

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH, AHMEDABAD**  
Original Application No.297 of 2013

Dated this the 26<sup>th</sup> day of February,2021

Reserved on: 30.09.2020  
Date of decision: 26.02.2021

**CORAM :**  
**HON'BLE SHRI JAYESH V BHAIRAVIA, MEMBER (J)**  
**HONBLE DR A K DUBEY, MEMBER (A)**

Magan Bhai S Parmar(deceased)  
Through LRs:

- |   |  |                |
|---|--|----------------|
| 1 | Shri Mahesh Bhai Magan Bhai Parmar (son) |                |
| 2 | Shri Amit Bhai Magan Bhai Parmar (son)   |                |
| 3 | Shri Jayadev Magan Bhai Parmar (son)     | ... Applicants |

All addresses : 10, Shri Hari Villa Society,  
Opp. Dharti Villa, Vaghasi Road, Anand-388001.

(By Advocate Shri O P Khurana)

V/s

- |   |   |                 |
|---|---|-----------------|
| 1 | The Union of India,<br>Through: The General Manager,<br>Western Railway, Churchgate,<br>Mumbai – 400 020. |                 |
| 2 | The Divisional Railway Manager (E),<br>Western Railway, Pratapnagar,<br>Baroda – 390 004.                 | ... Respondents |

(By Advocate Shri M J Patel)

**ORDER**

Per Dr. A. K. Dubey, Member (A)

1. The applicant has preferred this O.A. under Section 19 of A.T. Act and has sought the following reliefs:-

“(i) Allow this application in the interest of justice holding the Respondents’ action as per the Impugned Order dated 01-03-2013 (Ann:A1) as in non compliance of the Hon’ble Tribunal’s Order dated 03-12-2012 (Ann:A/13 in letter and spirit as also baseless or based on manipulated leave record to show qualifying service of only 1 year and 19 days out of total period of about 22 years, as quite arbitrary, unconstitutional and illegal for keeping the Applicant out of work/applying artificial breaks in service between the period from 23-11-1984 to 31-01-2007 as mentioned in the Impugned Order without any notice, for not fault on his part, and quash and set aside the same.

(ii) Direct the Respondents to consider Applicant’s continuity of service from 22-06-1984 after passing the medical examination / 15-7-1984 as per recorded date of appointment to 31-01-2007 when he was reinstated, with consequential benefits like payment of full back wages and all allowances including the National Holiday Allowance and the PLB etc.etc. as paid to other employees with interest @ 15% p.a, from the date the amount was due till it is fully paid.

(iii) Direct the Respondents to pay to the poor Applicant the cost of this Application for not doing justice but compelling him to run the court again to seek justice in the matter.

(iv) May pass any further order as deemed fit and proper in the interest of justice.”

2. This is the fourth round of litigation. This Tribunal while disposing of OA No.93/2010 with M.A.No.52/2011 order dated 03.12.2012 (Annex.A/13) observed as under:-

*“ Para-3, At the outset, it is brought to our notice that by Order dated 24.09.2012, the Applicant has since been regularized as Safaiwala in the PB of Rs.5200-20200 with Grade Pay of Rs.1800/-. However, Mr.O.P.Khurana, learned counsel for the applicant submits that the applicant is not satisfied with, his posting as Safaiwala. We note that this is a separate matter and the applicant may approach the Department, if so advised, by way of representation for any other posting and the same shall be considered by the Respondents, as per law, taking the totality of the facts and circumstances into consideration.*

*Para-4. We note that the only grievance which remains now to be redressed by the respondents is regarding the grant of continuity of service of the applicant with effect from 23.11.1984 i.e. the date when he was granted Temporary Status after passing the medical test in A-2 category. The respondents are directed to look into this aspect and pass appropriate orders within a period of 3 months at least granting continuity of service to the applicant for the pensionary and other consequential benefits only on notional basis. If the applicant still remains aggrieved, in any manner, he would be at liberty to approach this Tribunal, if so advised, as per law.”*

