

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1572/99

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T.A.No.

DATE OF DECISION 22-2-2000

Chatter Pal

....Petitioner

Sh.Yogesh Sharma

....Advocate for the
Petitioner(s)

VERSUS

UOI through the GM(NR)
and Ors.

....Respondent

Sh.R.L.Dhawan

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The Hon'ble

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 1572/99

New Delhi this the 22nd day of February, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Chatter Pal,
S/o Shri Raghbir Singh,
R/o Gaur Bhawan,
Gali No. 40, Sadh Nagar-II,
New Delhi-45.

... Applicant.

By Advocate Shri Yogesh Sharma.

Versus

1. Union of India through
The General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Bikaner (Raj).
3. The Divisional Engineer (MG),
Northern Railway Station,
Delhi Main. Jn.

... Respondents.

By Advocate Shri R.L. Dhawan.

ORDER (Oral)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the order passed by the respondents dated 7.4.1997 (Annexure A-I) rejecting his representation, in which it has been stated that he is not eligible to ^{be} considered for lower medical classification posts.

2. The aforesaid impugned order (Annexure A-I) has been passed by the respondents in pursuance of the Tribunal's order dated 14.11.1996 in MA 1954/96 in OA 385/90 (Annexure A-3). By order dated 14.11.1996, the Miscellaneous Application was disposed of directing the respondents to pass a reasoned and speaking order on the representations made by the applicant, taking into account the relevant rules and

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instructions and in particular clause (ix) of Railway Board's letter dated 8.6.1981 with intimation to the applicant. In the impugned order, the respondents have referred to clauses (ix) (a) and (b) of PS 7850 no.2205/190-XII (E-4) dated 30.6.1981. According to them, the applicant is not eligible for consideration for the lower medical classification posts. They have stated that as per their records, the applicant has been engaged as casual labourer only for 605 days from the date of his engagement to the date when he was declared medically unfit to hold the post of Gangman on 13.5.1986. Therefore, the main contention of the learned counsel for the respondents, based on the reply given by the respondents is that on merits the applicant has no case as he has not put in more than six years as casual labourer. Shri R.L. Dhawan, learned counsel has also submitted that it is only in cases of casual labourers, who have put in six years, whether continuous or in broken periods^{who^B} are included in a panel for appointment to Class IV posts and are sent for medical examination for first appointment in regular service and who do not qualify in that medical examination can be allowed the relaxed standard, which does not apply in the present case. He has also handed over a copy of the letter dated 28.10.1999 from the respondents addressed to him in which it is stated, inter alia, that the applicant was not medically examined at the time of giving him temporary status and at the time of initial engagement in prescribed category and thus there was need for medical examination which was done on 13.5.1986 when he was found unfit to hold the post of the Gangman, copy of the letter dated 28.10.1999 has been placed on record.

B.

3. Another ground taken by the learned counsel for the respondents is that the application is highly belated and is barred by limitation. Certain judgements relied upon by the learned counsel for the applicant have also been distinguished by the learned counsel for the respondents allegedly, on the ground that the relevant rules have not been cited before the court in those cases.

3. Shri Yogesh Sharma, learned counsel has relied upon the judgement of the Tribunal in **Chunni Lal vs. Union of India & Ors.** (1997(2) ATJ 370 - PB Single Bench). He further states that this judgement has been fully implemented by the respondents. Another case he relies upon is **Sayed Shamim Ahmed Vs. Union of India & Ors.** (1997(3) SLJ 276 - CAT Allahabad Bench -DB). Learned counsel has also contended that in the reply filed by the respondents in OA 385/90, the respondents have given the facts, including the fact that the applicant had acquired temporary status w.e.f. 15.5.1984. He has stated that this also shows that the applicant had worked under PWI, Mahendergarh from 16.9.1978 to 24.8.1985 after which he was directed to join PWI, Gurgaon vide letter dated 21.11.1985 where he reported on 5.12.1985 and worked upto 6.5.1986. He has also drawn my attention to this reply in which it has been stated, inter alia, that the applicant was directed for first medical examination for the post of Gangman to the Divisional Medical Officer, Rewari, who declared him unfit for the post of Gangman vide memo dated 13.5.1986. Regarding the question of limitation, learned counsel for the applicant has submitted that for the reasons given in MA 1398/99, the delay may be condoned. He has submitted that after receipt of the impugned order dated 7.4.1997, the applicant had made a representation in October,

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1997 which representation has, however, been denied by the respondents. He has also submitted that this is the third round of litigation and the applicant is at present unemployed. He has also stated that after Tribunal's order dated 14.11.1996, the applicant was also forced to file a contempt petition as the respondents had not completed the action, as directed in that order within the period of two months prescribed therein, but the contempt petition has been also disposed of leaving it open to him to proceed in the matter as per law. It is only after filing of the contempt petition, this order has been passed. These facts are not denied by the learned counsel for the respondents at the bar. In the circumstances, the learned counsel has submitted that the delay, if any, may be condoned taking into account the facts and circumstances of the case.

