

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

Jaipur, the 12<sup>th</sup> day of November, 2010

**ORIGINAL APPLICATION No.371/2007**

CORAM :

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER  
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Sua Lal s/o Shri Girdhari,  
R/o Near Railway Station,  
Kamali Ghat, presently residing at  
Tinshed, Frazer Road,  
Outside Dadabari, Ajmer.

... Applicant.

(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India through  
General Manager,  
Western Railway,  
Churchgate,  
Mumbai.
2. Divisional Railway Manager,  
Western Railway,  
Ahmedabad Division,  
Ahmedabad.
3. Divisional Railway Manager,  
North Western Railway,  
Ajmer Division,  
Ajmer.

... Respondents

(By Advocate : Shri B.K.Pareek, proxy counsel for Shri T.P. Sharma, counsel for Respondents No.1&2 and Shri Hawa Singh, counsel for respondent No.3)

**ORDER**

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

*Ull*

- "i) That the respondents be directed to release Railway Pass to the applicant as per rules available after retirement with the due claims of Pay and Allowances for the period 29.11.1999 to 12.12.2000 with all consequential benefits after due fixation of pay and allowance.
- ii) That the respondents be further directed to revise pension and pensionary benefits after allowing due claims with due benefits including arrears w.e.f. 21.10.2003."

2. Briefly stated, facts of the case are that the applicant while working as Blacksmith was relieved on transfer from Kota Division vide order dated 26.11.1999 (Ann.A/3). It is the case of the applicant that he reported for duty at Ajmer on 29.11.1999. It is further pleaded that he made request for his posting vide letter dated 11.4.2000 (Ann.A/5). However, the applicant was not permitted to join at Ajmer and vide letter dated 2.5.2000 (Ann.A/6) the DRM Ajmer was informed that it is not possible to take the applicant on duty due to reduction in work. The applicant was allowed to perform his duty at Gandhidham vide order dated 18.12.2000 (Ann.A/7) in the capacity of Gangman. The applicant took voluntary retirement on 17.10.2003. Grievance of the applicant is that he served a notice for demand of justice on 10.7.2007 (Ann.A/8) for grant of due benefits. However, the Ajmer authorities informed that the matter relates to respondent No.2 i.e. DRM, Western Railway, Ahmedabad. It is on the basis of these facts, the applicant has filed this OA thereby praying for the aforesaid relief.

3. In para-3 of the OA the applicant has stated that the present OA is within limitation as prescribed under Section-21 of the Administrative Tribunals Act, 1985.

4. Notice of this application was given to the respondents. Respondents No.1&2 have filed a combined reply, whereas respondent No.3 has filed a separate reply. In the reply filed by respondents No.1&2, by way of preliminary objection the respondents have stated that the present OA is time barred and the same cannot be entertained in view of the law laid down by the Constitutional Bench Judgement of the Apex Court

in the case of **S.S.Rathore v. State of Madhya Pradesh** [AIR 1990 SC 10]. As regards payment of salary w.e.f. 29.11.1999 to 12.12.2000, respondents No.1&2 have stated that the matter relates to Ajmer Division but the applicant has not impleaded the proper party i.e. DRM (E) Ajmer. Thus, the present OA deserves to be dismissed on account of non-joinder of the necessary party.

5. Subsequently, the applicant impleaded respondent No.3 i.e. DRM, NWR, Ajmer Division, Ajmer, as party respondent, who has filed a separate reply stating therein that after voluntary retirement the applicant has been residing at Khambli Ghat, which falls within the territorial jurisdiction of CAT, Ahmedabad or CAT, Jodhpur Bench in respect of working place and after retirement the residence place. As such, this Tribunal has got no territorial jurisdiction to entertain the present OA. Besides raising the plea that applicant's claim is time barred, on merit it has been stated that the applicant was working under the Construction Division and his lien was allotted in Group-D post in Ajmer Division in the year 1998-99. It is further stated that after allotment of lien, the applicant came from Construction Division to Ajmer Division and reported for duty at Ajmer on 19.10.2000. After reporting for duty on 19.10.2000 office order dated 6.12.2000 was issued posting the applicant as Gangman under PWI (BG) Gandhidham. It is further stated that after allotment of the lien the applicant came from Construction Division to Ajmer Division but he refused to work at Ajmer Division and requested for returning back to the Construction Division and returned back to the Construction Division. Subsequently, the applicant came from Construction Division to Ajmer Division and hence reported in Ajmer Division on 19.10.2000. Respondent No.3 has also annexed a copy of the joining report of the applicant dated 19.10.2000 as Ann.R/1. It is stated that after reporting on 19.10.2000, the office order dated 6.12.2000 was issued by which the applicant was posted on the post of Gangman under PWI (BG) Gandhidham. Thus, the applicant joined his duty in Ajmer Division vide order dated 6.12.2000

