

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

PRESENT:

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

Allahabad this the 29th day of January, 2009

ORIGINAL APPLICATION NO. 285 OF 2006

Kamta Prasad, S/o Sri Ram Charan at present posted as Helper Gr-I, under the Sr. Section Engineer (Works) N.C.R., Fatehpur.

...Applicant.

By Advocate : Sri Satish Dwivedi.

Versus

1. Union of India through the G.M. N.C.R., Headquarters Office, Allahabad.
2. The Sr. Divisional Engineer, Head Office, N.C.R., Allahabad, office of D.R.M., N.C.R., Allahabad Division, Nawab Yusuf Road, Allahabad.
3. The Divisional Engineer, N.C.R., Fatehpur.

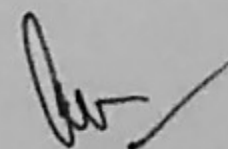
.....Respondents.

By Advocate : Sri J.P. Tripathi

ORDER

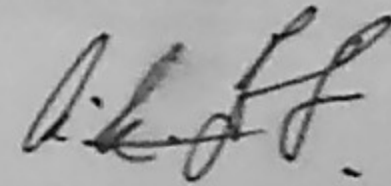
Admittedly, this O.A. was filed by the applicant against the order of disciplinary authority when departmental appeal is pending before appellate authority. The said appeal has been decided during pendency of O.A. Consequently, applicant filed M.A. (amendment) no. 2486/2006.

2. At the outset, it may be stated that amendment application was filed on 17.8.2006 without serving the copy of the same on respondents' counsel on the basis of



endorsement - 'no counsel is present on behalf of department in this case'. Copy of amendment application was served in January, 2008. It is to be noted that O.A. was premature since departmental appeal was pending. On coming into existence of appellate order, applicant has now absolutely new cause of action. In view of above, amendment application is misconceived. Applicant should have challenged appellate order, if so advised, in accordance with law before appropriate forum. Amendment application is rejected.

3. O.A. has been rendered infructuous in view of the admitted facts since the departmental appeal, which was pending, has now been decided vide order dated 26.5.2006. It is fresh cause of action. This O.A. is dismissed having been rendered infructuous, however, subject to condition that the applicant may file fresh O.A. within four weeks from today alongwith delay condonation application on the ground of pursuing alternative remedy bonafide. No costs.



(Justice A.K. Yog)
Member-J