

CENTRAL ADMINISTRATIVE TRIBUNAL

Principal Bench

O.A. No. 2231 of 1994

New Delhi, dated this the 15 November, 1996

HON'BLE MR. S.R. ADIGE, MEMBER (A)  
HON'BLE Mrs. LAKSHMI SRIMINATHAN, MEMBER (J)

Pawan Kumar Sharma,  
S/o Shri Budh Prakash Sharma,  
R/o Court Road (Delhi Road),  
Officers Colony,  
Back side: Near Thalab,  
Naveen Nagar,  
Distt. Saharanpur. .... APPLICANT  
(By Advocate: Shri B.B. Raval)

VERSUS

1. Union of India  
through the Chairman,  
Railway Board, Rail Bhawan,  
New Delhi.
2. The General Manager,  
Northern Railway,  
Govt. of India,  
Baroda House,  
New Delhi.
3. The Dy. Chief Engineer (Construction),  
Northern Railway,  
Govt. of India,  
Kashmere Gate,  
Delhi. .... RESPONDENTS

(By Advocate: Shri N.K. Aggarwal)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

Heard.

2. In so far as the relief (i) is concerned the impugned order dated 29.4.94 (Ann.B) which the applicant seeks quashing of, states that the total number of working days put in by him as on 31.12.85 was 1208, while persons having 3476 working days as on 31.12.85 were empanelled as Black Smith after screening. There is not a single averment by

the applicant in his pleadings that he had completed more than 3476 working days as on 31.12.85 and was therefore subjected to hostile discrimination, in not being screened for empanelment as Black Smith (H.S.) which would warrant our judicial interference. Upon the applicant's own averment as contained in the O.A. he was recategorised as Black Smith on 2.7.78 and continued as such till 12.3.82 which works out approximately to 1353 days in all, including Sundays and Gazetted Holidays. From 12.3.82 to 26.9.84 he claims to have been sent on deputation to Iraq which works out approximately to 924 days. Again according to his own averments as contained in the O.A., he worked as Black Smith from 26.9.84 onwards, and the number of days between 26.9.84 and 31.12.85 are approximately 463 days. Thus even if for a moment, we accept the applicant's claim that he was sent on deputation to Iraq from 12.3.82 to 26.9.84 and did not go on his own accord, the total number of days between 2.7.78 and 31.12.85 works out to 2740 days including Sundays and Gazetted Holidays, which is less than 3476 days. If the Sundays and Gazetted Holidays are excluded and only the number of working days are taken into account the number would be even less. Manifestly therefore the applicant has not

succeeded in establishing sufficient ground before us to warrant judicial interference in the impugned order dated 29.4.94.

3. In so far as relief (ii) is concerned the respondent in para 5 of their reply state that the competent authority has now (i.e. before 26.4.95) sanctioned payment of arrears from 1.1.82 to 1.1.89 as per the applicant's pay fixation in 1989. They have also submitted that the payment has already been released, which, however, has been disputed by the applicant. If payment has not already been released, the same shall be released within one month from the date of receipt of a copy of this order with interest @ 12% p.a. from <sup>17.11.94 (date of filing of O.M.)</sup> till the date of actual payment.

4. Coming to relief (iii), seniority is determined not on the basis of clearance of trade test which only one of the incidents for claiming eligibility for seniority and confirmation. The applicant has been unable to establish that he had right to be screened and empanelled as Black Smith any time before 31.12.85, and therefore we are unable to grant seniority as Black Smith (H.S.) from 5.1.81, which is only the date he cleared the trade test, which made him eligible for

confirmation. No materials have been established to show that any person junior to the applicant was confirmed prior to him. Under the circumstances this relief also fails.

5. In the result this O.A. is partly allowed in terms of paragraph 3 [relief (ii)] above. No costs.

Lakshmi Swaminathan  
(Mrs. LAKSHMI SWAMINATHAN)

Member (J)

Adige  
(S.R. ADIGE)

Member (A)

/GK/