(Ann.R/2). It is further stated that in compliance of the order dated 6.12.2000 the applicant joined his duty on the post of Gangman under Section Engineer (P.Way-BG) Gandhidham on 13.12.2000. Hence the applicant is not entitled for the pay and allowances for the said period.

6. Regarding issuance of railway passes, the stand taken by respondent No.3 is that since the applicant was retired from the Ahmedabad Division, therefore, it is only that division who can give reply on this point.

7. The applicant has not filed any rejoinder.

8. We have heard learned counsel for the parties and gone through the material available on record. As can be seen from the prayer clause, dispute of the applicant is regarding pay and allowances for the period w.e.f. 29.11.1999 to 12.12.2000. It may be stated here that the applicant who was working as Blacksmith <sup>was</sup> relieved on transfer from Kota Division vide order dated 26.11.1999. The applicant reported for duty at Ajmer on 29.11.1999. From the material placed on record it is also revealed that since the applicant was working in the Construction Division, his lien was fixed in the Ajmer Division against a Group-D post of Gangman vide letters dated 28.5.1998 and 8.12.1999 but the applicant, instead of performing the duty as Gangman, requested the authorities to allow him to work in the Construction Division. From the material available on record it is also evident that pursuant to the letter dated 2.5.2000 (Ann.A/6), written by the Deputy Chief Engineer (Construction), NWR, Jaipur, it was informed that on account of reduction of work the duty of the applicant in the Construction Division cannot be taken. The applicant was again directed to join his duty at Ajmer Division vide order dated 6.12.2000 (Ann.R/2). Pursuant to the said order (Ann.R/2), the applicant joined his duty under the Section Engineer Gandhidham on 13.12.2000. It is the case of the respondents that the applicant did not perform the duty on the post of Gangman but he was insisting that he may be

permitted to work against the post of Blacksmith. As such, the applicant is not entitled to the salary for the aforesaid period. Thus, in view of this specific stand taken by the respondents and the fact that lien of the applicant was at Ajmer Division against the post of Gangman, although he was working in the Construction Division, the applicant could not have been allowed to perform the duty of Blacksmith, which duty the applicant was performing in the Construction Division. Since the applicant has not performed the duty on the post of Gangman in Ajmer Division during the aforesaid period, no direction can be given to the respondents to give salary to the applicant for the said period. Even otherwise also, the payment of salary for the period from 29.11.1999 to 12.12.2000 is one time cause of action and is not a continuous cause of action. As such, the cause of action, if any, had arisen in favour of the applicant in the year 2000 when he was not granted salary for the aforesaid period. The present OA was filed on 15.10.2007 i.e. after a lapse of about seven years. The applicant has not given any explanation as to why he did not agitate the matter within the prescribed period as stipulated under Section 21 of the Administrative Tribunals Act, 1985. That apart, the applicant has also not moved any Misc. Application for condonation of delay. Thus, in view of the law laid down by the apex court in the case of **Secretary to the Government of India v. Shivram Mahadu Gaikwad** [1995 SCC (L&S) 1148], whereby it was held that in the absence of a Misc. Application for condonation of delay the Tribunal cannot entertain an Original Application, the present OA is liable to be dismissed on this score alone.

9. As regards issuance of railway passes to the applicant, although no specific relief has been prayed for but the applicant has made pleading that despite issuance of notice for demand of justice, claim of the applicant for grant of railway passes after retirement has not been considered. Suffice it to say here that such a claim is required to be entertained by the Ajmer Division where the applicant is maintaining his lien and retirement of the applicant from Ahmedabad Division is of no

consequence so far as issuance of the railway passes are concerned. Qua this aspect, the applicant may submit his claim to the Ajmer Division, who will consider the same in accordance with law.

10. For the foregoing reasons, the OA stands disposed of with no order as to costs.

*Anil Kumar*

(ANIL KUMAR)  
MEMBER (A)

*(M.L. Chauhan)*

(M.L. CHAUHAN)  
MEMBER (J)

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