

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 354/2003.

Jaipur, this the 25th day of November, 2006.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. J. P. Shukla, Administrative Member.

Nain Singh
S/o Ganesh Singh
Aged about 46 years,
R/o Ratan Singh, Hotelwala,
Top Dadhra, Ajmer.

... Applicant.

By Advocate : Shri Shiv Kumar.

Vs.

1. Union of India
Through General Manager,
North Western Railway,
Jaipur.
2. Divisional Railway Manager (E),
Western Railway,
Ajmer Division, Ajmer.

... Respondents.

By Advocate : shri S. S. Hassan.

: O R D E R :

Per M. L. Chauhan, Judl. Member

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

"i) That the impugned order dated 04/2/2003 (Annexure A/1) issued by the second respondent deleting the name of the applicant from the panel of Welder category may please be declared illegal, arbitrary and the same may be quashed with all consequential benefits including arrear of pay, seniority, promotion etc. and arrear may please be paid w.e.f. 3.5.95 to 4.2.2003.

ii) Any other order/directions/relief's 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 awarded."

2. Briefly stated, the undisputed facts of the case are that the applicant while working on the post of Gangman, a notification was issued by the respondents on 11.7.1989 (Annexure A/2) for filling up various posts including one post of Welder Grade-III in the pay scale of Rs.950-1500/- under 25% Ranker Quota. After the selection test, result was declared and one Shri Kishan Chenaram was empanelled for the post of Welder Grade-III vide order dated 20.05.1990, a copy of the said order has been placed on record by the respondents as Annexure R/1. However, the applicant was not empanelled. Subsequently, vide order dated 10.07.1990, the name of the applicant was substituted in the said Panel dated 20.05.1990 vice the name of Shri Kishan Chenaram. Respondents have placed copy of the order dated 10.07.1990 on record as Annexure R/2. It may be stated here that vide order dated 10.07.1990 (Annexure R/2), the name of various persons including the applicant were substituted in the original panel dated 20.05.1990. It may be further stated that in the meantime, the Union raised objection against the selection in the above manner whereupon the case was ultimately examined by the respondents and vide order dated 22.9.1993 in Carpenter and Welder Grade it was found that name of Shri Ram Kishan and Shri Nain Singh has been wrongly substituted vide order dated 10.07.1990 and their position as ~~was~~ ⁴ prevailed in the original panel dated 20.05.1990 was restored. Respondents have also

placed a copy of the order dated 22.09.1993 on record as Annexure R/3. At this stage, it may also be relevant to mention here that although the name of the applicant was deleted from the Panel of Welder Grade-III but the applicant was allowed to continue on the post of Welder Grade-III purely on ad hoc basis till further orders. *vide order dt 3-5-95* However, the applicant was actually reverted *v* to the post of Senior Welder Khallasi, where he joined on 2.8.1995. The said order was challenged by the applicant by filing OA No.348/95. The said OA was decided vide order dated 15.12.1999 (Annexure A/7) on the ground that since the applicant has worked on the post of Welder Grade-III for three years, he could not have been reverted by the impugned order dated 3.5.95 without following the principles of audi alteram partam. Accordingly, the impugned order dated 3.5.95 was quashed and it was observed that the said order will not preclude the departmental authorities to proceed against the applicant further and pass proper order after giving show cause notice/opportunity of hearing to the applicant. Subsequently, the respondents issued a show cause notice dated 22.9.2000 wherein it was stated that there is a proposal for deleting the name of the applicant from the Panel of Welder category and the order was meant for information of the applicant. The said order was challenged by the applicant by filing OA No.18/2001 which was decided on 5.7.2002 whereby this Tribunal held that the respondents authorities have failed to issue show

cause notice/opportunity of hearing to the applicant pursuant to the direction issued by this Tribunal in earlier OA, the impugned order dated 22.9.2000 is quashed and set aside. It was, however, observed that it will be open for the respondents to proceed further in terms of the directions issued in earlier OA by giving proper show cause notice/opportunity of hearing to the applicant and pass appropriate order thereafter. Accordingly, a fresh show cause notice was issued to the applicant on 3.1.2003 (Annexure R/4). The applicant submitted reply to the said show cause notice which is Annexure A/12 and after taking into consideration the reply filed by the applicant, the respondents passed order dated 4.3.2003 by which the order dated 3.5.95 has been maintained. It is this order which is under challenge in this OA.

