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May 14/02  
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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR.**

**O.A. No. 298/2002**

H. P. T. A. X

**DATE OF DECISION :**

Jamna Prasad : Petitioner

Mr. Bharat Singh Siengar : Advocate for the  
Petitioner

Versus

Union of India & Ors. : Respondent (s)

Mr. K. K. Vyas : Advocate for the  
Respondents

**Coram : Hon'ble Mr. Justice G.L. Gupta, Vice-Chairman,  
Hon'ble Mr. S. K. Malhotra, Member (A).**



1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

  
**(S. K. MALHOTRA)  
MEMBER (A)**

**(G.L. GUPTA)  
VICE-CHAIRMAN**

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH : JODHPUR**

**Date of Decision :**

8.9.03

**Original Application No. 298/2002.**

Jamna Prasad Son of Shri Ram Dayal Maurya, Khalasi Uttar Paschim Railway under Supervision of Junior Engineer (Works) - I, Uttar Paschim Railway, Hanuman Ghar Junction R/o. Railway Quarter No.17-C, Hanumangarh.

... APPLICANT.

Versus

1. Union of India through General Manager, Uttar Paschim Railway, Railway Head Quarters (Loco Shed Area), Jaipur.
2. Senior Divisional Personnel Officer, Uttar Paschim Railway Divisional Office, Bikaner (334 001).
3. Assistant Personnel Officer, North-Western Railway, Divisional Office, Bikaner - 334001.
4. Assistant Divisional Engineer-I, North-Western Railway, Hanumangarh Junction.
5. Junior Engineer (Works) - I, Uttar Paschim Railway, Hanumangarh Junction.

...RESPONDENTS.

Mr. Bharat Singh Sengar, counsel for the applicant.  
Mr. K.K.Vyas, counsel for the respondents.

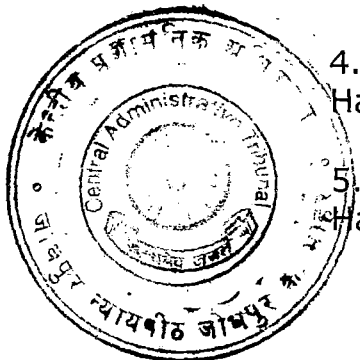
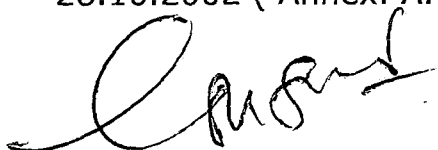
CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.  
Hon'ble Mr. S. K. Malhotra, Administrative Member.

**ORDER**

(per Mr. Justice G.L.Gupta)

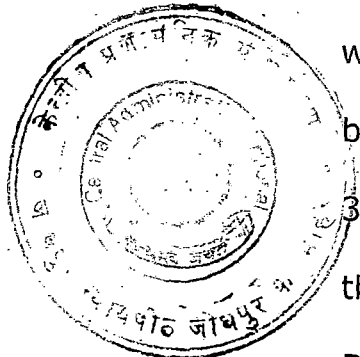
The applicant has called in question the order dated  
28.10.2002 ( Annex. A.1).



2. Applicant was engaged as Khalasi on 12.06.93 on compassionate grounds and that he was declared medically fit for Category - I posts and he was working on the post of Khalasi. Vide communication Annexure - A-1 he has been relieved to join as Gateman.

2.1. The grievance of the applicant is that for the post of Gateman fitness in Medical category A-3 is required, and that the service conditions, seniority the nature of duties of Khalasi and Gateman are totally different and hence the applicant could not be shifted to another category without his request. It is stated that no order declaring the applicant as surplus has been issued or communicated to him. It is also stated that the order Annexure A.1 is also not in consonance with the Railway Board's standing order dated 16.07.2001 wherein it is laid down that adhoc promotion and incentives can be given to surplus staff.

3. In the counter, the respondents have come out with the case that the applicant was working as Khalasi in Works Branch of the Engineer Department and that on survey of works it was found that there was excess staff than required and hence 19 posts of Khalasis were declared surplus. Since 19 persons were to be absorbed on other posts they including the applicant were sent for medical examination. The applicant was found fit for A.2 category, which is required for Gateman post. It is stated that no illegality has been committed in issuing the order Annex. A.1 after the orders Annex. R.1 and R.2 were issued declaring the applicant as surplus.



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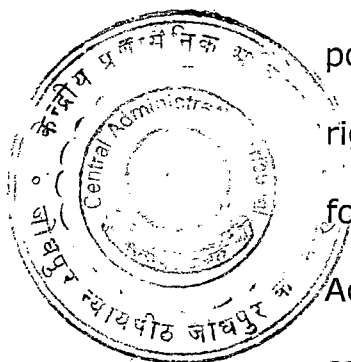
4. In the rejoinder, the applicant had tried to reiterate the facts stated in the O.A.

