

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

PRESENT:

**HON'BLE MR. JUSTICE A.K. YOG, MEMBER-J
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A**

Allahabad this the 20th day of January, 2009

ORIGINAL APPLICATION NO. 1601 OF 2001

Mohd. Shamin, A/a 51 years, S/o late Rajjab Ali, R/o
E-100/5 GTB Nagar, Kareli Scheme, Allahabad.

...Applicant.

By Advocate : Shri. S. Narain.

Versus

1. Union of India through G.M., Northern
Railway, Baorda House, New Delhi
2. D.R.M., N.R., Allahabad.
3. The Chief Medical Supdt. N.R., Allahabad.
4. The Divisional Personnel Officer, N.R.,
Allahabad.

...Respondents.

By Advocate : Smt. Anita Srivastava

ORDER

Delivered: By Justice A.K. Yog, Member-J

Heard Sri S. Narain, Advocate and Sri
M.K. Sharma, Advocate (Holding Brief of Smt.
Anita Srivastava, Advocate) representing the
applicant and respondents respectively.

2. In order to appreciate the controversy,
brief facts of the case are noted here-in-
after. Applicant was appointed as Porter
(Rs. 750-940/-) and in due course, he was
promoted to the post of Shuntman, Leverman
and lastly as 'Switchman' (1200-2040/-). At
this stage, applicant fell ill and took sick

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leave from 9th October 1988 to 19th October, 1988 and then again from 1.4.1989 to 6.4.1989 as he suffered 'cardiac ailment'. In the above background, the applicant was - medically 'De-categorized' as per Rules/circulars of the Railway Board and given appointment - on a post - two grade lower than his post of 'Switchman'. According to him, respondents made no endeavour and ignored his claim to 'an alternative post' of carrying similar employments. He has placed reliance upon the provisions of Railway Establishment Code e.g. 1314(a).

3. Bench of this Tribunal vide order dated 4.1.2002 allowed said MA but issuing notice/calling for objection from the respondents. We may reproduce relevant (1st and 2nd) order on the ordersheet- which read-

"28.11.01

Sri Sudhir Agarwal, counsel for applicant has sought adjournment on the ground of illness. Adjourned. List for orders on 4.1.02.

4.1.2002

*Hon'ble Mr. Rafiq Uddin, J.M.
Hon'ble Mr. C.S. Chadha, A.M.*

Sri V. Budhwar holding brief of Sri S. Agarwal learned counsel for the applicant. Sri M.K. Sharma holding brief of Sri A.K. Gaur, learned counsel for the respondents.

"M.A. no. 4990/01 has been moved by the applicant for condoning the delay in filing the present O.A. M.A. is supported by an affidavit of the applicant. The respondents have not filed any objection against this application. M.A. is allowed on the ground mentioned in the affidavit. Delay is condoned. Office is directed to register the case and give the original number.

Heard learned counsel for the parties. Admit. Learned counsel for the respondents seeks and is

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granted two weeks time to file CA. Applicant may filed RA within one week thereafter. List before Registrar for completion of pleadings on 7.3.2002."

Aforementioned order shows that respondents were not given notice, nor opportunity given to them to file objection or the Bench hearing the counsel before - condoning delay. Unfortunately, there is no reference to the contents of the Affidavit - explanation offered for condoning delay. One has to bear in mind, (i) period of limitation cannot be stretched by approaching authorities time and again, (ii) law prescribe 'limitation' to agitate issues - with solemn - definite objects (seeking endorsement or affirmation/re-affirmation of initial order giving rise to 'cause of action'); (iii) 'Law of Limitation' cannot be ignored on whims or casually, and (iv), it cannot be suggested to be treated lightly or insignificantly. To allow a person to challenge stale matters or to permit them to dig 'sleeping graves' or guilty of gross negligence will perpetuate uncertainty. **"A man who does not speak where he ought to; shall not be heard later-when he does ires (legal- maxim- consensus Tollit Errorem) is still relevant".** However in the end of justice we have heard the O.A. on merit also.

4. A Supplementary Rejoinder Affidavit (SRA) served upon the counsel for the Respondents on 14.12.2005 is being filed

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before this Bench today. We have accepted it and taken on record. In this SRA, it is contended that 'academic qualification' (High School-passed in 1988) was not entered in service-Record inspite of intimation given in 1988/89 and it was entered in the year 2003 and hence he was deprived of higher pay-scale/promotion illegally, arbitrarily. Said 'Supplementary Rejoinder Affidavit' filed today and taken on record on the oral request of the learned counsel for the Applicant (since Respondents were given its copy way back in the year December, 2005-as noted above). Alongwith Supplementary Rejoinder Affidavit, several documents have been filed to show that he had given information vide letter dated 13.1.1989 for noting his High School-1988 qualification in the Service book (Refer to Annexure SRA-1 to SRA-6- which include Photostat copies of High School Marks-sheet and High School certificate, and Correspondence/documents 'relating to this issue'. Respondents had no opportunity to meet the averments made in the said Supplementary Rejoinder Affidavit and cannot be relied upon at this stage.

