

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 28th day of November, 2007.

**HON'BLE MR. ASHOK S. KARAMADI, MEMBER- J.
HON'BLE MR. K.S. MENON, MEMBER- A.**

ORIGINAL APPLICATION NO. 409 OF 1999

Phool Singh, S/o Sri Bhawani, C/o Ram Autar,
R/o Q. No. 155-B, Railway Colony, Ashok Nagar,
Etawah.

.....Applicant.

V E R S U S

1. Union of India through Divisional Railway Manager,
Northern Railway, Allahabad Division, Allahabad.
2. Senior Divisional Superintending Engineer,
Northern Railway, Allahabad Division, Allahabad.
3. Chief Permanent Way Inspector, Northern Railway,
Etawah.


.....Respondents

Present for the Applicant: Sri B.N. Singh
Present for the Respondents : Sri Prashant Mathur

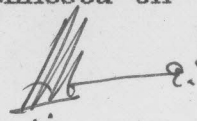
ORDER

BY HON'BLE MR. ASHOK S. KARAMADI, J.M.

This application is filed seeking direction to the respondents to pay the salary and other benefits for the period from 30.10.1990 to 03.01.1993.

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2. The brief facts of the case are that the applicant was appointed and regularized on the post of Gangman by the respondents, but he was performing the duties of Black Smith. As the applicant is working as a Black Smith, the respondents neither promoted the applicant nor given the benefit ^{attached} for the said post. The applicant made representation ~~to the respondents~~ bringing his grievance to the notice of the respondents. The applicant fell ill from 11.09.1990 and he was under treatment till 29.10.1990. The Railway doctor declared the applicant fit w.e.f. 30.10.1990, thereafter, he submitted the fitness certificate to the respondents but the applicant was not allowed to resume his duties without any reason. The applicant again submitted representation dated 12.11.1990 to the respondents. Even though the repeated requests are made, the applicant was not allowed to resume his duties and as such he filed O.A No. 1048/98, which this Tribunal disposed off vide order dated 31.01.1991 with direction to the respondents to consider and decide the representation of the applicant by speaking order. In spite of the order dated 31.01.1991 and the representation made by the applicant, the respondents have not passed any order and, therefore, another O.A No. 877/91 was filed by the applicant seeking the same relief. After notice, the respondents filed Counter Affidavit and further issued charge sheet dated 23.01.1992 to the applicant regarding his absence from duties. After the receipt of notice of this Tribunal, the respondents permitted the applicant to join his duties w.e.f. 04.01.1993. Even though the applicant was working, the payment for the period from 30.10.1990 to 03.01.1999 was not paid. The applicant had submitted his reply to the charge sheet and denied the allegations. Thereafter an enquiry was conducted by duly appointed Enquiry Officer, who completed the enquiry but no final orders were passed. Having regard to the same, the O.A was dismissed on



04.02.1996 as no relief can be granted during the pendency of the enquiry proceedings and the respondents were directed to complete the disciplinary proceedings within three months. Since the respondents have not completed the disciplinary proceedings the applicant filed Misc. Application No. 376/97, which this Tribunal dismissed vide order dated 14.05.1998 with a direction to file a fresh O.A for the relief claimed. As the applicant was prevented by the respondents to resume his duties and as such he claims that he is entitled to full salary w.e.f. 30.10.1990 to 03.01.1993 with other admissible consequential benefits alongwith 18% interest as prayed for in this O.A.

3. On notice, the respondents have filed Counter Affidavit and stated that the applicant is not legally entitled for the relief claimed as the same is barred by limitation and also hit by principle of resjudicata and , therefore, the O.A deserves to be dismissed. It is further stated that in view of the orders dated 04.02.1996 passed in O.A No. 877/91, the cause of action accrued to the applicant in the year 1990 and therefore, this O.A is not maintainable as the same is barred by limitation. On merits, it is stated that the applicant was never allowed to work as Black Smith and he was working in the capacity of Gangman as the post of Black Smith is a selection post for which an individual has to appear/ pass the requisite trade test and without passing the same, the question of promotion as Black Smith does not arise at all. After declaring him fit w.e.f. 30.10.1990, the applicant was unnecessarily absent and did not turn up for duties for the reasons best known to him. The applicant had worked and discharged his duties as Gangman and never allowed to work as Black Smith as he was not tested for that post or Hammer man and had work in the team of one Sri Kripal Singh as Gangman and



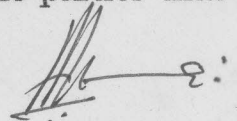
payment was made to the applicant for the said post. It is further stated that the Tribunal vide para 5 of the order clarified and opined, " In our opinion leave no room for doubt that the applicant was neither utilized as Welder not as Blacksmith nor as Hammerman . All that the aforesaid documents disclose that the applicant was a member of Welding Team of which Sri Kripal Singh was the Welder". Based on the material and the documents produced by the respondents, they have sought for dismissal of the O.A.

