



CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 2234/2001

NEW DELHI THIS 28TH DAY OF NOVEMBER 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Ajyodha Prasad S/o Sh. Sumer Singh
Ticket No. 1309, Yard Section General,
Stores Depot, Northern Railway,
Shakur Basti New Delhi

(By Ms. Nilofer Qureshi, Advocate)Applicant

VERSUS

1. Union of India, through its
Secretary, Ministry of Railway, Northern Railway,
Baroda House, New Delhi
2. Controller of Stores,
Northern Railway
Shakur Basti New Delhi
3. Deputy Controller of Stores
Northern Railway General,
Stores Depot, Shakur Basti, New Delhi
4. CPO Northern Railway,
Baroda House, New Delhi

(By Shri B S Jain, Advocate)Respondents

O R D E R (ORAL)

BY HON'BLE SHRI GOVINDAN S TAMPI, MEMBER (A) :

Applicant in this OA seeks payment of salary to him for the period between 1.2.89 and 8.5.95, when he had been incorrectly discharged and refixation of his seniority, including the period of his wrong discharge.

2. During the submission before me today Ms. Nilofer Querishi of B S Jain & Co. represented the applicant and Sh B S Jain appeared for the respondents.
3. The applicant, belonging to a Scheduled Caste, was appointed as a Casual Labourer -substitute Khallasi - on 27.6.77 and was granted temporary status, after screening, on 30.8.85. Though he suffered injury to one eye during

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duty he carried on with his work. At the screening for regularisation, his case was forwarded to regularisation on 14.12.88.~ Though being from a Scheduled Caste, ^{and} relaxed standards were available in his case, he was dealt with under normal standards, and declared 'unfit' medically and discharged from service on 31.1.89, illegally. His discharge after 12 years of service on account of an injury occurred during duty, was harsh and improper. Following his representation, he was sent for medical examination with relaxed standards, which he cleared. Still considerable time elapsed before he was re-engaged on 8.5.95. Thereafter the applicant made repeated representations for inclusion of the intermediate period between discharge and re-instatement in his service with attendant benefits. The same did not evoke any response leading to this OA.

4. Grounds raised in this OA are that:

- i) his medical examination was not done under permissible relaxed standards;
- ii) he had a long service from '77 and the discharge was improper;
- iii) even after being found medically fit in 91, years went by till his re-engagement in May, 95;
- iv) respondents' action of laying him off had caused great misery and inconvenience to him and his family;

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v) his various representations had gone unanswered.

OA in the circumstances, should succeed, argues the applicant, whose pleas were forcefully reiterated by Ms. Querishi.

5. Replying on behalf of the respondents, it was urged by the learned counsel Shri B S Jain, that the applicant who was appointed as a casual worker on 17.6.77 and granted temporary status on 30.8.85, could not be regularised as he did not come up CII Medical category. Following his representation, his case was reconsidered and was declared fit, but on account of paucity of vacancies it took time to re-engage him, which was ultimately done on 18.7.02. He has been regularised as Khallassi on 11.5.96. According to the learned counsel the application was hit by limitation, as his representation followed his re-engagement by three years. He took more time for approaching the Tribunal and that too without applying for condonation of delay. OA therefore, should not be entertained, pleads Sh. Jain quoting the decision of the Hon'ble Supreme Court in Udhamp Singh Kamal Vs UOI & Ors. (2002(2)SLJ 89). Facts of the case are not generally disputed by the respondents who however hold that there was no relaxed standards for medical examination for SC candidates. Still on his representation a compassionate view was taken and he was regularised on relaxed standards, keeping in view the service rendered before his discharge. He cannot therefore ask for any further relief, and the OA be dismissed, seek the respondents.

6. Having considered the matter, I am convinced that the applicant has a case. Engagement of the individual as casual labourer, grant of temporary status to him, his discharge on 31.1.89 on the ground of being medically unfit, his being found medically fit subsequently in 91 and ultimate reinstatement on 8.5.95 are facts. Respondents blow hot and cold when they state that there were no relaxed standards for medical examination but that they considered his case on relaxed standards on compassionate grounds. It is obvious that the respondents ^{had handled} ~~had handled~~ approach only led to the discharge of the applicant in 89 and delayed re-engagement in 95. That being the case they cannot take the plea of limitation in this case, which is a continuous cause of action and as such gets the protection of the decision of the Hon'ble Supreme Court in the case of M.R. Gupta Vs UOI & Ors [1995 SCC (L&S)1273]. Respondents having dis-engaged services wrongly but having rectified it, though belatedly, should in law extend to him the benefit of the intervening period, for the purposes of seniority and fixation of pay. The applicant is correctly entitled to regularisation from the date of first medical examination, as the second medical examination, ^{became necessary} ~~arose only~~ on account of the respondents failure to do their job properly. The applicant would not however, be entitled to backwages, or arrears of pay and allowances, not having worked. ^{only the post}

7. OA in the above circumstances, succeeds but particularly and is accordingly disposed of. Respondents are directed to treat the applicant as having been

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regularised, following the first medical examination in 88 ignoring the period of his disengagement from 31.1.89 to 8.5.95, and grant his benefit of pay and allowances to him, from that date with increments till day. The applicant would not however be entitled to any backwages for the period, he was out of job. No costs.

(Govindan S. Tampi)
Member (A)

Patwal/