

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD**

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Original Application No. 892 of 2004

**Allahabad, this the 23<sup>rd</sup>, day of December, 2010**

**Hon'ble Mr. Justice S.C. Sharma, Member (J)**

Brij Narain Rai C/o D.N. Sinha, Advocate, M. Dharampur,  
P.O. Gita Vatika, Gorakhpur.

**Applicant**

**By Advocates: Mr. R.N. Sinha**  
**Mr. S.S. Sharma.**

**Vs.**

1. Union of India through the General Manager, N.E. Rly. Gorakhpur.
2. The Chief Personnel Officer, N.E. Rly. Gorakhpur.
3. The Divisional Rail Manager, N.E. Rly. Ashok Marg, Lucknow.
4. The Divisional Rail Manager (Personnel) N.E. Rly. Ashok Marg, Lucknow.

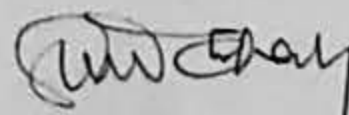
**Respondents**

**By Advocate: Mr. K.P. Singh**

**ORDER**

**By Hon'ble Mr. Justice S.C. Sharma, J.M.**

Instant O.A. has been instituted for giving a direction to the respondents to fix the seniority of the applicant over his juniors. Further prayer has also been made in order to give directions to the respondents to grant notional pay over his juniors and pay the arrears of his notional pay from the date of joining duty i.e. from 18.12.2001 and to



regularize the same. Further prayer has also been made to give direction to the respondents to regularize the services of the applicant in view of police verification and the same has already been done. Regarding verification of the working, affidavit was also submitted on 18.10.2001. Regularisation must be done when his juniors were regularized. Further prayer has also been for directing the respondents to pay the wages for the period when they received the Court's Order dated 12.04.2001 on 11.05.2001 to arrear pay from 12.05.2001 to 17.12.2001, when the applicant was allowed to join duty i.e. on 18.12.2001.

2. The facts of the case may be summarized as follows: -

That the applicant had worked as Casual Labour in North East Railway in between 1980 to 1986 in broken <sup>Span</sup> ~~spells~~ of time. There was vacancy in class IV category under the Divisional Railway Manager, North Eastern Railway, Lucknow. A notice was issued by the Personnel department of North Eastern Railway, Lucknow division that as casual labours who had worked for a short period of time in North Eastern Railway in any department and are out of job, may apply and appear before the Screening Committee and submit his working certificate in original along with photostat copy of the same to the then A.P.O. The certificates were not returned to any of the candidates

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who had appeared and were selected. It is stated that 363 candidates were selected and a loco panel was formed by the Screening Committee where<sup>in</sup> the applicant's name appeared at Serial No. 294 of Loco Panel List. The loco panel was approved on 31.07.1987 and published on 01.08.1987. The respondents arbitrarily posted several junior candidates and ignored the claim of the applicant. Several times requests were made and representations were submitted but to no avail. The O.A. No. 22 Of 1993 was filed in the name of Brij Narain Rai and others vs. Union of India and others. The case of the applicants ~~was~~<sup>is</sup> allowed by the Tribunal vide order dated 12.04.2001. The facts, as stated by the applicants, in the O.A. were admitted by the Tribunal also and directions were given to the respondents to comply and appoint the applicant. The applicant awaited for two months for compliance of the order, ultimately applicants (in the earlier O.A.) had to file the Contempt Petition on 24.07.2001. After receipt of contempt notices, formalities were performed by the Screening Committee etc. but work certificates were not returned to the candidates hence it was difficult to the applicant to submit fresh certificate. An affidavit was submitted in that connection. It is claimed by the applicant that only part of the order was complied by the respondents and remaining part of the Tribunal's order was

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not complied and the applicant was advised to file a separate O.A. hence, the present O.A.

