

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH,
LUCKNOW**

Civil Contempt petition No.52/2006

In

Original Application No.558/1996

This the 17 day of April 2012

Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

Hon'ble Mr. S.P. Singh, Member (A)

Kamlesh Kumar, aged about 47 years, son of Sri Mool Chand Pandey, resident of 223/Kha, Azad Nagar, Alambagh, Lucknow.

...Applicant.

By Advocate: Sri R.K. Dwivedi.

Versus.

1. Sri Bhupendar Salwan, presently posted as Ass. Divisional Engineer-II, Northern Railway behind the Police Station, Alambagh, Lucknow.
2. Sri Rajaram Kanaujiya, Presently posted as Khand Engineer, Work line, Northern Railway, Munnaauwar Bagh, Near Pani-Ki-Tanki, Alambagh, Lucknow.
3. Smt. Renu Sharma, Presently posted as Senior D.P.O., Karmik Adhikari, Northern Railway, D.R.M. Officer, Hazratganj, Lucknow.
4. Shri Rakesh Kumar, Presently posted as Assistant Divisional Engineer-II, Northern Railway, Behind the Police Station, Alambagh, Lucknow.
5. Shri Janardan Singh, presently posted as Senior Divisional Personnel Officer (S.D.P.D.), D.R.M. Office, Northern Railway, Hazratganj, Lucknow.

.... Respondents.

By Advocate: Sri Praveen Kumar holding brief for Sri Anil Srivastava.

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(Reserved on 11.04.2012)

ORDER

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

This C.C.P. has been filed for alleged non-compliance of this Tribunal's order dated 21.04.2004 passed in O.A.No.558/1996. The relevant order was as under:-

" In view of the above discussions, we allow the O.A. and direct the respondents to consider the case of the applicant for regularization of his services and in accordance with rules applicable to him and also to pay him all consequential benefits including salary at the rate admissible to him in the scale revised from time to time till date. Since he has been admittedly paid wages upto August, 1988, but at a lesser rate, difference thereof be also paid after due calculation as directed above. The respondents shall also consider the claim for seniority of the applicant as per rules and for all the above directions the respondents are granted three months time to comply with the same. In case the back wages and arrears are not paid as directed within one month thereof, the respondents shall be liable to pay interest at the rate of 12 % per annum on the amount of arrears payable to the applicant, by virtue of this order."

2. On behalf of Respondent No.1, the then Assistant Divisional Engineer-II, Northern Railway, Lucknow a compliance affidavit dated 20.09.2006 was filed saying that a Writ Petition No.832/2004 has been filed before the Hon'ble High Court, which is still pending.

3. Against the above, Rejoinder Affidavit was filed saying that mere pendency of writ petition has nothing to do. The Hon'ble High Court has refused to pass any interim order therefore, compliance should be made.

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4. Then another compliance affidavit of Respondent No.1 dated 28.02.2007 was filed pointing out that the contempt petition has been filed beyond the period of limitation therefore, it should be dismissed. Moreover, it was also averred that during the pendency of the proceedings before Regional Labour Commissioner (Central), Kanpur the respondents have paid a cheque of Rs. 839567/- to the applicant on 29.03.2006, which has been duly accepted. But, the applicant has concealed it from this Tribunal while filing the present petition. It has been further averred that after the dismissal of writ petition the respondents filed Special Leave Petition before the Hon'ble Supreme Court, which too was dismissed. Therefore, on 20.02.2007 an order for reengagement of the applicant was passed and on the very next day he joined without any protest (Annexure C-3).

5. The applicant filed an objection against the above saying that there was no delay in filing the contempt petition and the Tribunal has already entertained it. But, it appears that the applicant has not given any satisfactory reply as to why the above payment was not disclosed at the time of filing of this contempt petition on 23.05.2006. Subsequently, in due course of time, some officers were transferred and therefore, new incumbents were impleaded.

