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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1001 OF 2006

ALLAHABAD THIS THE 12th DAY OF oct 2007

HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J
HON'BLE MR. SHAILENDRA PANDEY, MEMBER-A

Hukum Singh Pal,
Son of Late Babu Lal,
R/o 342-B Railway New Colony, Trundla,
District-Firozabad.

.Applicant

By Advocate : Shri A. Srivastava

Versus

1. Union of India,
through its General Manager,
Northern Central Railway,
Allahabad.
2. Divisional Railway Manager,
Northern Central Railway, Allahabad.
3. Divisional Personal Officer, Allahabad.
4. Sr. Divisional Operating Manager,
Northern Central Railway, Allahabad.
5. Suresh Chandra Chaudhary,
O.S. -II, Divisional traffic Office,
Trundla.

.Respondents

By Advocate : Shri A. Dwivedi, Shri S. S. Sharma

O R D E R

HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J

This application is filed to quash the order dated 05.09.2006 passed by the respondent no.3 and for direction to the respondents not to revert the applicant from the post of Office Superintendent Grade-I and other reliefs.

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2. The brief facts of the case are that the applicant was appointed in the Railway service as a clerk. The seniority list was published in the year 1987 of Ministerial cadre, in the said seniority list the name of the applicant was placed at serial no.18 and that of the respondent no.5 at serial no.29. In the Ministerial cadre the applicant was shown at serial no.29 and one Shri Jagdish Kumar who is presently posted as OS-I at serial no.43. The applicant was promoted to the post of senior clerk by the order dated 01.10.1980, but the respondent no.5 even though appeared in the selection but could not qualify for the same. In the seniority list of Senior Clerk dated 25.10.1985 the name of the applicant finds place on serial no.1, and whereas Shri R. D. Ram and Shri Jagdish Kumar (SC) shown at serial no.12 and 18. The applicant was promoted as Head Clerk from 05.03.1984. The seniority list of Head Clerk was published on 20.11.1996. In the said list the applicant's name is at serial no.1, that of the respondent no.5 shown as serial no.30, the respondent no.5 was promoted as Senior Clerk on 10.03.1992. In the year 1993 re structuring scheme was introduced in the cadre of OS-II. The applicant was promoted as OS-I on 23.09.2002. While he was working in the said grade surprisingly the authorities issued a letter dated 05.09.2006 proposed order for his reversion from the post of OS-I to OS-II, aggrieved by the same this

3. On notice the respondents have filed the counter affidavit, and also the private respondent no.5 has filed the counter reply. The applicant has filed the rejoinder affidavit and the applicant also filed the amendment application for amending the OA and another application seeking amendment to challenge the reversion order dated 24.01.2007. The official respondents have filed the objection to the amendment of the OA. The private respondent no.5 also filed the objection for the applications filed by the applicant. The sum and substance of the official respondents as well as the private respondents, is that, this application is premature and the same is not maintainable as the applicant has approached this Tribunal against the show cause notice dated 05.09.2006 and it is not an order but it is only a show cause notice calling upon the applicant to make his submission for the same as the applicant has failed to make any reply for the show cause notice has approached this Tribunal, therefore, the OA is premature and is not maintainable, and also further stated that the decision taken by the respondents is based on the order passed by this Tribunal in OA No.413/03 dated 14.10.2004 and all other allegations and the contention of the applicant are denied and stated that the competent authority has taken a decision which is legal, and the show cause notice served on the applicant is a proper one. The objection for the amendment with regard to challenging the order dated 24.01.2001 subsequent to filing of the



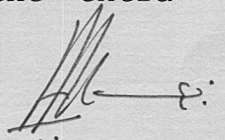
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OA the amendment seeking to that effect by the applicant is objected on the ground that the cause of action and the nature of the facts and circumstances to challenge the order 24.01.2007 are different and as such the said prayer cannot be allowed and further stated that this OA be dismissed.

4. We have heard the learned counsel for the parties and perused the pleadings and materials available on record. The learned counsel for the applicant submits that annexure-1 which was received by the applicant even though this is in the nature of show cause notice dated 05.09.2006 but the respondents have proposed for reversion of the applicant, and as such it is in the nature of the order, but subsequently by the order dated 08.03.2007 this contention of the applicant was considered after hearing both sides, held that it is only a show cause notice having regard to the admitted fact that subsequently the respondent have passed the order on 24.01.2007 thereafter the applicant's counsel moved a application for amendment consequent upon the order passed by the respondents dated 24.01.2007. This clearly goes to show that the present application was filed only against the show cause notice issued by the respondents, the applicant further states that he has not filed any reply to the said show cause notice but on the other hand it is stated that, and brought to our notice that the applicant by the letter dated 24.09.2006 informed the respondents that he has approached the Tribunal by filing OA No.1001/06 and he



has not filed any detailed reply for the same. On his own showing by the applicant himself it is clear that he filed this OA against the communication dated 05.09.2006, in our considered view it is not an order it is proposal for reversion of the applicant, for that show cause notice was issued to the applicant as the applicant fails to submit any reply for the same to the respondents it is needless to say that this OA filed by the applicant is premature and not sustainable in law against the show cause notice. However, subsequently the order was passed by the respondents on 24.01.2007, this clearly goes to show that even though an opportunity is given to the applicant, he failed to avail of the same but approached this Tribunal by filing this OA and as such seeking an amendment subsequent to filing of the OA in pursuance of the order passed by the respondents dated 24.01.2007 cannot be accepted to amend the OA as sought for by the applicant for the reasons that, the circumstances under which the OA was filed against the show cause notice and the changed circumstances seeking for amendment of the OA for challenging the order dated 24.01.2007 passed by the respondents are different. In that view of the matter accepting the contentions of the respondents with regard to the objection filed for seeking amendment and also with regard to the maintainability of the OA we are of the considered view that this OA is not maintainable, and further the interference on the show cause notice, and to entertain the application is only on the extra

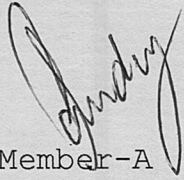


ordinary circumstances in the present case ~~we~~ do not find any extra ordinary circumstances to entertain this OA, and accordingly for the reasons stated above accepting the contention of the respondents the reliefs sought for by the applicant cannot be granted. During the course of the arguments the learned counsel for the applicant submits that in the event if the OA is premature and the relief sought for the applicant cannot be granted in that event the applicant be permitted to submit his detail^{ed} reply to the show cause notice of the respondents dated 05.09.2006. Having regard to the said submission and in view of the conclusions we have reached that this OA is not maintainable and the relief cannot be granted to the applicant for the aforementioned reasons. We thought it just and proper in the interest of justice that the applicant be permitted to make his representation to the respondent's authorities concerned within a period of 15 days from the receipt of the copy of his order. If the said representation is submitted by the applicant to the respondent's authorities concerned within that time, in that event the respondent's authorities are directed to dispose of the said representation of the applicant within a period of six weeks on the receipt of the representation of the applicant and to pass appropriate speaking order in accordance with law. All the contention of the applicant is left open.



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5. With the above observations and directions to the respondents this OA is disposed of with no order as to costs.



Member-A



Member-J

/ns/