

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 298/88
T.A. No.

198

DATE OF DECISION 16.3.1990

Shri Babu Lal _____ Applicant (s)

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

Versus
Union of India through _____ Respondent (s).
the Secretary, Ministry
of Railways, & Ors.

Shri O.P. Kshatriya _____ 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

(Judgement of the Bench delivered by Hon'ble
Shri D.K. Chakravorty, Administrative Member)

The applicant, who has worked as Gangman in the Office of the respondents, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the impugned order dated 28.12.1987 be quashed and set aside, that his services may be regularised, and that he may be given regular pay-scale.

2. The case of the applicant in brief is that he was appointed on 15.9.1977 and worked continuously as Gangman for over ten years. He has acquired temporary status and was getting regular pay-scale. At the time of his appointment, he was medically examined and declared fit. He was called for a test again after ten

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years in September, 1986. On 28.12.1987, the respondents issued the impugned order to the effect that he was being removed from service on the ground that he had been found medically unfit.

3. The respondents have raised a preliminary objection in their counter-affidavit to the effect that the applicant has not exhausted the remedies available to him under the service rules. On the merits, they have not disputed that the applicant has acquired temporary status. He was declared unfit after the screening test was conducted.

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 rules. 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

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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 shall be continued in service in a post for which she may be found medically fit in accordance with the prescribed standards. He should also be considered for absorption in service in accordance with the length of service put in by him 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
(D. K. Chakravorty)
Administrative Member

16th March, 1990

P. K. Kartha
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(P. K. Kartha)
Vice-Chairman (Judl.)