

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 8830 of 2021

**Md. Rafique
Vs.
The Central Bank of India & Ors.**

For the petitioner: Mr. Malay Dhar,
 Mr. Biswajit Sarkar

For the respondents: Mr. Bishwambhar Jha

Heard on : 04.11.2022.

Judgment on : 16.01.2023.

Raja Basu Chowdhury, J:

1. The instant writ application has been filed, *inter alia*, challenging the award passed by the Learned Central Government Industrial Tribunal, Kolkata, West Bengal in Reference No. 24 of 2016. It is the petitioner's case that previously he was engaged as a personal driver of the respondent authorities. The respondents having found the petitioner to have satisfactorily discharged his duties and having found him to be eligible for absorption in the service of the respondent no.1, as sub-staff cum driver, the General

Manager, HRD by letter dated 27th October, 2011 recommended for his absorption. Thereafter he was appointed in the post of sub-staff cum driver on 21st December, 2011 and on successful completion of the probationary period his service had been confirmed.

2. The petitioner regularly receives his monthly salary through his bank account as per pay slip issued by the respondent no.1. In the pay slip his job description from the beginning was mentioned as driver cum peon. Such description continued till February 2012. Suddenly, thereafter, without any intimation the petitioner's job code, in the pay slip was changed to peon on and from March, 2013. The petitioner was also not paid additional allowance payable to drivers, in terms of bipartite settlements between the respondent no.1 and the unions.
3. Being aggrieved with the unilateral change in service conditions and for non-payment of the allowance payable to drivers, the petitioner through the union, moved before the conciliation officer for redressal of his grievances.
4. The conciliation having failed, the appropriate Government in exercise of its powers under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act.), had passed an order dated 28th February, 2016 thereby referring the following disputes to Tribunal for adjudication:

“Whether the action of the management i.e. Central Bank of India in denying driving allowance to i) Shri Jagdeo Prasad, 2) Md. Rafique, 3) Shri Ram Yaya Pandey is legal/and or justified? If not, what relief the workmen are entitled?”

5. Before the Tribunal the petitioner through his registered union filed a statement of claim and other relevant documents. The respondents did not contest the proceedings. Ultimately by an award dated 18th September, 2019 the Learned Tribunal was, *inter alia*, pleased to hold that the petitioner along with other similarly placed persons was recruited in the bank on 21st December, 2011 on the basis of their respective appointment letters. The conditions of service of the workmen were mentioned in their letters of appointment. Since the appointment letters of the workmen specifically mentions that their recruitment as sub-staffs were without special pay, the Tribunal did not find that denial of driving allowance to the workmen as violative of the conditions of service, therefore, not illegal or unjustified. The reference was answered accordingly.
6. Although the reference was made concerning three workmen, the challenge to the award is only by the writ petitioner.
7. Mr. Dhar, learned advocate representing the writ petitioner, submits that prior to the petitioner being appointed as sub-staffs cum driver, he was engaged as a personal driver of the respondents. It is only on the basis of his satisfactory

performance and on being found eligible, the General Manager of the respondent no.1, by letter dated 27th October, 2011 had recommended for his absorption. Consequent upon the same, the petitioner had been appointed as sub-staff cum driver. It is submitted that notwithstanding the petitioner being appointed as sub-staff cum driver, the petitioner has never been allotted duties of a driver. Mr. Dhar, submits that the petitioner is an employee of the respondent no.1 and as such is entitled to the benefits of the bipartite settlements entered into between the respondent no.1 and the registered union of the respondent no.1. By relying on the bipartite settlements, he says that irrespective of the fact whether the petitioner's service is utilized as a driver, the petitioner cannot be denied the allowance attached to the post of a driver, simply because the petitioner is not assigned the work of a driver.

8. By drawing attention of this Court to page 43 of the writ application in particular clause 20.1 and 20.2 of the bipartite settlement, it is submitted that ordinarily an employee shall not be assigned, more than two designations and in case an existing workman having more than two designations, the same shall be revised. However, an employee performing duties on regular assignment, which entitles him to a special allowance, shall not be deprived off such allowance by reasons of such revision.

