

18

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR

O.A.NO. 21/2005

4th Sept., 2006

**CORAM: HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN &
HON'BLE MR. J.P.SHUKLA, MEMBER (A)**

1. SHRI NATHOO ALI S/O SHRI CHOTTEY ALI, WORKING AS WELDER UNDER P.W. / 1/JU. R/O BUNGLOW NO.D31A, BLOCK NO.D32, QUARTER NO.H, JODHPUR RAJASTHAN.

2. NISHAR ALI S/O SHRI CHOTTEY ALI, WORKING AS WELDER UNDER PWI/JU., R/O BLOCK NO.G-1B, PURANI BHAGAT KI KHOTI, JODHPUR (RAJASTHAN).

Applicant.

Mr.K.K.Shah,Advocate.

Versus

1. Union of India, through the General Manager, Northern Western Railway,Jaipur.
2. Divisional Railway Manager, North Western Railways,Jodhpur.
3. Assistant Personnel Officer,North Western Railways, Jodhpur.

By : Mr.Manoj Bhandari,Advocate.

ORDER (Oral)

KULDIP SINGH, VICE CHAIRMAN

The applicants have assailed the order dated 6.8.2002 (Annexure A-1) vide which they have been informed that seniority of employees belonging to Welder Gde III, in the pay scale of Rs.3050-4590 (RSRP), is determined on the basis of their date of promotion. As

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per seniority list dated 10.5.2002 issued in regard to Welder Grade II, Rs.4000-6000, the persons whose names have been mentioned therein were promoted in the grade of Rs.3050-4590, prior to the applicants and as such they have been granted seniority in Grade II, on the basis of date of promotion in Grade III, which is correct according to the rules.

The grievance of the applicants is that they are entitled to seniority from the date they were put to officiate as Welder and since their request for assignment of seniority from the date their services have been utilized as Welder in the grade of Rs.3050-4590, has been rejected, so they have filed this O.A.

Applicants No.1 pleads that he joined as Aligner in Northern Railway on 28.12.1976. He was issued a Casual Labour Card on 2.1.1981 and since then he has been performing duties as Aligner/Welder under the PWI/AEN, Jodhpur and was sent for training in Thermit Welding at Training School, Lucknow. He was also awarded competency certificate of Thermit Welding dated 30th May, 1981. It is further submitted that even after completion of training in Thermit Welding, he was not promoted as Welder and was continued to be paid in the scale of Rs.200-250 as Gangman despite the fact that he was performing duties as welder since 1981. The applicant was sent for Refresher Course in 1988 at Lucknow for training in Thermit Welding

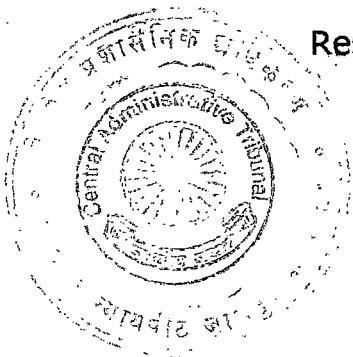


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Unit and despite undergoing Refresher course he was not promoted as Welder in temporary or regular pay scale but his services were continued to be utilized as Welder by the respondents. Applicant No.2, who was Molder / casual labour, joined as casual labour khalasi on 22.8.1981. He was utilized as Molder. He started performing the job of Aligner / Welder under PWI/Jodhpur. He was sent for training in Thermit Welding at Training School, Lucknow under RDSO and was granted competency certificate for completion of training from 17.5.1982 to 22.5.1982 as Aligner. He was promoted as Welder and given the salary of Gangman, though utilized as welder since May, 1982. He also underwent Refresher Course at Lucknow. He was also not promoted as Welder either on temporary or on regular basis and was utilized as welder.

It is further submitted that respondent No.2 failed to comply with the instructions of the Railways wherein it was provided that all the skilled labour should be granted scale of Rs.260-400. Thus, the applicants have prayed for quashing of Annexure A-1 and assignment of correct seniority from 1981. The applicants pray that juniors to them who were issued competency certificate had been shown senior to them and the action of the respondent is violative of Articles 14 and 16.

Respondents are contesting the O.A. In their reply they plead



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that the O. A. is barred by time and the same is liable to be dismissed as O.A. has been filed in the year 2005 and the applicants have challenged the order dated 6.8.2002, through present O.A. which is grossly barred by time in view of Section 21 of the Administrative Tribunals Act, 1985. It is further pleaded that the applicants have not impleaded the persons junior to them over whom they are claiming the relief. The applicants have named Shri Ramesh, Shri Sawai Singh, Shri Shankar Puri, Shri Madhoo Singh, over and above whom, they are claiming seniority. Therefore, they are not only proper but also necessary party in the O.A. and without hearing them no relief can be granted to the applicants.

It is also submitted that the applicants are claiming regularization from retrospective date which is as per the settled law is not permissible. Applicants have filed a rejoinder reiterating the allegations as contained in the O.A.

We have heard learned counsel for the parties and gone through the record.