3. Notice of this application was given to the respondents. The facts as stated above have not been disputed. The case of the respondents is that the applicant, though has cleared the written test, but in the interview he was not successful. As such, his inclusion in the subsequent Panel Annexure R/2 was irregular which was rectified vide Annexure R/3. It is further stated that the order Annexure R/3 was passed after scrutinizing the record of both the employees, namely the applicant and Shri ^{Chenarao} ~~Kishan~~ and it was only thereafter the name of the applicant was removed from the

Panel of Welder Grade-III and the seniority was also revised.

4. We have heard the Learned Counsel for the parties and gone through the material placed on record and we are of the view that the applicant has not made out any case for the grant of relief.

5. From the facts as stated above, it is admitted position between the parties that a notification was issued by the respondents on 11.7.1989 (Annexure A/2) for filling up the various posts including one post of Welder Grade-III in the pay scale of Rs.950-1500/- under 25% Ranker Quota. It is also not in dispute that the applicant as well as one Shri Kishan Chenaram also participated in the said selection. It is also not in dispute that vide order dated 20.05.1990 (Annexure R/1), a provisional Panel of selected candidates was notified in which the name of the applicant does not find mention whereas the name of Shri Kishan Chenaram was empanelled against one post of Welder Grade-III. The respondents have categorically stated in the reply that the name of the applicant could not be empanelled, although he has qualified the written test but he has failed in interview. As such, he was not selected and one Shri Kishan Chenaram was rightly empanelled. This part of averment has not been controverted by the applicant by filing rejoinder. Thus, the fact remains that once

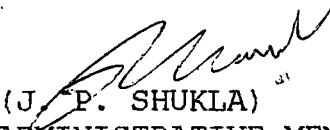
rightly or wrongly one Shri Kishan Chenaram was empanelled on the post of Welder Grade-III, it was not legally permissible for the respondents to substitute his name by issuing another order dated 10.07.1990 whereby the name of the applicant was substituted to that of selected candidate Shri Kishan Chenaram. Thus, according to us, the respondents have not committed any infirmity by issuing another order dated 22.9.93 (Annexure R/3) whereby the illegality committed by the respondents was rectified and the position which was reflected in Panel dated 20.05.1990 was restored. The contention raised by the applicant that since he was sent for training and he has worked against the post of Welder Grade-III for almost 3 years, as such, he could not have been reverted, cannot be accepted as the name of the applicant was substituted by passing a illegal order and as such, such illegality cannot be allowed to continue and in case the respondents have rectified their mistake, no infirmity can be found in such action.

6. Further the applicant cannot draw any assistance from the earlier order passed by this Tribunal as the said order was passed on the premise that the applicant was reverted to his original post after a period of 3 years without following the principle of natural justice and without hearing him and it was under these circumstances this Tribunal has directed the respondents to pass fresh order after hearing the applicant and

giving him opportunity to put up his case. Further from the material placed on record and more particularly from the reply to the show cause notice given by the Respondents vide Annexure A/12, it is clear that the case of the applicant is that Shri Kishanlal was not eligible for promotion as he has not put in 3 years of regular service as required for promotion to the pay scale of Rs.950-1500/- and he was only a temporary status holder. But even for arguments sake, it is assumed that Shri Kishanlal was not eligible for promotion in the aforesaid scale of Rs.950-1500/- that will not confirm any right on the applicant to hold that post especially when the applicant has participated in the selection test for the post of Welder Grade-III, in which selection though he has qualified the written test but failed in the interview. As such, his name could not have been brought in the panel, even if, one Shri Kishanlal was not eligible for promotion in the pay scale of Rs.950-1500/. Further this ipse dixit of the applicant that Shri Kishanlal was not eligible for promotion cannot be accepted as he has not impleaded Kishanlal as one of the respondents who was likely to be affected by the inclusion of the name of the applicant in the Panel by deleting his name. The Apex court, in number of decisions, has held that no relief can be granted to a person without impleading affected party and entire ~~exercise~~ ~~mistake~~ is vitiated because of non implementation of the selected candidate. In this behalf reference may be made

to the decision of the Apex Court in the case of Pramod Verma vs. State of UP, 1987 Vol.4 SCC 251, in case of Arun Tewari vs. Zila Mansavi Shikshat Sangh, 1998 SCC (L&S) 541. The Apex Court further in the case of Khetrabasi Biswal vs. Ajaya Kumar Baral, 2004 (2) SCSLJ 228 has held that the procedural law as well as the substantive law both mandates that in the absence of a necessary party, the order passed is a nullity and does not have a binding effect. Thus, on the basis of the law laid down by the Apex court, as noticed above, the applicant is not entitled to any relief, even on this ground.

7. For the reasons stated above, the OA being bereft of merit, is dismissed with no order as to costs.


(J. P. SHUKLA)
ADMINISTRATIVE MEMBER


(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./