6. The new incumbent Sri Rakesh Kumar, Assistant Divisional Engineer-II has also filed a compliance affidavit dated 22.07.2009 saying that direction no.1 in respect of consideration of the applicant for

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regularization has already been complied vide order dated 20.02.2007 and he has also joined. In respect of direction no.2 for payment of all consequential benefits including salary it has been averred that treating him into service right since his termination, he has been paid an amount at revised rate. From 01.07.1988 to 30.09.2001 - Rs.483082/- and from 01.10.2001 to 31.10.2004-Rs.228700/- total Rs.711762/- was to be paid. But, due to misrepresentation of the applicant during proceedings before the Regional Labour Commissioner (Central), Kanpur, the respondents paid him a cheque of Rs.839567/- on 29.03.2006, which he has accepted. Thus, he has received an excess amount of Rs.127805/-. But, despite of lapse of three years he has not returned the excess amount. Similarly, from 01.11.2004 to 31.10.2006 he has been paid Rs.320996/- whereas, he was to be paid Rs.160432/-. Thus, he again received excess amount of Rs.160564/-. In respect of direction no.3, for payment of difference of wages for the period up to 1988 since his termination, an amount of Rs.93870/- has been paid vide Pay Order dated 26.6.2008. But, due to several proceedings initiated by the applicant in the same matter, under the threat of Recovery Certificate, he again received excess amount of Rs.26119/- but did not return it. The aforesaid amount includes interest @ 12% as directed by this Tribunal. In respect of direction no.4 for according seniority it has been averred that a seniority list was published for the grade Rs.3050-4590 in which he figures at Serial No.1 (Annexure-C-1). With regard to last direction no.5 for payment of interest @ 12 % on back wages and arrears it

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has been said that while making compliance of direction no.2 and 3 the interest has also been paid.

7. It has been also mentioned in the compliance affidavit that in the meantime the applicant, on the basis of revised seniority claiming promotion on the post of Blacksmith filed an O.A.No.128/2008, which was decided on 31.07.2008 with a direction to decide his pending representation. Therefore, any promotion on the above post will have to be subject to the above O.A. It has been further said that for the above promotion notice has been issued to entire sub-division inviting options. Thereafter, they will be subjected to trade test. After clearance of trade test, on the basis of marks secured by the candidates, their selection will be determined irrespective of their seniority position. But, it is not the subject matter of the present petition.

8. The petitioner has filed Rejoinder Affidavit saying that an amount of Rs.127805/- has been deposited back in favour of Regional Commissioner (Central), Kanpur. It has been further said that he is not being paid correct salary in accordance with 6th Pay Commission, which provides given M.A.C.P. But, this claim appears to be beyond the ambit of the present petition. The petitioner also said that the seniority list is forged but no convincing reasons have been assigned in this regard.

9. Lastly, another affidavit dated 11.04.2011 of Sri Rakesh Kumar, Assistant Divisional Engineer-II, Northern Railway, Alambagh, Lucknow has been filed to bring some facts to the notice of this Tribunal. It has been said that for the promotion on the post of

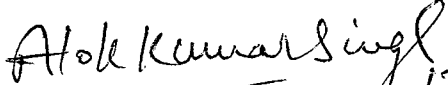
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Blacksmith i.e. from Group-'D' to Group-'C' post certain rules and procedure have to be followed. Keeping in view the judgment of this Tribunal, the case of the applicant was also considered thought actually no post of Blacksmith or Hammer Man was lying vacant in any of the Sub Units under the respondents. However, one of the Hammer Man was transferred to ADNE-II, Alambagh, Lucknow by the competent authority for carrying-out Trade Test for the post of Hammer Man Grade-III. The Hammer Man Grade-III has further advancement as Tech-III Black Smith. The applicant was subjected to said trade test on 02.08.2010 but he could not qualify. Intimation regarding this has already been given to him vide letter dated 28.12.2010. The representation moved by the applicant in this regard has also been decided vide order-dated 11.02.2011 (Annexure-1 to this affidavit). Thus, the compliance has been fully made.

10. In view of the above, it appears that firstly the petitioner did not come with clean hands and did not disclose about the excess payment received by him. Secondly as far as compliance is concerned all the directions of this Tribunal have been fully complied with, as discussed above.

11. This C.C.P. is therefore struck off in full and final satisfaction. Notices stand discharged.


(S.P. Singh)
Member (A)


(Justice Alok Kumar Singh)
Member (J) 17.4.12