9. According to Mr. Dhar, the terms of the letter of appointment cannot override the bipartite settlements. By referring to the pay slip of the petitioner, it is submitted that the petitioner's designation remains to be a driver and as such the petitioner is entitled to special allowance as are payable to drivers. By drawing attention of this Court to page 33 of the writ application, it is submitted that the respondents attempted to unilaterally alter the designation of the petitioner from sub-staff cum driver to peon. He says similarly placed persons are getting special allowance, such fact has not been denied in the affidavit-in-opposition. The Tribunal had overlooked the fact that the petitioner was originally appointed as driver and the factum of being posted as sub-staff cum driver has also been recorded in the appointment letter. The Tribunal also overlooked the bipartite settlement while laying emphasis on the terms of letter of appointment. It is submitted that the award impugned in the writ application is perverse, the same should be set aside and the respondent no.1 should be directed to make payment of the special allowance, as are payable to drivers, to the petitioner.

10. In support of his contention that an employee is entitled to a special allowance if such allowance is attached to the post/designation, then notwithstanding the fact that the services of such employee is not utilised for the

designation/post which has been assigned to such employee, the special allowance cannot be denied, he places reliance on a judgment delivered by the Hon'ble Supreme Court in the case of Hindustan Lever Ltd. –Vs. – Ram Mohan Ray & Others.¹

11. *Per contra*, Mr. Jha, learned advocate appearing for the respondents has submitted that the respondents had never utilised the services of the petitioner as a driver. It is submitted that unless the petitioner is appointed as a driver against a permanent vacancy, no allowance can be disbursed in his favour. It is submitted that the petitioner has not been appointed as a driver. The bilateral settlements referred to by the petitioner cannot be made applicable in the petitioner's case since the petitioner has not been appointed as a driver. The Tribunal has rightly passed the award by holding that the petitioner has no right to claim driving allowance. He submits that the terms and conditions of service of the petitioner disentitle the petitioner to claim allowance payable to drivers. He says that judgment delivered in the case of Hindustan Lever Ltd.² relied on by Mr. Dhar has been rendered in a different set of facts, the same does not assist the petitioner. He says that the writ application has no merit the same should be dismissed.

¹ *Hindustan Lever Ltd. –v. – Ram Mohan Ray & Others*, (1973) 4 SCC 141.

² *supra*-1.

12. Heard the learned advocates appearing for the respective parties and considered the materials on record. I find that the writ petitioner prior to his appointment with the respondent no.1 was working as a personal driver of an executive of the respondent no.1. Record would reveal that the management of the respondent no.1 had decided to absorb the personal drivers working with the bank executives. The managements' decision to absorb such workmen is extracted below:

“In order to mitigate the shortage of sub-staff at branches and meet the requirement of sub-ordinate cadre staff at branches in a limited way, it has been decided to absorb the personal drivers working with the Bank’s executives, who conform to the following eligibility criteria:

Continuous service with any executive of the bank of minimum 10 years with break of maximum one year as of 30th June 2011

Should be medically fit

He should be registered with Employment Exchange, which should be currently valid

Should hold driving licence for Medium Motor Vehicle

Good conduct certificate from the Executive with whom he is presently working

On the basis of the details of personal drivers provided by you, the following personal drivers of your region have been found to be eligible for absorption in bank’s employment as Sub-staff cum

driver and their services will be utilised as sub-staff (without any special allowance). However whenever any permanent vacancy of driver arises in the region, their services will be considered for utilising as driver.

<i>Name of Drivers</i>	<i>Presently working with</i>
<i>Shri. Jagdeo Prasad</i>	<i>DGM,CBOTC/ AGM, Law</i>
<i>Shri Ramgya pandey</i>	<i>GM, Kolkata</i>
<i>Shri Md. Rafique</i>	<i>DGM, Recovery”</i>

13. The aforesaid managements’ decision which finds place in the communication dated 9th December, 2011, *inter alia*, provides that such decision has been taken to mitigate the shortage of sub-staff and further records, the conditions for eligibility and appointment.

14. Based on the aforesaid decision, the letter of appointment was issued on 21st December, 2011. From the letter of appointment, I find that the writ petitioner had been appointed as a sub-staff cum driver. The terms of appointment of the petitioner are also set forth in the letter of appointment. The same are extracted herein below:

“We are glad to inform you that you have been taken up to work as Sub-staff cum Driver in our Bank’s Subordinate Cadre on probation for six (6) months with effect from 21.12.2011 and have been placed at our Bira Branch on a basic salary of Rs.5850.00 +DA as per rules + HRA as admissible as per rules.

Please note that your service will be utilized as sub-staff (without any special allowance). However whenever any permanent vacancy of Driver arises in our Region, your services will be considered for utilizing as Driver.”

