

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

60

O.A. No. 262/89
T.A. No.

199

DATE OF DECISION

10.6.93

<u>Shri Manmohan Sharma</u>	Petitioner
<u>Shri B.L.Madhok</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India</u>	Respondent
<u>Shri BK Aggarwal</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. N.V.Krishnan, Vice Chairman (A)

The Hon'ble Mr. B.S.Hegde, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(Hon'ble Shri N.V.Krishnan, Vice Chairman(A)

The applicant is aggrieved by the fact that despite his case being taken up by the authorities concerned to obtain for him an alternate job in B-2 vision category as he was declared medically fit for that category, the respondents have not given him any such alternate job.

2. The facts of the case giving rise to this complaint are as follows:-

2.1 The applicant states that, after initially working for a period of 130 days, he has rendered continuous service from 10-12-81 till 6-12-87 as a khalasi in the PQRS Safdarjang Station, New Delhi. On 7-12-87, he was sent for a medical test in connection with his permanent absorption but, he was not found medically fit for regularisation as khalasi.

2.2 Therefore, he was examined for medical test for a lower category and he was found fit on 22-2-88 for the B.2 category.

2.3 Respondent No.2, under whom the applicant was already working, did not have any post suitable for the applicant consistent with the medical category for which he had qualified. He therefore made a reference to the Personnel Deptt. by a letter dated 3-3-88. A reply

0.A.262/89

⑥ A

Shri Man Mohan Sharma

Applicant.

Vs.

Union of India

Respondents. 10.6.93

Present: Shri BS Mainee counsel for the applicant.

None from the respondents.

ORDER

The applicant is aggrieved by the fact that despite his case being taken up by the authorities concerned to obtain for him an alternate job in B-2 vision category as he was declared medically fit for that category, the respondents have not given him any such alternate job.

2. The facts of the case giving rise to this complaint are as follows:-

2.1 The applicant states that, after initially working for a period of 130 days, he has rendered continuous service from 10-12-81 till 6-12-87 as a Khalasi in the PQRS Safdarjang Station, New Delhi. On 7-12-87, he was sent for a medical test in connection with his permanent absorption but, he was not found medically fit for regularisation as Khalasi.

2.2 Therefore, he was examined for medical test for a lower category and he was found fit on 22-2-88 for the B.2 category.

2.3 Respondent No.2, under whom the applicant was already working, did not have any post suitable for the applicant consistent with the medical category for which he had qualified. He, therefore, made a reference to the Personnel Department by a letter dated 3-3-88. A reply

was received by that Department on 18-3-88 (page 21 of the paper book) from the A.P.O stating that he is working under Respondent No.3, the applicant be considered for such appointment in the PQRS establishment itself and if there was no vacancy, his name be brought on the live register and absorbed according to his turn.

2.4 In reply to this letter, the matter was again taken up by the third respondent by the letter dated 6-4-88 (page 19 of the paper book) which reads as follows:-

"Sub: Absorption of Shri MamMohan Lal Sharma.

Ref: Your letter No.561-E/134/Dup/Pt 4
dated 18-3-88.

As there is no post of B6s-Two category in PQRS/Unit, hence keep the employee on live register in PQRS/Unit does not arise. Please register his name in other unit having Bes-Two categories.

As the aforesaid employee is sincere and hard worker and he has worked more than 6 years continuous service in Railway, hence it is requested that he may be offered alternate job on priority against the vacancy of Bes-Two category in other department in ICW, IOW/Horticulture etc."

2.5 The applicant also states that many colleagues of his who were found medically fit in still lower categories have already been regularized. Their names are given in para 4.11 of the application.

2.6 The applicant took the trouble of meeting the second respondent but to no effect. Hence, he has filed this application for the following direction:

a) In view of the facts mentioned in para 5 above the applicant prays that the Respondents be directed to give suitable post (absorb) to the applicant forthwith and to treat the applicant as continued in employment since 22-2-88, when the applicant was declared fit for the post of B2 category and orders for his appointment were passed by the Respondents.

b) That the applicant be given full back wages with all the privilege and benefits of the post in which he is absorbed w.e.f. 22-2-88.

