

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the **07th** day of **May, 2008.**

**HON'BLE MR. JUSTICE A.K. YOG, MEMBER- J.
HON'BLE MR. K.S. MENON, MEMBER- A.**

Original Application No. 1189 OF 2002

Girraj, S/o Sri Pitamber, R/o Vill. Nawalpur, Post- Mehrara,
Tahsil- Sadabad, Distt. Mathura, at present posted on the post of Mate
under Permanent Way Inspector, Head Quarter, Northern Railway,
Tundla.

.....Applicant

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1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager ,
Northern Railway, Allahabad.
3. The Divisional Engineer (HeadQuarter),
Northern Railway, Tundla.
4. The Permanent Way Inspector, Head Quarter,
Northern Railway, Tundla.

.....Respondents

Present for applicant : Sri Satish Dwivedi
Present for respondents : Sri G.P. Agarwal

ORDER

BY HON'BLE MR. JUSTICE A.K. YOG, J.M.

The applicant/ Sri Guru Prasad approached the Tribunal by filed
this O.A No. 1189/02 on the pleadings interalia that he was initially
engaged as casual worker in Railways in 1970 and continued to work as

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such till February ,1980 ; he was later posted as 'Mate' w.e.f. 15.02.1980; in July, 1995 the applicant was posted as Mate under Permanent Way Inspector, Head Quarter, Northern Railway, Tundla in Special Gang named as Break Down Gang; the applicant allegedly fell seriously ill w.e.f. 08.07.1995 to 17.07.1995; after fitness, he reported for duty but was not allowed to work by the P.W.I, Head Quarter, Northern Railway, Tundla; being aggrieved he filed O.A No. 702/95 claiming relief for quashing order of reversion, in which, this Tribunal passed interim order on 31.07.1995 staying the operation of order reverting him; the applicant contents that interim order was not honoured inspite of his repeated representation; being aggrieved he filed Contempt Petition, which was dismissed on technical ground; meanwhile the department issued charge sheet dated 11.09.1995 on the ground that the applicant was unauthorisedly absent from duty against which reply was submitted; the applicant also prayed for allowing him to join duties and for payment of arrear of salary/emoluments; in the above referred O.A No. 702/95 , order of reversion was set aside vide judgment dated 21.08.1996 (Annexure- 6 to the O.A); order of Tribunal dated 21.08.1996 was submitted before the concerned competent authority on 02.09.1998 (para 15 of the O.A); despite the efforts being made, the applicant was not allowed to discharge his duties and also deprived of his salary (para 17 of the O.A); it is alleged that junior to the applicant was retained (para 23 of the O.A) and on the basis of aforesaid contention , the applicant is claiming following relief(s) : -

"(A). that the respondents be directed to allow the applicant to perform his duty and further they be directed to pay his salary with effect from July 1995 with interest at the rate of

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18% per annum and they be also directed to pay his future salary regularly.

- B. Any other and further relief, which this Tribunal may deem fit and proper be also awarded to the applicant.
- C. Cost of proceeding be awarded to the applicant".

2. The respondents filed Counter Affidavit denying the averments made in the O.A. The applicant filed Rejoinder Affidavit in support of his pleadings made in the O.A.

3. Heard learned counsels for the parties and perused the pleadings as well as documents annexed thereto.

4. Learned counsel for the applicant submits that from the averments made in the Counter Affidavit, the applicant came to know that the enquiry against the charge sheet dated 11.09.1995 has been completed and he was found guilty. On knowing aforesaid fact, he filed Appeal before Divisional Superintending Engineer-II, North Central Railway, Allahabad, which has not been decided. Learned counsel for the applicant then has pointed out that the second charge sheet dated 25.03.2003 (Annexure -4 to the R.A) was served against which he filed reply on 30.05.2003. It is further submitted that enquiry initiated on the basis of second charge sheet is being kept pending and no enquiry has been held. It is argued that the applicant has not been communicated the decision taken in the disciplinary proceedings initiated on the basis of charge sheet dated 25.03.2003. Learned counsel for the applicant further submits that the applicant does not want to press first part of the afore quoted relief inasmuch the applicant has been allowed his duties

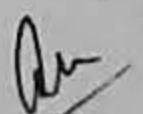
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and is in service at present. It is stated that only grievance of the applicant is with regard to the arrears of salary and for payment of regular salary to which he is entitled.

5. On the other hand, learned counsel for the respondents has pointed out that the facts stated in the Rejoinder Affidavit are to be ignored inasmuch the respondents have no occasion to admit or deny the same. Learned counsel for the respondents further submits that even if all the submissions/arguments (noted above in this order) are accepted, the applicant cannot be granted any relief unless applicant seeks relief for final conclusion of the enquiry referred to above.

6. Taking into account rival contentions of the parties, we find that the applicant has failed to bring on record relevant facts regarding pendency of enquiry/enquiries initiated on the basis of two charge sheets (referred to above). The first one is at Appellate stage and other is before the Inquiry Officer itself. The applicant ought to have filed Supplementary Affidavit instead of incorporating new facts in Rejoinder Affidavit of which respondents has no opportunity to reply. However, considering the nature of the controversy with reference to the enquiry/enquiries initiated in pursuance of two different charge-sheets (referred to above) and whether same have been decided finally, can be verified by the respondent authorities from 'original record' before them.

7. We, therefore, refrain from deciding the disputed question/s by ourselves and direct the applicant to approach the concerned competent authority raising his grievance by two separate representations with reference to two different charge-sheets/Departmental Enquiries.

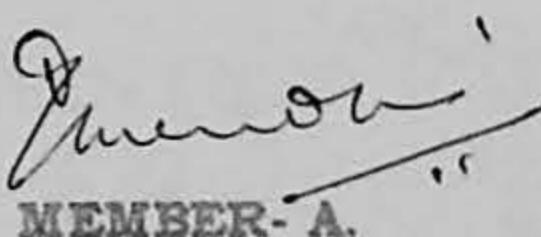


8. Learned counsel for the applicant submits that grievance regarding subsequent part of afore-quoted relief, i.e. regarding payment of salary/arrears etc. shall arise and depend upon the decision in these enquiries after their finalization and hence, this part of relief is not pressed at this stage.

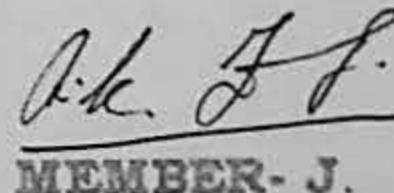
9. In the result, we direct the applicant to file a comprehensive representation with regard to charge sheets, pending before Deputy Superintending Engineer- II, North Central Railway, Allahabad and another representation regarding second charge sheet dated 25.03.2003, stated to have been pending before the Assistant Engineer, H.Q. Northern Railway, Tundla, within four weeks from the date of receipt of certified copy of this order and the aforesaid authority shall decide the same by passing a speaking /reasoned order within six weeks thereafter in accordance with law.

10. With the above observation, the O.A is disposed of finally.

11. Considering the facts and circumstances of the case, we make no order as to costs.



MEMBER- A.



MEMBER- J.

/Anand/