3. It is noticed that in compliance of aforesaid direction, the respondents vide impugned order dated 01.03.2013 (Annex.A/1) fixed the pay of applicant from the date of grant of Temporary Status i.e., from 23.11.1984 till 31.01.2007 and by indicating the revised position of the applicant's service in detailed statement, it is stated in the said order that applicant remained absent from 23.11.1984 – 31.01.2007 i.e., upto the date of re-engagement. Hence, the qualifying service being one year and 19 days as per the said statement, will be counted for pensionary and other consequential benefits only on notional basis. Aggrieved by this order, the applicant has filed the present O.A.
4. It is further noticed that with regard to an MA filed by the applicant for discovery of certain documents i.e., in M.A.No.57/2014 in the present OA, this Tribunal vide its order dated 28.01.2019 directed the respondents “to bring documents related to this case”. Pursuance to it, the respondents had produced relevant documents and sent their copy to the counsel for the applicant. The respondents have produced documents related to the service record of the applicant, such as (i) Memorandum dated 21.04.2018 whereby office of DRM(E) BRC stated that Shri Maganbhai S. Parmar S/wala vxd, scale 5200-20200+1800GP expired on 08.04.2016 and his service particulars have been given wherein his date

of appointment has been shown as TS 23.11.1984 and one Alkaben has been shown as nominee of the applicant. (ii) Copy of PPO dated 16.09.2016 about disbursement of pension through public sector bank in favour of the deceased railway employee, i.e., Alkaben. (iii) Copy of details of family pension in favour of the nominee. (iv) Copy of Order dated 01.03.2013. (v) Extract of service book. (vi) Copy of letter dated 01.03.2013 issued by office of DRM(E) BRC whereby applicant was informed that he was granted continuity of service from the date of TS on notional basis for pensionary and other consequential benefits as per enclosed memo in this regard dated 01.03.2013.

5. The brief facts as stated by the applicant in the present OA is as under:-

5.1 Applicant's father was a Railway employee posted as Gateman, who died in harness on 31.07.1977. At that time, the applicant's age was only 15 years and he could not be employed on compassionate ground. His mother, the widow of the deceased employee, was also not offered any compassionate appointment on the ground that she was handicapped and that the post held by her deceased husband was only meant for a male candidate. After the applicant attained the age of 18 years in 1980, the Station Superintendent, Anand, took pity on the plight of the widow and started utilising the applicant as a substitute on daily wages.

5.2 The applicant worked for about four years as substitute on daily wages, and was sent to the DMO-PRTN on 22.06.1984 for medical examination where he was found fit in A2 medical category. Then his services were utilised as a substitute in leave vacancy from 22.06.1984 to 09.03.1989 and was granted temporary status w.e.f. 23.11.1984 as per the respondents letter No.Et/615/3/1/1988/TI Vadodara P.PART I, dated

09.03.1989 (Annex.A/2). The applicant claims that this letter was not delivered to him. Nor was he paid arrears of pay from 23.11.1984 to 09.03.1989. It is stated that whenever he requested he was told that he would be paid the arrears on regularization of his service.

5.3 The applicant claims that he was handed over the medical memo No.G 89B dated 11.03.1989 (Annex.A/3), which shows his date of appointment as 15.07.1984.

5.4 The applicant also claims that he made several attempts to appear at the medical examination for A2 medical test but, on one pretext or other, the respondents denied him the opportunity to do so. The applicant had reported back on 19.09.1989 with the same medical memo and was told by the official concerned not to come from the next date i.e., 20.09.1989, as he was to be sent again for medical examination and would be taken only after clearing the medical examination. But he was actually sent for the fresh medical examination only after about six months. However, he was not communicated anything in writing. Nor was he allowed to work.

5.5 The applicant had filed O.A. No.25/2006 in this Tribunal and only after this Tribunal order dated 06.03.2006 he was subjected to medical examination on 17.07.2006 and was allowed to work from 31.01.2007. The applicant's claim is that he was always available and willing for duty but was forcefully and illegally kept out of the job intermittently between 23.11.1984 and 18.09.1989 and continuously from 20.09.1989 till 30.01.2007.

