

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH : JAIPUR  
Original Application No.528/2002.

with

Miscellaneous Application No.39/2003.

this the 24<sup>th</sup> day of December 2004.

CORAM : Hon'ble Shri M. P. Singh, Vice Chairman.  
Shri M. L. Chauhan, Judicial Member.

Badri S/o Shri Bhanwaria, aged about 48 years,  
R/o Village & Post Nimoda, Distt. Sawaimadhopur.

... Applicant.

None is present for the applicant.

v.

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Kota Division, Kota.
3. Chief Permanent Way Inspector (North) Kota, Western Railway.

Respondents.

By Advocate Shri Rajvir Singh proxy counsel for  
Shri S. S. Hassan counsel for respondents.

: O R D E R:

By M. L. Chauhan, Judicial member.

The applicant has filed this OA thereby praying  
for the following reliefs :-

"(i) That the respondents may please be directed to take the applicant on duty at any place either at Kota or at Bhawani mandi in the interest of justice. It is further prayed that Hon'ble Tribunal may please pass appropriate order under the peculiars facts of the case under Section 24 of the AT act 1985 so that applicant can earn his bread and butter in the interest of justice and he can survive.

ii) Any other order/direction may be passed in favour of applicant which may be deemed fit just and proper under facts and circumstances of this case.

iii) That the cost of this application may be

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awarded."

2. Briefly stated, the applicant while working on the post of Gangman had made an application dated 28.03.1994 to the Assistant Engineer (North), Western Railway, Kota, for his transfer to Kota on account of personal reasons. [redacted] The applicant was relieved from Bhawani Mandi to join under PWI (N) Kota vide relieving order dated 21.04.1994. Accordingly, the applicant reported for duty at Kota on the same date on which the relieving order was issued. Since the applicant was not taken on duty as there was no clear vacancy of Gangman under CPWI, Kota, he filed OA No.338/1994 in this Tribunal.

2.1 The stand taken by the respondents in the said OA was that PWI Bhiwani Mandi, relieved the applicant on 21.04.1994 without there being any order of transfer of the applicant from Bhiwani Mandi to Kota and without approval of the competent authority. By order dated 17.08.1994, this Tribunal directed the respondents to give an intimation to the applicant regarding the place where he should report for duty. Accordingly, the intimation was given to the applicant to join duty at Bhiwani Mandi. When the matter was listed for arguments/for hearing it was brought to the notice of the Tribunal that the applicant has joined duty at Bhiwani Mandi. However, learned counsel for the applicant pleaded ignorance about this fact. Accordingly, this Tribunal while disposing of the OA observed that if the applicant has already joined duty at Bhiwani Mandi as stated by the respondents some time

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in July 1994 or thereafter, the prayer regarding taking him back on duty has become infructuous. However, the applicant is still not taken on duty he may report to PWI, Bhiwani Mandi, within two weeks from today, who shall taken him on duty. Regarding other consequential benefits in the prayer of the applicant, such as salary for the period from the date of issue of the relieving order till his resumption of duty again, the Tribunal observed that the applicant may make representation to the appropriate authority who shall decide the same on merit. The OA was disposed of vide order dated 09.10.1996 in terms of the aforesaid observations. It appears that the applicant did not report for duty at Bhiwani Mandi pursuant to the direction given by this Tribunal vide order dated 09.10.1996. He kept silent for about four years and subsequently he filed an MA which was registered as MA No.169/2000 for implementation of the order dated 09.10.1996 passed in OA No.338/1994, which was in the form of Execution Petition. The said MA was disposed of by this Tribunal vide order dated 24.11.2002 thereby observing that in view of the law laid down by the Apex Court in the case of Hukam Raj Khinwasra vs. Union of India & Others 1997 (3) Supreme Court 555, it has been held that the Execution Petition under Section 27 is required to be filed within one year of the date of the order unless order of the Tribunal was suspended by the Hon'ble Supreme Court or Hon'ble High Court. Since in this MA there is no prayer for condonation of delay and in the circumstances of this case, we are of the view that this MA is not maintainable. This MA appears to have been

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filed under Section 24 of the Administrative Tribunals Act and we do not find any basis to pass any order for implementing this order. In the interest of justice, as the order passed in the OA pertains to the year 1996, for its implementation the applicant was required to file Contempt Petition. Accordingly, the MA was dismissed.

