

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 2nd day of August 2006.

Original Application No. 305 of 2002.

Hon'ble Mr. Justice Khem Karan, Vice-Chairman
Hon'ble Mr. P.K. Chatterji, Member-A

Subhas Chandra Sharma, S/o Sri Kashi Prasad Sharma,
R/o Village Lalpurekavi, Post Office Anapur, P.S.
Nawabghanj, Allahabad.

. . . . Applicant

By Adv: Sri B.P. Srivastava

V E R S U S

1. Union of India through, General Manager,
Eastern Railway, New Delhi.
2. The Divisional Railway Manager (Personnel),
E. Rly., Varanasi
3. The General Manager (Personnel), N.E. Rly.,
Gorakhpur.

. Respondents

By Adv: Sri Anil Kumar

O R D E R

By Hon'ble Mr. Justice Khem Karan, VC

The applicant is seeking direction to the effect that the respondents be asked to consider the applicant for appointment on a suitable post on humanitarian grounds.

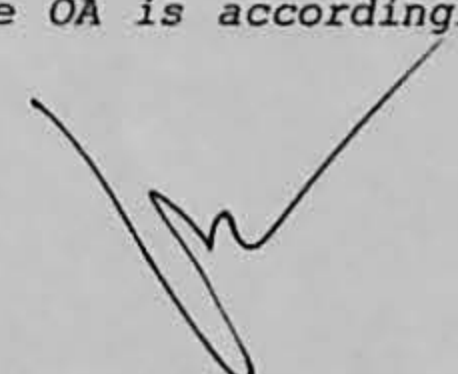
2. The applicant has alleged that he worked as ~~Seasonary~~ ^{Seasonal} Labourer in the Eastern Railway, Gorakhpur from 07.01.1978 to 04.01.1990, with breaks as

mentioned in para 4 and, thereafter, his services were arbitrarily dispensed with without serving any notice on him. It is also alleged that he met with an accident on 25.05.1991 and got one of his leg amputated and thus become physically handicapped person. Getting no response ^{from} ~~from~~ the authority concerned on his various applications for giving him appointment, he filed OA No. 1273 of 1994, which this Tribunal ~~has~~ ^{has} rejected vide its order dated 17.02.1998 (annexure A4). The Tribunal was of the view that the OA was highly time barred and had no substance on merits ^{as} as well. Aggrieved by this dismissal the applicant filed Writ Petition No. 12048 of 1998 ⁱⁿ ~~in~~ which the Hon'ble Allahabad High Court disposed of vide its order dated 13.04.1998 (Annexure 5). The relevant portion of the order is as under:

"On consideration of the entire matter this Writ Petition is disposed of with the order that dismissal of the case by the Tribunal will not prevent the petitioner from making an application for appointment when a post is notified and if such an application is made by the petitioner the same will be considered in accordance with law treating the petitioner as handicapped person."

3. It appears that the authorities could do nothing in favour of the applicant and there^{upon} upon the applicant filed another OA No. 1113 of 2000^b. This OA was also disposed of vide order dated 01.11.2001 (Annexure A 7). The relevant portion of the order of November 2001 is as under:

"The learned counsel for the applicant submits that the OA may be disposed of with the direction to the respondent No. 2 to consider and pass appropriate orders on the aforesaid representation of the applicant. The OA is accordingly disposed

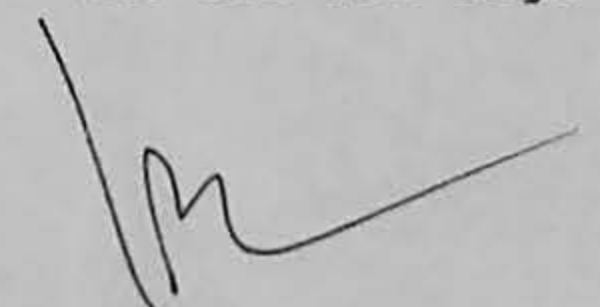


of with the direction to the respondent No. 2 to consider and pass appropriate orders on the aforesaid representation of the applicant as per rules within a period of three months from the date of communication of this order, by a reasoned and speaking order. There shall be no order as to costs."

