

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2838/1999

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New Delhi, this 27<sup>th</sup> day of November, 2000

Hon'ble Shri Kuldip Singh, Member(J)  
Hon'ble Shri M.P. Singh, Member(A)

Nathi Lal  
Canteen Khallasi  
Staff Canteen, DRM Office  
Northern Railway, New Delhi .. Applicant  
(By Shri D.S.Mehandru, Advocate)

versus

Union of India, through

1. General Manager  
Northern Railway  
Baroda House, New Delhi  
2. Divisional Railway Manager  
Northern Railway  
State Entry Road, New Delhi .. Respondents

(By Shri P.L.Mimroth, Advocate)

ORDER

By Shri M.P. Singh

Heard the learned counsel for the parties and perused the records. By the present OA, the applicant seeks a direction to the respondents to fix his pay in the scale of Rs.825-1200 and to pay him pay and allowances for the period from 19.5.90 to 7.7.95 with interest at the rate of 24% per annum.

2. Learned counsel for the respondents raised the preliminary objection that the OA is hit by the principles of constructive resjudicata inasmuch as that the applicant has earlier filed OA No.2442/90 claiming a similar prayer which was disposed of by order dated 23.1.95 with the following directions:

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(3)

(1) Respondents shall take immediate decision on giving alternative employment to the applicant as recommended in the medical certificate dated 3.1.91;

(2) The intervening period will be treated as on medical leave as the applicant was not fit to join his original post during such period;

3. Respondents have further submitted that SWLI was deputed to verify the facts from the residence of the applicant on 24.1.95 but he was not available at home. The applicant informed SWLI on 4.2.95 that he was lying sick for the last 3/4 years but he did not take treatment in any hospital. The applicant was asked to give his willingness to adjusting him against the post of Luggage Porter/Safaiwala in the grade of Rs.750-940, which the applicant declined and requested to give him duties of Coach attendant. Though he was later on adjudged suitable for the post of Hospital Attendant/Peon Khallasi in the grade of Rs.750-940, there being no vacancy in that cadre he was posted as Wash Boy in the staff canteen w.e.f. 7.7.95. As per Para 1303 of IREM, 1989, the period from the date of decategorisation to the date of alternative appointment employee has to take his own leave. The applicant has already been paid an amount of Rs.584/- for the period from 19.5.90 to 18.6.90. After no payment could be made to him as no leave was due to him.

4. In view of the above factual position, we find no merit in the present OA and the same deserves to be dismissed. We do so accordingly. No costs.

*MP Singh*  
(M.P. Singh)  
Member(A)  
/gtv/

*K.Singh*  
(Kuldeep Singh)  
Member(J)