3. The respondents contested the O.A., filed Counter Reply and denied from the allegations of the applicant. It has been alleged by the respondents that the applicant utterly failed to come forthwith any cogent ground to invoke the extra ordinary jurisdiction of this Hon'ble Tribunal in filing the present O.A. and thus, the present O.A. is liable to be dismissed. It is stated that working of the applicant as casual labour is still not verified. He was engaged in group 'D' post in compliance of the Order passed in the O.A. No. 22 of 1993. It has further been alleged that only the attested copy of the documents are accepted by the respondents and it is wrong to allege that the original work certificate was delivered to the respondents at the time of screening. It is also wrong to allege that 87 loco panel were arbitrarily appointed. Infact the candidates who were on roll in Mechanical (Loco) Department were given appointment while those who were not on roll in Mechanical (Loco) Department were not appointed because it was revealed that many candidates could manage to get their names placed in the year 1987 Loco Panel on the basis of fake working certificates. It is stated that the applicant had already been engaged in Group 'D' post in

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Carriage and Wagon Department, and it was essential for the applicant to produce the Casual Labour Card so that same can be verified. It is stated that every casual labour has given Labour Card. Till date, applicant has not produced his working certificate (casual labour card for verification) and notional seniority cannot be granted without verification of Casual Labour Card. It is prayed that the O.A. may be dismissed.

4. I have heard Mr. R.N. Sinha and Mr. S.S. Sharma, Advocates for the applicant and Mr. K.P. Singh, Advocate for the respondents, and perused the entire facts of the case.

5. At the outset-learned counsel for the applicant argued that on the same set of facts, applicant filed an O.A. No. 22 of 1993, and the same was decided vide Order dated 12.04.2001 (annexure A-2 is the copy of the Order of the Tribunal). Learned counsel further argued that the relief (s), which have been claimed in the present O.A., had already been granted in the earlier O.A. But the directions of the Tribunal were partly complied with by the respondents. Although a Contempt Petition was filed by the applicant before the Tribunal but the Contempt Proceedings were dropped by the Tribunal with the

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observation that the applicant is free to file a separate O.A. I have perused the Judgment of the Tribunal, and I am of the opinion that there was no necessity for the applicant to file a separate O.A. for the relief (s) claimed in the present O.A. and in my opinion the matter had unnecessarily been dragged for so many years. If the Contempt Petition was dismissed with the observation that the applicant may file separate O.A. for remaining prayers, then the learned counsel for the applicant prays before the Court that option may be given to him to file Execution Application. This Tribunal while entertaining the Execution Application, can ensure that its Order has been complied with in toto or not. It is also material to state that the order of the Tribunal was not challenged before the Hon'ble High Court. The option was available to the respondents to challenge the Order of the Tribunal before the Hon'ble High Court if the respondents were not satisfied by the Order but as the Order was not challenged before the Hon'ble High Court hence there is no option before me except to rely the Judgment passed in the earlier O.A. in toto. It will not be justified for me to upset or reverse the findings recorded in the earlier O.A. No. 22 of 1993. Learned counsel for the respondents argued at length on the point that although observations were there of the Tribunal in the Judgment regarding certain facts but the factual position is that those

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facts were incorrect. I cannot accept this contention of the Respondents' Advocate and I have to accept the findings recorded by the Tribunal as correct and without upsetting the findings recorded in the earlier O.A. by the Superior Court, I cannot record an inconsistent finding.