Learned counsel for the applicant has submitted that since the services of the applicants have been utilised since 1981, so the applicants are entitled to the higher pay scale and accordingly they are also entitled to the higher seniority for such working. In support of this contention counsel for the applicants has referred to a letter dated



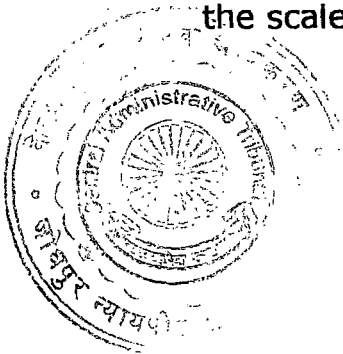
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28/29 July, 1985, placed at page 49 of the paper book (Annexure P-4), in which it was mentioned that the casual labourers who are working as skilled categories on completion of 4 months service are to be given grade of Rs.260-400. On the basis of this, the applicants are claiming wages with retrospective effect as well as seniority. However, from the perusal of the prayer clause as contained in para 8, we find that the applicants have only asked for quashing of the order, Annexure A-1 dated 6.8.2002 vide which their request for assignment of seniority from the date their services were utilized as Welder has been turned down and secondly they have asked for assignment of seniority on the post of Welder from the date they have been put to work as Welder after obtaining the competency certificate from Thermit Welding Training School, Lucknow. However, there is no prayer made for payment of wages from retrospective effect. Nor it is mentioned in the grounds for claiming the reliefs that he is entitled to wages from retrospective date.

However, during the course of arguments, learned counsel for the respondents Mr. Manoj Bhandari pointed out that the applicants have been paid wages in the grade of Welder since 1989 and through this O.A. they cannot claim wages since 1981 as the claim is grossly time barred. In our view also, first of all claim with regard to wages in the scale of Welder is highly barred by time as it relates to working on



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the post of Welder for the period from 1981 to 1989, even though there is no specific prayer made in para 8 of the O.A. in this regard.

As regards the assignment of seniority, the respondents pointed out that a circular dated 21.11.2005 has been issued by the Divisional Railway Manager's office at Jodhpur with regard to their seniority, whereby it was specifically mentioned that all those employees utilized as welder Grade III, will get seniority from a common date of 2nd July, 1989, after their services have been regularized. After deciding the objections raised by the various parties, this letter was issued along with seniority list and the names of the applicants appear at Sr. No.2 and Sr. No.10, respectively, in the seniority list of Welder/P.Way Grade I. This was issued on 21st November, 2005, and same has not been challenged by the applicants in this case.

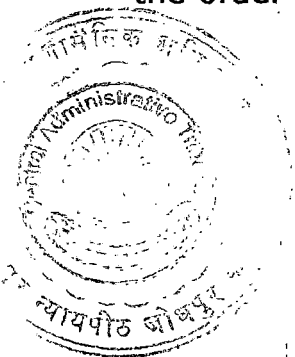
Learned counsel for the applicant pressed into service a decision of the Hon'ble High Court of Rajasthan at Jodhpur in S.B. Civil Writ Petition No.2047/2002 titled Roshan Lal Jat Vs. State of Rajasthan & others, decided on 17.9.2004, wherein Hon'ble High Court upheld the judgment and award dated 21.11.2001, passed by the Industrial Tribunal and Labour Court, Bhilwara, who had come to the conclusion since the workman was performing and doing the work of Store Munshi from the date of his initial appointment, therefore, he was entitled to the salary of the post of store Munshi. High Court directed the



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respondents to regularize the services of the employee from the date of his initial appointment. A perusal of this judgment leaves no scope of doubt that the same is distinguishable on facts and point of law inasmuch as in this case the O.A. is found to be defective on two counts, firstly that it is barred by time and secondly the persons who are likely to be affected by grant of any benefit to the applicants, are not party before us. Furthermore, the applicants have not challenged the seniority list of Welder/P.Way Grade I issued on 21.11.2005, which has attained finality. Last of all, there is no prayer made by him for grant of wages from retrospective effect. In view of this the judgment cited on behalf of the applicants cannot be of any help to him.


The applicants have also filed an M.A.No.8/2005 for condonation of delay in filing the Original Application. They have mentioned that aggrieved of the seniority list, they had filed an O.A.no.128/03 before the Principal Bench of C.A.T. Which was dismissed as withdrawn on 25.4.2003 for want of jurisdiction and this O.A. was filed on 6.8.2004. There is no delay on their part to file the instant O.A. To say the least, there is no ground, much less with with cogent reasons for condonation of delay in filing the O.A. Infact, even if the limitation is counted from 2003 itself when the O.A. was filed in the Principal Bench of C.A.T., the fact remains that the applicants have failed to challenge the order dated 21.11.2005, which has attained finality and the order,

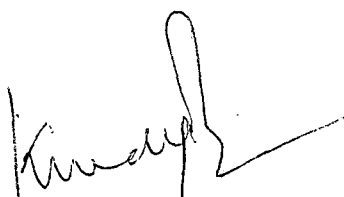


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and moreover their alleged claim of regularisation, seniority and wages is for the period from 1981 to 1989, which definitely is barred by time. So, the cause of action, if any, arose to the applicant during 1981 to 1985 itself and not in 2002. In view of this the M.A. is held to be devoid of any merits and is rejected.

In view of the above discussion, we are of the view that the applicant has no cause of action for regularisation, assignment of seniority or wages from 1981 to 1989 and the O.A is dismissed being not maintainable. No order as to costs.


(J.P. SHUKLA)
MEMBER (ADM.)


(KULDIP SINGH)
VICE CHAIRMAN



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