3. Now again the applicant has filed this OA whereby he has prayed that under peculiar facts and circumstances of the case, order under Section 24 of the Administrative Tribunals Act 1985 be passed and the respondents be directed to take the applicant on duty at any place either at Kota or Bhiwani Mandi.

4. When the matter was listed for admission, this Tribunal vide order dated 10.03.2003 on the basis of argument submitted by the learned counsel for the applicant that it is the respondents who are responsible for not implementing the earlier order of this Tribunal and there was no fault on the part of the applicant and he was always willing to join duty pursuant to the order dated 09.10.1996, this Tribunal while issuing the notice observed that in case after the reply of the respondents, it is found that the applicant was at fault in any way the Court may take view as deemed fit.

5. The respondents have filed reply. In Para 4.9 and 4.10 of the reply, the respondents have categorically stated that it is the applicant who is responsible for not joining duty at Bhiwani Mandi

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pursuant to the direction given by this Tribunal vide order dated 09.10.1996. It is further stated that in case the applicant was not taken on duty by the CPWI (N) Kota he should have reported at the relieving end of his office and contacted PWI, Bhawani Mandi but instead the applicant absented himself altogether for rest at home for which he has no plausible explanation to make except to show that he was absent from duty on his own accord without any authority and thus for whole of the period of absence none else but the applicant himself is responsible for all consequences. This conduct on the part of the applicant made it difficult to take the applicant on duty as no orders from any authority are available for the period of absence of the applicant from duty for months and years together.

6. Despite repeated opportunities, the applicant has not filed rejoinder. From the order sheet it appears that none has put in appearance on behalf of the applicant on 23.08.2004, 20.09.2004 & 22.12.2004.

7. We have considered the submissions made by the learned counsel for the respondents and perused the material placed on record. We are of the view that the present OA is abuse of the process of this Court, as can be seen from the prayer clause which has been reproduced in the earlier part of this order. The applicant wants us to invoke the provisions of Section 24 of the Administrative Tribunals Act, 1985 for the execution of the earlier order dated 09.10.1996 passed in OA NO.38/1994. As can be seen from the order dated

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24.11.2000 (Annexure A/6), this Tribunal has already rejected the prayer of the applicant for execution of the order dated 09.10.1996, when he moved MA NO.169/2000, which MA was treated by this Tribunal as Execution Petition and was ultimately dismissed on merit by relying the judgement of the Apex Court in the case of Hukam Raj Khinwasra (supra). Thus, it was not open for the applicant to sought the same relief by filing substantive OA, which according to us amount to abuse of the process of the Court.

8. That apart, this Tribunal while issuing notice vide order dated 10.03.2003 has also made clear that in case after the reply of the respondents it was found that the applicant was at fault in not reporting for duty pursuant to the order passed by this Tribunal vide order dated 09.10.1996 this Court may take a view as deemed fit. The respondents in their reply has categorically stated that it is the applicant who is responsible for the entire episode as he never reported for duty pursuant to the order passed by this Tribunal in the earlier OA. This part of the averment made by the respondents in the reply has not been contraverted by the applicant. Further, from the material placed on record, we are of the view that it is the applicant who is responsible for not reporting for duty at Bhiwani Mandi. This Tribunal vide order dated 09.10.1996 has specifically observed that "In case the applicant has still not been taken on duty he may report to PWI, Bhawani Mandi within two weeks from today, who shall

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take him on duty". Thus by virtue of this order passed in the earlier OA, the applicant could have reported for duty at Bhawani Mandi latest by 24.10.1996. The contention of the applicant that he was not taken on duty pursuant to the order passed by this Tribunal cannot be accepted as in case the order of this Tribunal dated 09.10.1996 was not complied by the respondents, it was open for the applicant to file Contempt Petition before this Tribunal. However, the applicant remained silent for about four years and it is only in November 2000 that the applicant filed MA for execution of the order 09.10.1996, which applicant was also dismissed vide order dated 24.11.2000. Thereafter the applicant again slept over the matter and it is only almost after two years that he again filed this OA whereby he is seeking the relief under Section 24 of the Administrative Tribunals Act 1985 which prayer was already declined by this Tribunal vide order dated 24.11.2000 (Annexure A/6). Thus, viewing the matter from any angle, there is no substance in the present OA which is accordingly dismissed.

9. In view of the above order, no order is required to be passed in MA No.39/2003 filed for condonation of delay and the same shall stand disposed of accordingly.



(M. L. CHAUHAN)

MEMBER (J)



(M. P. SINGH)

VICE CHAIRMAN