6. Learned counsel for the respondents argued that as per direction of the Tribunal, appointment has already been given to him in Group 'D' category. The direction was also given by the Tribunal to grant notional seniority to the applicant from his juniors. But, this direction of the Tribunal cannot be complied with for want of working certificate, only from the work certificate it can be ascertained that during which period applicant actually worked with the Railways. As I have stated that all the matter stands finalized in the earlier O.A. and there appears no justification for me to upset the earlier findings. In this connection, the relevant portion is material to reproduce: -

*"6. Another factual issue raised by learned counsel for the respondents is that the onus of proving their working days is on the applicants and since they have not done so, they are not entitled to any relief. This argument of learned counsel for the respondents is not tenable. It is the case of the respondents themselves that one of the issues under enquiry of the Vigilance Department was the certificate of work/photocopies of the same given by the eligible candidates at the time of screening. Therefore, it was for the respondents to verify the period of work and inform the applicant of the outcome. The respondents have failed to do so after several years of screening and seven years of filing of this application."*

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Hence in view of the above finding and observation, it was decided that the respondents themselves alleged that one of the issues under enquiry of the Vigilance Department was the certificate of work/photocopies of the same given by the eligible candidates at the time of screening. After recording this finding, it does not lie in the mouth of the respondents to allege that the working certificate was not delivered by the applicant at the time of screening. Under these circumstances, it is expected from the respondents to make compliance of the directions of the Tribunal. On perusal of the above portion of the Judgment, I am of the opinion that a definite and correct finding was recorded by the Tribunal to the effect that the working certificate was delivered by the eligible candidates at the time of screening. Moreover, learned counsel for the respondents also highlighted that as certain persons were appointed in Group 'D' category on the basis of forged certificate, matter was investigated by the Vigilance department of the Railways but in this connection the contention of learned counsel for the applicant as well as observation of the Tribunal appear justified that in connection with the vigilance enquiry, working certificate was delivered to the respondents. Under these circumstances, there can be no possibility for the applicant to produce further or fresh working certificate for

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verification. Whatever was available with the applicant, same had already been delivered and there is a specific finding on this point of the Tribunal. Hence, now the respondents are required to make compliance of the Order in letter and spirit.

7. Learned counsel for the applicant also argued that for compliance of the Judgment of the earlier O.A., the instant O.A. has been filed. Although for compliance of the earlier Judgment, instead of filing an O.A., applicant ought to have filed an Application for execution of the Order. But even then it will be material to peruse the operative portion of the Judgment of the Tribunal, and the same is reproduced as below: -

*"8. In the facts and circumstances of this case, we consider it appropriate to direct the respondents to engage the applicants against Group 'D' posts within a period of two months from the date of receipt of a copy of this order, if the applicants have not been found to be at fault in the Vigilance enquiry till the date of this order. They shall be granted notional seniority without back wages from the date of appointment of their junior. The applicants shall be paid Rs.1500/- as costs of this application."*

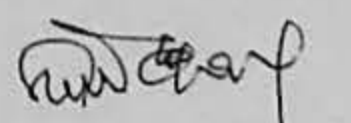
Learned counsel for the applicant in this connection argued that only part of the Tribunal's Order has been complied with by the respondents, except giving appointment to the applicant in Group 'D' category, no other directions have been complied with. In accordance with the directions of the Tribunal, the respondents were required to give notional seniority to the applicant from juniors (without backwages), and in case applicant is found

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at no fault in the vigilance enquiry, the applicant shall be given notional seniority, and there is inherent relief being granted to regularize the applicant. No further order is required to be passed regarding the relief prayed in the present O.A., and I am of the opinion that it is just and proper to ensure proper compliance of the Order/directions of the Tribunal in the earlier O.A.

8. For the reasons mentioned above, I am of the opinion that the O.A. deserves to be allowed and whatever was decided in the earlier O.A., is to be complied <sup>with</sup> by the respondents except giving appointment to the applicant in Group 'D' category, no other compliance has been made and the respondents are required to follow the remaining operative portion of the Judgment in O.A. No. 22 of 1993.

9. O.A. is allowed. The respondents are directed to grant notional seniority to the applicant with his juniors (without backwages), although relief has been claimed for back wages but the same cannot be granted in this O.A. also, and the applicant shall also be granted consequential relief (s). A sum of Rs.3000/- is imposed as cost on the respondents.

  
{Member-J}

/M.M/