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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2047/2002

This the 11th day of February, 2003

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HON'BLE SH. KULDIP SINGH, MEMBER (J)

Sh. Tejpal Singh
S/o Sh. Birbal
Working as S & T Khalasi
Northern Railway, Shamli
under Chief Signal Officer,
Shamli.

(By Advocate: Sh. S.K.Sawhney)

Versus

1. Union of India through
General Manager
Northern Railway,
Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
D.R.M. Office, Chelmsford Road,
New Delhi.
3. Divisional Personnel Officer,
Northern Railway,
D.R.M. Office,
New Delhi.

(By Advocate: Sh. D.S.Jagotra)

O R D E R (ORAL)

Applicant a Railway employee was medically declassified and was retired from service on 3.6.99. The case of the Railways was that applicant was suffering from "Malingering". Applicant challenged the same by filing OA-1535/99. The said OA was allowed and it was found that applicant was not suffering actually from "Malingering" rather the Court found on the basis of the medical report of AIMS that applicant a partially colour blind is fit for appointment. Respondents were directed to give other suitable vacancy and withdraw their impugned order dated 3.6.99 vide which applicant was made to retire and regularising the period between 3.6.99 and applicant's appointment in accordance with rules, instructions and judicial pronouncements on the subject.

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2. In pursuance of this judgment, applicant was considered for alternate job and was granted a job of S&T Khalasi on 30.10.2001. However, the respondents vide impugned order treated the period between 3.6.99 till 30.10.2001 as dies non.

3. Applicant has assailed this and submitted that the respondents could not treat the period in between 3.6.99 till the date the applicant was given appointment as dies non, as the respondents were directed to regulate the period in accordance with rules and instructions on the subject.

4. Sh. Jagotra appearing for the respondents pointed out that the applicant was given an alternate job of Gangman and then S&T Khalasi but the same were not accepted by the applicant. Therefore, respondents had a right to treat the period as dies non period. However, counsel for applicant referred to Annexure R-2 which has been issued by the Railway Department itself by invoking the provisions of Section 47(1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and they have also invoked Board's letter dated 29.4.99 and relying upon this counsel for applicant submitted that according to para 13.03, the Railways were under obligation to create a special supernumerary post for the applicant in which the concerned employee was working on regular basis before being declared medically unfit pending location of suitable alternative employment for him. So they could not have decided the intervening period as dies non.

5. In view of this rule which has been incorporated in the Indian Railway Manual by inserting Advance Correction Slip No.77, I find that the impugned order cannot be sustained.

KW

Respondent's counsel was unable to show any rule under which the period has been treated as dies non. Accordingly, I quash and set aside the impugned order and direct the respondents to pass a fresh order in accordance with para 13.03 of this Advance Correction Slip No.77 within a period of 2 months from the date of receipt of a copy of this order.


(KULDIP SINGH)
Member (J)

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