest Officer, Urban Forestry Division, Jammu, which is addressed to the Respondent No. 4 i.e. The Conservator of Forests, East Circle, Jammu, that the Dozer was grounded since May, 2005. In compliance to Order dated 16.09.2014 passed by the Hon'ble High Court, the charge allowance of the petitioner was released in his favour w.e.f. August, 2002 to May, 2005 for the period he operated the Dozer.

17. I have heard Learned Counsel for both the parties and examined material on record.

18. The petitioner herein was entitled for the charge allowance for the period for which he had operated the Dozer, and the said allowance has already been granted to the petitioner, as per the directions of the Hon'ble High Court of Jammu and Kashmir at Jammu and the Contempt petition raised thereafter, has also been dismissed by the Hon'ble High Court stating therein that the Order dated 16.09.2014 had already been complied with, by the respondents. The applicant herein had approached the Hon'ble High Court by filing writ petition in the year 2007 for the claim of charge allowance, and the same was allowed by the Hon'ble High Court and the benefit of charge allowance was restricted upto May, 2005 because he had actually worked upto that period and the claim for rest period i.e. beyond May, 2005 stood rejected. Thereafter, the applicant approached this Tribunal for the same cause which he claimed to be due after May, 2005 but the same had already been rejected by the Hon'ble High Court.

Moreover, the applicant was not the Dozer Operator, rather he was simply given the charge of the same. So, he is not entitled for the charge allowance because the Dozer was not working since May, 2005.

19. Accordingly, the claim of the petitioner for release of charge allowance from the date he took charge of the Dozer till date is not legitimate and justifiable as the charge allowance till May, 2005 has already been released in his favour and the said Dozer has been grounded for the last fifteen years in non-working condition i.e. since May, 2005, so there exist no valid ground to grant the benefit of charge allowance after May, 2005, as thereafter no work was done on the Dozer, as the same remained unoperated.

20. Hence, I found no merits in the case.

21. Accordingly, the same is dismissed.