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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O.A.No.2159/2001

New Delhi, this the 24th day of October, 2002

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Maha Singh,
S/o Late Mohan Lal,
R/o TT 39, Railway Colony,
Shahdara, Delhi.Applicant.
(By Advocate: Shri Neeraj Shekhar)

Versus

1. The Union of India
Through its General Manager,
Northern Railway,
New Delhi.
2. Chief Administrative Officer(Construction),
Northern Railway, Head Quarter Office,
Kashmiri Gate, Delhi.
3. Deputy Chief Engineer(Construction),
Northern Railway,
Jammu Tawi.
4. Deputy C.P.O.(Construction),
Northern Railway,
Kashmiri Gate, Delhi.Respondents.
(By Advocate: Shri B.S.Jain)

O R D E R (ORAL)

The applicant has filed this OA seeking quashment of order dated 17/23.2.2000 by which his representation has been rejected.

2. The facts, as alleged by the applicant in brief, are that the applicant had initially joined as casual labour on 7.8.1979. The services of the applicant was terminated on 14.8.1981 due to non-availability of further work. He again joined the service on 8.1.1982 and continued up to 16.1.1992. Further he fell ill on 16.1.1992 and resumed the duty on 10.7.1992 after having recovered. The applicant claims that pursuant to the judgement delivered by the Hon'ble Supreme Court in Inderpal Yadav's case, those casual labour who had worked for more than one year but less than three years their temporary status will take effect from 01.01.1983. The

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applicant made a representation for grant of temporary status. His representation was disposed of vide order dated 17.02.2000 stating therein that the applicant had passed the Requisite Medical Examination only on 26.5.1997 and granting of temporary status w.e.f. 1.1.1983, could not be permitted. Applicant further relies on the Railway Board's letter dated 14.5.1984 in which reckoning the previous spell of service as continuous service is allowed. However, the applicant was conferred temporary status w.e.f. 6.7.1993 after he had undergone medical examination. Sometime in May, 1997, the applicant was denied for conferment of temporary status w.e.f. 1.1.83 since the applicant had not come forward for medical examination which was conducted in May, 1997. The applicant was given temporary status w.e.f. 6.7.1993.

3. Respondents have contested the OA and admitted in their reply that the applicant was engaged as a casual labour on 7.8.1979. The applicant was requested on 3.10.1986 to take medical examination but he did not appear for medical examination on 6.10.1986. He remained unauthorisedly absent from 17.1.1992 to 9.7.1992 and consequently grant of scale rate of pay was discontinued w.e.f. 17.1.1992. The respondents further plead that the applicant was medically examined only on 26.5.1997 and thereafter he was given temporary status on 6.7.1993 as per rules after completion of 360 days of continuous service. It is further stated that applicant has no case for grant of temporary status w.e.f. 1.1.1983.

4. I have heard the parties and perused the pleadings available on record. On perusal of the record,

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the impugned order issued on 17/23.5.2000 and the OA has been filed on 15.3.2001, there is admittedly delay. The OA should have filed after the lapse of one year from the date of issue of the impugned order. However, applicant was filed an application alongwith the OA seeking condonation of delay. Applicant submitted 25 days delay has been caused inadvertently because he was posted in Jammu and he was making efforts in arranging the legal expenses which was finally arranged on 12.3.2001 and thereafter the application was got prepared and had been filed. As regards the delay is concerned, delay was only 25 days, as he was posted in Jammu, the present petition filed is reasonable and is bonafide. Accordingly, the application for condonation of delay is allowed.

5. In so far as the merits of the case are concerned, learned counsel for the applicant had invited my attention to a letter dated 21.4.1987 (Annexure R-4) annexed by the respondents alongwith the counter affidavit, and on perusal of that letter issued by the Railway Administration it would transpire that the applicant was due for temporary status w.e.f. 1.1.1983 but the applicant was loosing all the benefits as are admissible to temporary status staff, as the applicant has failed to get the medical memo for getting himself examined in the prescribed medical test before grant of temporary status.

6. The question arises whether before grant of temporary status passing of medical test and declaration of fitness certificate is essential or not. In this regard, I may mention that the respondents in this case itself have stated that the applicant was medically examined in the year 1997, and conferred the temporary

status to the applicant w.e.f. 6.7.1993 and in this regard an order was also issued subsequently.

7. This aspect of the case would show that non passing of medical examination can not deny for grant of temporary status.

8. The temporary status can be granted in accordance with the Scheme, as envisaged in the case of Inder Pal Yadav wherein it has been held that if an employee had completed the requisite number of days, he is eligible for grant of temporary status. As per Railway's own letter dated 21.4.1987 (Annexure R-4), wherein they have admitted that the applicant was due for temporary status w.e.f. 1.1.1983 and taking the respondents' plea that applicant is entitled for temporary status during the year 1992-93, temporary status has been conferred upon the applicant, but still the Railways are not accepting as to how they had mentioned in letter dated 21.4.1987 that the applicant was due to temporary status w.e.f. 1.1.1983. If the Railways had already issued letter in the year 1987 itself, the applicant was due for the grant of temporary status in 1981 meaning thereby that the applicant had already requested that he is working in the Railways and is entitled for grant of temporary status w.e.f. 1.1.1983. This fact is not only mentioned in Annexure R-1 but also mentioned in Annexure R-3 dated 30.10.1986 and another document dated 20.2.1987 issued by the office of Deputy Chief Engineer/Construction, Jammu Tawi and it was addressed to the applicant. In this letter, applicant was informed that he was loosing all the benefits since he did not come forward for medical examination and since this condition of medical

(18)

examination was not mandatory in nature, it could not postpone the conferment of temporary status but it was only to see whether employee is medically fit to join service or not. Temporary status still with retrospective effect has been given in this case by the Railways themselves.

9. In view of above, I find that the letters (Annexures R-3 and R-4) issued by the Railway Authority admit that applicant was due for grant of temporary status w.e.f. 1.1.1983. Accordingly, after medical examination he should have been conferred the temporary status w.e.f. 1.1.1983. Since the respondents could grant temporary status with retrospective effect after medical examination. So why not in this case w.e.f. 1.1.1983 as the respondents admit in their own letters at annexures R-1 and R-3 dated 3.10.1986 and 20.2.1987.

10. Hence, I allow the OA and direct the respondents to confer temporary status with effect from the date he was due as admitted by respondents. This exercise shall be done within three weeks from the date of receipt of a copy of the order. No costs.

Kuldeep
(KULDIP SINGH)
MEMBER(JUDL)

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