3. The respondents have filed a reply resisting the prayers made. It is contended that the applicant was never in continuous service from 10-12-81 as alleged by him. In para 4.6 of the reply the respondents state "It is submitted that the Resp. No.2 correctly directed the employee to Divisional Personnel Officer Delhi for absorption in a suitable post in B-2 category as there was no work charge post available with the Respondent No.2".

4. The respondents have also denied that the 12 persons whose names have been mentioned in para 4.11 of the D.A are junior to the applicant. It is contended that they had acquired temporary status on 1-1-84 or even earlier and therefore, these employees are senior to the applicant who was working only on casual basis on work charged post.

5. When the matter came for final hearing today, we heard the learned counsel for the applicant Shri BS Mainee. None was present on behalf of the respondents.

6. The learned counsel for the applicant pointed out that he has filed a rejoinder enclosing therewith a document PP-2 which relates to the subject of his re-medical examination. This is a photo copy of an office note sheet which indicates that the applicant was in continuous engagement from 10-12-81 to 6-12-87 as per casual service card No.224109. He, therefore, states that the applicant automatically acquired temporary status after 120 days and therefore he was senior to all the 12 persons, particulars about whom have been mentioned in para 4.11

of the respondent's reply. He contends that having established his continuous service and also the fact that he has been declared medically fit for a B-2 category job, it was the duty of the respondents to employ him in a suitable job at the time of regularisation. Though the learned counsel for the applicant was not in a position to readily point out to the rule under which this claim is made he pointed out that the respondents themselves have agreed in para 4.6 of their reply which is filed on behalf of all the respondents including the General Manager that the step taken by the 2nd respondent to direct the employee to the Divisional Personnel Officer Delhi for absorption in a suitable post in B-2 category was correct vide the extract in para 3. The applicant could not be absorbed only because of the fact that there was no work charge post available with the Respondent No.2.

7. We have considered the contentions raised in the O.A. It is clear that the applicant was found medically fit only for B-2 category at the time when the regularisation was considered on 7-12-87. It stands to reason even though the precise rule may not have been pointed out by the learned counsel of the applicant that in the circumstances the respondents are bound to find out for him a suitable job in the B-2 category. Otherwise, there was no need to have him re-examined after he was declared medically unfit for the post of Khalasi. Further, the second respondents had clearly stated in the letter dated 6-4-88 reproduced in para 2.4 above that he does not have such a job in his establishment to regularise

the applicant. Obviously, it is the duty of the third respondent to find such a job for him in that Division or if no such job is available in that Division the Resp.No.1 has to find a job elsewhere. The learned counsel for the applicant, however, points out that as considerable time has elapsed there should be suitable vacancies in Delhi Division itself where the applicant could be accommodated in the B-2 category.

8. We are also not satisfied with the reply of respondents that the applicant could not be considered only because he was too junior, particularly, vis-a-vis the 12 persons whose particulars have been mentioned in para 4.11 of the reply. The applicant has established clearly by the production of the additional documents PP-2 at page 34 of the paper book that he was in continuous service from 10-12-1981 and therefore he acquired temporary status automatically after 120/180 days.

9. In the circumstances, we find that the applicant is entitled to be considered for a post in B-2 category in the Northern Railway, preferably under the third respondent, and if such post is not available, in any other Division in that Railway. We, therefore, allow this application in part, with a direction to the first respondent to consider the case of the applicant for absorption in a suitable post for which he is medically fit in the B-2 category, within a period of three months from the date of this order.

There will be no order as to costs.

B.S. Hegde
(B.S. HEGDE)

Member (Judicial)

N.V. Krishnan
(N.V. KRISHNAN)
Vice Chairman(A)

10/6/83