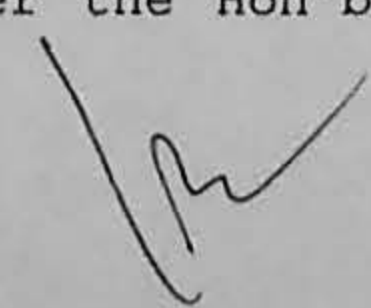
4. The applicant ^{did} ~~could~~ not ^{give up the} ~~make any~~ efforts and continued the same for getting appointment on humanitarian grounds. It was in January 2002 that DRM, Varanasi sent a communication dated 28.01.2002 (Annexure A1) informing the applicant that so far no vacancy in the category of Physically Handicapped persons had been notified and whenever it would be so notified the candidature of the applicant would be considered on getting application from him. It appears that this information ^{has} ~~is~~ again brought the applicant to this Tribunal.

5. The respondents have tried to resist the claim of the applicant by filing written reply. They have come with a case that since no such vacancy of the quota of Physically Handicapped person have so far been notified, so the question of considering the case of the applicant in terms of the order of the Hon'ble High Court does not arise and when such vacancy will be notified and the application from the applicant will be given the same shall be considered in accordance with the relevant rules.

6. Sri B.P. Srivastava, learned counsel for the applicant has submitted that the purport or sprit of the order dated 13.04.1998 of the Hon'ble High Court



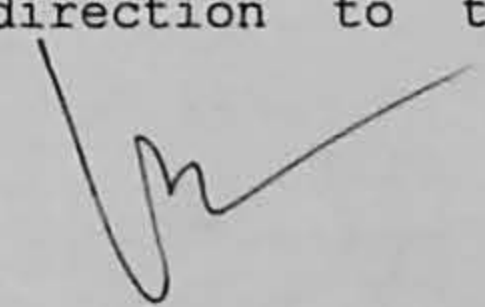
has not properly been ^{appreciated} ~~constructed~~ by the authorities concerned, before sending the communication dated 28.01.2002. Sri Srivastava, goes on to argue that the Hon'ble High Court has asked the authorities concerned to consider the case of the applicant for appointment as a Physically Handicapped person irrespective of the non-existence of the vacancies in that quota. According to him, for considering the case of the applicant for appointment in terms of the order of Hon'ble High Court, ^{notifying} ~~inviting~~ of the vacancies of that quota is not necessary. The learned counsel has also tried to say that cases of such Physically Handicapped person should be considered with humanitarian ^{approach} ~~grounds~~ or with compassion and should not be ^{brushed} ~~brushed~~ aside on highly technical grounds. Learned counsel referred to the observations of the Hon'ble High Court made in para 12 & 13 in the case of **Om Prakash Singh Vs. Union of India & Others**, reported in **SLR 2006 (3) 727**. There can be no debate that persons coming in the category of Physically Handicapped persons, deserved all possible sympathy and compassion and their request for such appointments should be considered with all ^{possible compassion} ~~sympathy~~, But to say that the same will be considered against the rules may not be correct or the rules will not be observed will also be not correct. It is never the arguments of Sri Srivastava that the rules ^{should} ~~have~~ not ^{be} ~~been~~ observed, But the question is as to whether the Hon'ble High



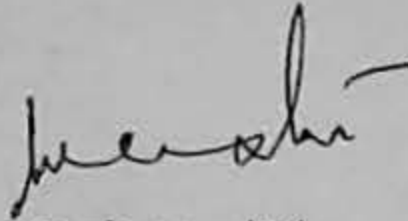
Court in its order dated 13.04.1998 directed for consideration of the applicant for appointment irrespective of the existence of or without notifying the vacancy of Physically Handicapped quota. Although it ought to have been seen in some other proceedings. But even if we see, we find that the Hon'ble High Court asked for such consideration only on vacancy being notified. There is nothing in the OA that such vacancy has been notified, The authorities are not saying that ^{they} ~~it~~ will not ~~be~~ considered, on vacancy being notified and application received from the applicant for such appointment.

7. The applicant's subsequent OA of 2001 also ended with no fruitful result in its favour. We are not in a position to issue any express mandate to the respondents over and above what has been said by the Hon'ble High Court in its order-dated 13.04.1998. We ^{expect} ~~so accept~~ that the authorities will proceed with all possible compassion and sympathy at their command in dealing with the matter relating to the applicant, who is Physically Handicapped person. He may not be able to wait for long and to spend prime period of his life in waiting for such appointment or consideration of his matter for appointment.

8. In view of what we have said above, the OA is finally disposed of with the direction to the



respondents that they shall move swiftly in terms of the order dated 13.04.1998 of Hon'ble High Court and try their best to consider the case of the applicant as early as possible. No cost.



Member (A)



Vice-Chairman

/pc/