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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 130/88
T.A. No.

198

DATE OF DECISION 16.3.1990

Smt. Sumitra Devi Applicant (s)

Shri D.N. Goburdhan Advocate for the Applicant (s)

Versus

Union of India through Respondent (s)
Secretary, Ministry of
Railways & Others

Shri D.N. Moolri Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

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. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(of the Bench pronounced by Hon'ble Shri P.K. Kartha, V.C.)

The applicant, who has worked as a Chowkidar in the Northern Railway, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing and setting aside the impugned order dated 18.12.1987 whereby she was declared unfit. She has also prayed that she should be regularised in service and that she should be granted the regular pay-scale. According to the applicant, she worked in the post of Chowkidar in the Northern Railway for over 14 years since 15.7.1973. The respondents have stated in their counter-affidavit that she joined as Casual Labour Khalasi on 15.7.1973 and worked for a total period of 153 days and left thereafter. Subsequently, she joined on 15.12.1978. The respondents have produced a photocopy of the Casual Labour Card issued to the applicant

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from which it appears that the applicant has worked for 153 days in 1973 and thereafter from 15.12.1978 to 14.6.1986 with some breaks.

2. The case of the applicant is that she had acquired the status of a temporary railway servant and she had also been granted regular pay-scale and other benefits and privileges. She was declared fit after passing the medical examination held in October, 1986. She has produced a copy of the fitness certificate issued by the Railway Medical Examiner (Annexure 1, p.14 of the paper-book). However, on 18.12.1987, the respondents sought to terminate her services on the ground that she was declared unfit at the time of screening her for the post of Gangman Khalasi. She has called in question the second medical examination after having worked for 14 years. She has contended that no screening test can be done after 14 years of service for the same post. She has also contended that the respondents could not terminate her services on the alleged ground of medical unfitness.

3. The respondents have, in their counter-affidavit, raised a preliminary objection to the effect that she has not exhausted remedies available to her under the relevant service rules before filing the application. On the merits, they have admitted that though she has acquired temporary status, she had not been screened. She was only declared medically fit for B-1 category. She was sent for medical examination as a first step before undergoing screening. She failed to pass the stipulated medical standards.

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4. We have carefully gone through the records of the case and have heard the learned counsel for both the parties.

5. At the outset, we may point out that we are not impressed by the preliminary objection raised by the respondents. The Tribunal has a discretion under Section 20 of the Administrative Tribunals Act, 1985 to entertain an application even in a case where the applicant has not exhausted the remedies available to him under the relevant service rule. To our mind, in a case of this kind, there is no effective departmental remedy available to the applicant.

6. In our opinion, having regard to the service put in by the applicant, the respondents should have, in all fairness, offered to the applicant a suitable alternative job consistent with the medical standard prescribed for such job. Rule 304 of the Indian Railway Establishment Code, Vol. I provides, inter alia, that a railway servant, who becomes physically incapable of performing the duties of the post which he occupies, should not be discharged forthwith but should be granted leave and during the leave period, some alternative employment on reasonable emoluments should be offered to him or her (see also M.L. Jand's book on Railway Establishment Law and Practice, 2nd Edn., pages 98 and 137).

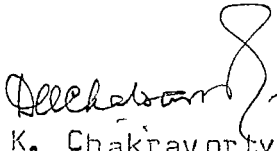
7. The respondents also did not retrench the applicant in compliance with the provisions of Section 25F of the Industrial Disputes Act.

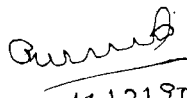
8. In the conspectus of the facts and circumstances of the case, we are of the opinion that the termination of the services of the applicant by the impugned order dated 18.12.1987, is illegal and invalid. The applicant

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shall be continued in service in a post for which she may be found medically fit in accordance with the prescribed standards. She should also be considered for absorption in service in accordance with the length of service put in by her and the relevant service rules. . In the facts and circumstances of the case, we do not, however, pass any direction regarding the payment of back wages. The parties will bear their own costs.

9. The respondents shall comply with the above directions within a period of three months from the date of communication of this order.


(D.K. Chakravorty)
Administrative Member
16/3/1990


16/3/90
(P.K. Kartha)
Vice-Chairman(Judl.)