4. The applicant has filed Rejoinder Affidavit reiterating the same contentions and admitting the facts on record with regard to the proceedings and further stated that the enquiry was not completed and the decision not taken by the respondents.

5. The respondents have filed Suppl. Counter Affidavit in which it is stated that vide order dated 21.08.2006, the respondents have decided to close the disciplinary proceedings initiated against the applicant as the charge sheet issued to the applicant was more than 14 years old and the enquiry officer appointed in the case has already been superannuated. The respondents have also denied the averments made in the Rejoinder Affidavit and have sought for dismissal of the O.A.


6. We have heard the learned counsel for the parties, perused the pleadings and the material on record.

7. The question that arise for consideration is whether grievance of the applicant with regard to the entitlement to the benefit, claimed can be granted or not. In view of the admitted fact between the parties that



the applicant had filed application before this Tribunal earlier seeking his claim in O.A No. 1048/1998 and O.A No. 877/91. Having regard to the orders passed in both O.As and on the basis of the contention of the applicant that he has been working as Gangman of Welding Team or he is working as Welder or Black Smith, even then he is entitled for the relief claimed. On perusal of the order passed in O.A No. 877/91 dated 04.02.1996, the contention of the applicant and the grounds taken in the Misc. Application No. 376/97 were considered and the detailed orders were passed dismissing the said O.A. While dismissing the said O.A No. 877/91, in para 7 , the rival contention of the parties were taken in to consideration. The finding record by the Tribunal in para 7 in O.A No. 877/91 reads as follows: -

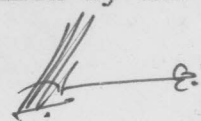
“ We have no reason to believe the abovementioned contention of the respondents. The applicant, it would thus appear has not been able to substantiate that he had been utilized as Black Smith after his appointment as Gangman. The documents filed by him also do not support the claim of the applicant. In this connection reference may be made to Annexure- 2 and 4 to the application filed by the applicant. IN Annexure- 2, which is dated 23.08.1990, it has been mentioned by the applicant himself that he has been attached with Kripal singh Welder as Gangman. Annexure- 2 also, which is addressed to Divisional Railway Manager, Northern Railway, Etawah, after that he has been attached with Sri Kripal singh's Gang and that he is performing welding work. The applicant appears to have been called upon to submit an explanation for same omission and


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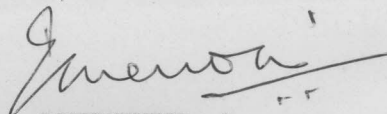
commission. After receiving his reply, Chief Way Inspector issued a letter Annexure A- 1. It appears that his work was not found satisfactory and he was cautioned to be careful failing which he will be reverted to his Gang. This letter is dated 31.05.1990 and the applicant has been addressed as Gangman of Welding team. The documents, aforementioned, in our opinion leave no room for doubt that the applicant was neither utilized as Welder not as Black Smith nor as Hammer man. All that the aforesaid documents disclosed, it that the applicant was member of the welding team of which Sri Krpal Singh was the Welder."


8. In view of the findings recorded as mentioned above, the grievance of the applicant cannot be looked into and the relief cannot be granted as prayed for. In support of the claim of the applicant, learned counsel for the applicant has placed reliance in judgment passed by the Hon'ble High Court, Allahabad in Union of India Vs. Chhagan and others (1974 LAB I.C 497 (V 7 C 109) and judgment passed by Full Bench in Mandegam Radhakrishna Reddy Vs. Sri Bharthi Velu Bus Service and another (AIR 1986 Andhra Pradesh 102=1986 Lab. I.C.80 Full Bench). On perusal of the judgment relied on by the counsel for the applicant, we are of the considered view that the facts and circumstances of the present case are not similar to that of the cases referred to by the learned counsel for the applicant and as such cannot be taken in to consideration.

9. As contended by the learned counsel for the respondents, the cause of action arose in the year 1990 and the relief claimed by the



applicant by filing this O.A, even though he has filed earlier O.As, having regard to the contention of the applicant that the cause of action survives for consideration, we not able to accept the contention of the learned counsel for the applicant. Apart from this, the grounds taken in this O.A has already been decided in the earlier O.As and the findings are recorded, and as such accepting the contention of the respondents, we reject the contentions of the applicant. we are of the considered view that the applicant has not made out any case for grant of any relief as prayed for in the present O.A and is accordingly dismissed with no order as to costs.


MEMBER- A.


MEMBER- J

/Anand/