4. I have carefully considered the pleadings and the rival contentions of the learned counsel for the parties.

5. As the case has been fully argued on merits, apart from the questions of limitation, both these issues will be taken up in order. On the merits, I find ^{from} ~~that~~ the letter dated 28.10.1999 issued by the respondents to their counsel, in which they have stated that the applicant was not medically examined at the time of giving him temporary status or at the time of initial appointment in the prescribed category, which admittedly was that of Gangman, which is a safety category, clearly shows that the respondents themselves, for whatever reasons, have not followed their own Rules. Having not done that, the respondents cannot take advantage of their own wrong by stating that the medical examination for which he was sent for the post of Gangman to the DMO,

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Rewari, who subsequently issued the memo dated 13.5.1986 declaring him unfit for the post was the first time when the applicant was sent for such medical examination. It is clear from the aforesaid letter dated 28.10.1999 that the applicant should have been medically examined either at the time of ^{his 1st} initial appointment or at least at the time when he was given the temporary status w.e.f. 15.5.1986. The relevant portion of the Railway Board's instructions relied upon by the respondents themselves in the impugned Annexure A-1 order reads as follows:

"As per P.S.7850 no.2205/100-XII (E-4) dtd. 30.6.81 clause (ix) (a) when casual labour who have put in six years service whether continuous or in broken period, are included in a panel for appointment to Class IV posts are sent for medical examination for first appointment regular service, the standard medical examination should not be the one as required for first appointment but should be relaxed standard as prescribed for re-examination during service.

(b) Such of the casual labour as are found, on medical examination unfit for the particular category for which they are sent for medical examination despite the relaxed standard prescribed for re-examination may be considered for alternative category requiring lower medical classification subject to the suitability for the alternative category being adjudged by the screening Committee to the extent it is possible to arrange absorption against alternative requiring lower medical classification".

6. Taking into account the aforesaid facts, including the fact that the respondents themselves have stated that the applicant had worked as casual labourer (Gangman) from 16.9.1978 till 24.9.1985 under PWI, Mahendergarh in the reply filed by them to O.A.385/90, before he was directed to report to PWI Gurgaon, it is clear that the applicant had worked as casual labourer for more than six years whether ^{in 1st} continuous or in broken periods. From the same reply filed by the respondents read with their own letter dated 28.10.1999, it is also evident that they have sent the applicant for the

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first medical examination for the post of Gangman on 7.5.1986 after he had already been engaged and worked in the post of Gangman ^{from 18.9.78} as far back as 16.9.1978. In other words, it appears that the respondents had found the applicant medically fit to hold the post of Gangman for more than six years and he would, ^{therefore, 18.9.78} be entitled to relaxed standard as prescribed for re-examination during service, as referred to in Paragraph 5 above, which has been relied upon by the respondents ^{themselves?}. This benefit of relaxed standard has not been given to the applicant which is contrary to the aforesaid instructions. The respondents have also stated that he has worked for 605 days. This cannot be accepted in view of their own reply given in O.A.385/90.

7. In the facts and circumstances of the case, I find that the judgements of the Tribunal in **Chunni Lal's case** and **Sayed Shamim Ahmed's case** (supra) are fully applicable to the facts of the present case as the applicant has also been granted temporary status after completing 120 days continuous service w.e.f. 15.5.1984. The contention of the learned counsel for the respondents that the relevant Rules have not been considered by the Tribunal in those cases is also not correct as the same have been considered in Paragraph 7 of the judgement in **Sayed Shamim Ahmed's case** (supra). On merits of the case, I find that the impugned order issued by the respondents dated 7.4.1997 is liable to be quashed and set aside.

8. The remaining question for consideration is one of limitation. Having considered the grounds taken by the applicant in the Miscellaneous Application (MA 1398/99) for condonation of delay and the aforesaid actions taken by the

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respondents which are clearly contrary to the relevant Rules and instructions, I find sufficient grounds to condone the delay in this case. The fact that the applicant had to approach the Tribunal on a number of times in which the directions have been given to the respondents to consider his case in accordance with the Rules cannot also be over looked. It was the duty of the respondents to comply with the relevant Rules for the reasons given above, which they have failed to do.^B

9. In the result, for the reasons given above, the application succeeds and is allowed. The impugned order dated 7.4.1997 is quashed and set aside. The respondents are directed to consider the case of the applicant immediately for appointment in ^{an} ~~the~~ alternate post on suitable medical category in accordance with the rules and instructions. Necessary action in this regard shall be taken within two months from the date of receipt of a copy of this order. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

SRD