5. We have heard the learned counsel for the parties and perused the documents placed on record.

6. It is seen that the applicant has challenged the order dated 28.10.2002 ( Annex. A.1) whereby he was relieved of his post. This order was issued pursuant to Letter No. E.8 /Transfer/02 dated 25.10.2002( Annex. R.1). That letter was sent to the Headquarters by the ADEN-I. Vide Annex. R.1 dated 9.10.2002 stating that the applicant had been declared as surplus. The name of the applicant finds place at Sl No. 16 of the order. The Order Annex. R.2 says that the post of Khalasi where the applicant was working stood surrendered

7. No illegality is seen in the order Annex. R.2 when the post of Khalasi had been abolished. The respondents had every right to declare the excess staff surplus. The applicant was sent for medical examination and he was found fit for category A.2. According to the respondents for the post of Gateman, fitness in category A.2 is enough. The learned counsel for the applicant was not in a position to say that fitness in category A.3 was required for the post of Gateman. There is no reason to disbelieve the contention of the respondents in this regard.

8. The contention of the applicant that no order declaring him surplus was ever issued is not acceptable since the order Annex R.1 issued on 9.10.2002 contained the name of the applicant. It may be that a copy of this order was not supplied to the applicant and it was sent to the office where he was working. In any case, copies of the order Annex. R.1 and R.2



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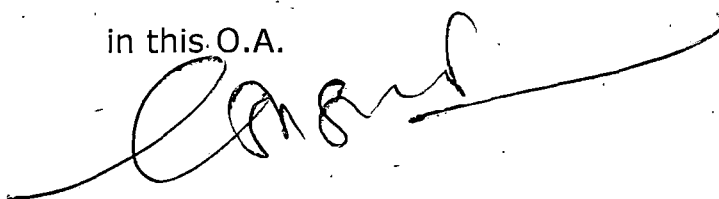
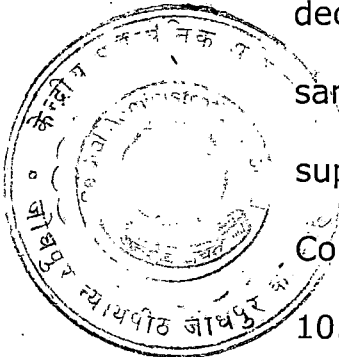
were supplied to the applicant along with the copy of the reply. The applicant has not chosen to challenge the same. No request for amendment in the O.A has been made.

8.1 During the course of arguments the learned counsel was asked as to how could he assail Annex. A.1 without assailing Annex. R.1, a copy of which was given to him along with the reply. The learned counsel for the applicant did not want to amend the O.A challenging Annex. R.1

9. It may be pointed out that in the O.A a reference of declaring the staff as surplus was made at para 4.13, wherein it is averred that no order declaring the applicant as surplus has been issued or communicated to the applicant. This averment by itself goes to show that the applicant was aware of the order declaring him surplus but he did not wish to challenge the same. He could have made a request to the respondents to supply a copy of the order Annex. R.1 before coming to this Court.

10. Be that as it may, as already stated the applicant has not chosen to assail the order Annex. R.1 by making amendment to the O.A. even on asking by the Court.

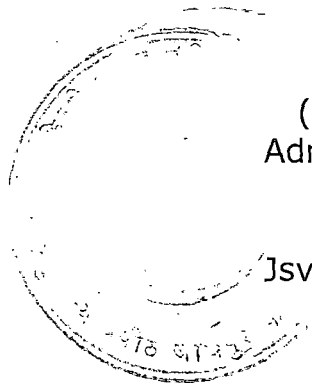
11. No fault can be found in the order Annex. A.1 which was issued after the order Annex. R.1. Though the applicant has not stated in so many words that he did not want to work as Gateman, which carries higher pay scale, yet on assuming that the applicant does not want to join the post of Gateman, in that case he can seek retirement from Railway service as per rules. In any case, on that ground the applicant cannot succeed in this O.A.



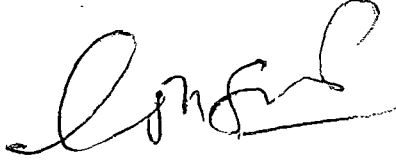
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12. We find no merit in the instant O.A and dismiss it. No order as to costs.



  
(S.K. Malhotra)  
Administrative Member



( G.L. Gupta )  
Vice Chairman

For  
HXVISA  
16/9/03

Received  
May 27/9

Part II and III destroyed  
in my presence on 24.7.09  
Under the supervision of  
[illegible] [illegible]  
[illegible] 13/2/09

Section Officer (Records)