5. The applicant- Mohd. Shamin, through this O.A. seeks (i) to challenge orders dated 25.5.2001/Annexure-1, 2.6.2000/Annexure-1-A and 6.4.2000/Annexure-1-B (annexed with compilation no.I) and claims

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for a direction to set-aside these impugned orders; (ii) prays for issuance of mandamus commanding the Respondents not to give effect to the aforementioned impugned orders; and (iii) to direct the respondents to grant promotion alongwith other benefits/revision of pay-scale vis-à-vis at par with his juniors who got promotion and higher pay scale before him.

6. Alongwith O.A., applicant has also filed M.A. (Delay Condonation) no. 4990/2001 and prayed for condoning delay in filing the OA and treat it within prescribed period of Limitation under AT Act 1985.

7. On behalf of the applicant, it is submitted that, in the end of justice, contents of afore-referred SRA be noticed. Relying upon it, he argues that the applicant was illegally and arbitrarily deprived of 'suitable alternative employment' on being Medically de-categorized'; his 'academic qualification - High School not entered in his Service Book - for no fault of his, his High School qualification has been ignored due to Respondent's failure to note said High School Qualification in service Record in spite of the same being intimated to the respondents at the earliest in 1989 (as noted above).

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8. Arguments raised on behalf of the applicant require adjudication of new facts brought on record through 'Supplementary Rejoinder Affidavit'. Authority has to decide whether said information was communicated as alleged, and if so why consequential 'Note' was not made at relevant time; etc. This can be done by scrutinizing original records and after an enquiry is held as may be deemed fit and proper in the facts and circumstances of the instant case.

9. We may note that issue regarding the applicant being medically de-categorized, his appointment as 'Bill issuer' are long closed chapters and applicant cannot be allowed to re-agitate the same in view of the fact that the applicant had earlier filed O.A. no. 655 of 1991, which was allowed on 21.3.1993/Annexure-10 to the O.A. (Compilation-II) By means of said order, Tribunal directed respondents to reconsider the matter within specified time. Issues covered under said order (i.e. offering post 2 grade: lower the post of Switchman, arrears put off duty etc.) are foreclosed since said order of Tribunal has attained finality.

10. It will be recalled that the applicant had filed CCP no. 94 of 1994 - Mohd. Shamim Vs. Pradip Kumar Wahi and Others. In the meanwhile, respondents passed order dated

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25.4.1994/Annexure A-11 showing compliance of Tribunal's order dated 23.3.1993 in O.A. No. 655/91. The said Contempt petition was, however, dismissed vide order dated 22.2.1996 on the ground that order of Tribunal has been complied with.

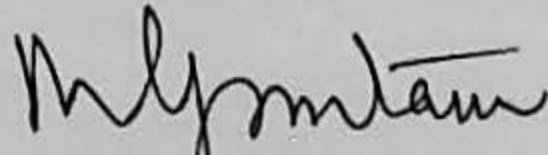
11. In the above backdrop, we find that there is no ground or occasion to permit the applicant to challenge earlier orders whereby he was medically de-categorized and offered appointment on the post of 'Bill issuer' which he had accepted at that stage (as noted above). Question regarding his alternative suitable post/promotion not being given { if on the ground that he had not passed High School at relevant time in past) an issue now raised by filing Supplementary Rejoinder Affidavit, may be raised by applicant (if so advised), before concerned competent authority. We have no reason to doubt that said authority shall not consider and adjudicate in accordance with law - grievance of the applicant (if raised). Learned counsel for the applicant stated that applicant is due to retire shortly.

12. In view of the above, the applicant may raise his grievance (in writing) if so advised - within 4 weeks before concerned authority; and in that case the authorities shall decide grievance of the applicant (in the above respect) within two months from

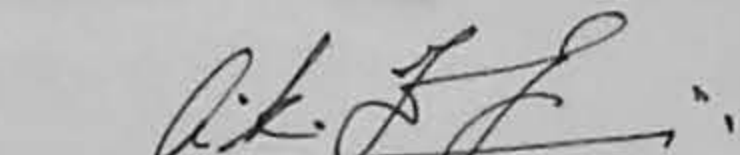
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the date of receipt of desired representation alongwith certified copy of this order, pass a reasoned and speaking order in accordance with law.

13. O.A. stands dismissed subject to above observations/directions. No costs.



(Mrs. Manjulika Gautam)
Member-A



(Justice A.K. Yog)
Member-J

Girish/-