15. The terms of appointment categorically provided that the petitioner had been appointed as a sub-staff (without any special allowance). The same also records that whenever any permanent vacancy of driver arises, the service of the petitioner shall be considered for being utilised as a driver. The petitioner had accepted the terms of his appointment as set forth in the said letter of appointment, he not only joined the respondent no.1 but also worked as a sub-staff. I thus find that the letter dated 9th December, 2011 issued by the General Manager, forms the very basis of the writ petitioner entering into service. Based on the aforesaid letter, the letter of appointment had been issued. Although Mr. Dhar, learned advocate representing the writ petitioner has, *inter alia*, claimed that the letter of appointment cannot override the bilateral agreements I do not concur with such view. I find that the petitioner had not been appointed in the service of the respondent no.1 in usual course but on the basis of the decision taken by the management of the respondent no.1. I find it had been categorically provided both in the letter recommending appointment as also in the letter of appointment that the petitioner shall not be entitled to

any special allowance. I also find that the respondents have not utilised the services of the petitioner as a driver, he has only been utilised as a sub-staff. There is also no whisper in the writ application that the writ petitioner worked as a driver.

16. I find that Mr. Dhar has laid a lot of stress by drawing attention of this Court to the bipartite settlement at page 43 of the writ application, especially clauses 20.1 and 20.2 thereof.

17. A perusal of the aforesaid clause would demonstrate that more than two designations will not be combined in case of any workmen. In the case of existing workmen having more than two designations, bank will revise their designations to confirm to the said provision, upon intimation to the workmen, provided that an employee performing duties on regular assignment which entitled him to a special allowance will not be deprived of such allowance merely by reasons of such revision. From the appointment letter, it would appear that the parent designation of the petitioner is that of a sub-staff and he is performing duties of a sub-staff on a regular basis. Since the petitioner is performing duties of a sub-staff, the same does not entitle him to a special allowance payable to a driver. Since the petitioner is otherwise not entitled to a special allowance payable to a driver, I am afraid the aforesaid bipartite settlement on which much stress has been laid by Mr. Dhar does not assist him. Mr. Dhar has also referred to a Commentary on Award and

Settlements in Banks, by annexing a truncated copy of such commentary. I am of the view that such commentary cannot be made applicable in case of the petitioner, especially having regard to the terms of appointment as set forth in the appointment letter. The Tribunal upon elaborate deliberations has concluded that the bilateral agreements cannot be made applicable in the petitioner's case since the conditions mentioned in the letter of appointment are deemed to be his conditions of service and the appointment letter mentions his recruitment as sub-staff without special allowance.

18. The judgment delivered by the Hon'ble Supreme Court in the case of Hindustan Lever Ltd.³, relied on by the petitioner does not assist him. I find that the Hon'ble Supreme Court in paragraph 12 of the said judgment, while considering whether withdrawal of an allowance constitutes alteration in service conditions, after elaborate discussions has been, *inter alia*, pleased to observe as follows:

"12. It is hardly necessary to refer to the various decisions which were cited before us as to what would constitute conditions of service the change of which would require notice under Section 9-A of the Act.

.....
.....A close scrutiny of the various decisions would show that whether any particular practice of allowance or

³ *supra*-1.

concession had become a condition of service would always depend upon the facts and circumstances of each case and no rule applicable to all cases could be called out from these decisions. In the face of the elaborate consideration of the evidence and findings made by the Tribunal we are unable to hold that there has been any change in the terms and conditions of the service of the workers in this case to their detriment. It follows, therefore, that Section 9-A is not attracted. It is, therefore, unnecessary, to consider the question whether the argument advanced by Shri Gupte on behalf of the employer that in view of the very prolonged and detailed discussions that went on between the parties there was a substantial compliance with provisions of Section 9-A and the mere fact that a formal notice was not given under Section 9-A would not make the reorganisation scheme not valid.”

19. As such whether an allowance is attached to a job description and whether the same is payable has to be considered in the facts of a case. I find that the Tribunal has held the terms of letter of appointment, to be the conditions of service of the petitioner and has concluded that such conditions do not entitle the petitioner to a special allowance. Proceeding on such premise while answering the reference, the Tribunal, *inter alia*, held that denial of driving allowance to the concerned workmen is not violative of their conditions of service and therefore, not illegal and unjustified.

20. I do not find any infirmity far less any jurisdictional error committed by the Tribunal while passing the award. No case for interference has also been made out. The writ application fails, and is accordingly dismissed.
21. There shall be no order as to costs.
22. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)