5.6 As endorsed by the Senior DMO on the back of medical memo dated 11.03.1989 which was delivered to the applicant on 18.03.1989, his date

of appointment was 15.07.1984, which was not correct because he was already examined on 22.06.1984. Even if it was taken as the correct date, he should have been sent for periodical medical examination once in three years i.e., before 15.07.1987 or before 22.06.1987 (because his first medical examination was conducted on 22.06.1984 and three years were to be counted from then). On this ground, the applicant alleges malafide conduct on the part of the respondents. The applicant also disputed the date of grant of TS w.e.f 23.11.1984 on the ground that it should have been from the date of medical examination or immediately thereafter. Thus, the date 18.09.1989 was maliciously written in back date, he alleges. Upon his taking up the matter with the authorities, communication No.ET/ZM/1251 dated 27.01.1989 was issued by DOS(E)BRC to SS, Anand to take the applicant on duty and to send working particulars for granting TS to the applicant. Further communication No.ET/615/3/SS-ANAND II dated 17.02.1989 and No.ET/ZM/1251 dated 10.03.1989 (Annex. A/4Colly), from DOS(E) BRC advised the Station Superintendent, Anand to take him on duty as substitute. However, the officials at the lower levels ignored it, he claims.

- 5.7 The applicant has also questioned the date of medical memo which shows the date as 11.03.1989, whereas he claims that the medical examination was already held on 22.06.1984. The applicant requested the officials concerned to correct the date and to allow him to go for medical examination on 18.09.1989. But he was not allowed. Eventually, he appeared before the DMO, PRTM on 19.09.1989, but he was still not allowed to work. Then the applicant filed OA No.211/2000

on 23.03.2000 seeking direction to the respondents to permit him to resume duty and to pay him the back wages. This OA was disposed off on 15.05.2000 directing the respondents to treat the averments in OA as applicant's representation and to decide the matter within a month. The decision was informed by the respondents through a letter dated 13.07.2000 which, the applicant claims, was not signed by the competent authority. He was dissatisfied with this decision because he claimed that he had already passed the medical examination in 1984.

5.8 Then, he preferred a representation dated 31.08.2000. This representation of the applicant was not decided in his favour, aggrieved by which, he approached this Tribunal yet again by filing OA No.804/2001 on 03.12.2001, which was decided on 17.02.2003, directing the respondents to decide the representation dated 31.08.2000 within two months, keeping in mind the points raised in the representation. The applicant claims that he was communicated the decision on his representation by letter No.E/351/CC-14- dated 12.06.2003 and again he was declared unfit in all medical categories.

5.9 The applicant filed yet another OA No.581/2003 on 24.10.2003 which was disposed of by this Tribunal vide its order dated 07.12.2004 (Annexure A/5) directing the respondents to examine the applicant in the lowest medical category within two months and communicate the finding within one month from the date of the medical examination. The applicant preferred another representation dated 18.01.2005 before the respondent. Medical examination certificate in M4B form dated 01.03.2005 (Annex.R/2) indicated that he was unfit for all classes due to poor vision with "bilateral optic atrophy" with no improvement possible

with glasses, medical or surgical means. At the same time, this was communicated by the CMS (BRC) to the APO(III)BRC vide letter No.MD-216/02ANND dated 01.03.2005 (Annex R/3) that the applicant was unfit in all classes. Under these circumstances, the applicant again filed O.A.No.25/2006 on 16.01.2006 which was disposed of by this Tribunal vide order dated 06.03.2006 directing the respondents to consider the applicant's representation dated 17.03.2005 and also directed the Chief Medical Superintendent to consider his appeal and decide the same within three months after re-examining the applicant. The applicant submitted his appeal on 13.04.2006 and was finally re-examined on 17.07.2006 and declared fit in C2 medical category as communicated by Senior DMO, Baroda's Certificate of Fitness No.0243523 dated 04.10.2006 in M4B form and consequently he was deployed at Anand as substitute in accordance with the memo No.ET/891/3/ Vol.III dated 30.01.2007 (Annex.A/6).

- 5.10 The applicant reiterated that he was subjected to monetary loss by keeping him out of work from 09.03.1989 till 30.01.2007. He made a representation dated 06.06.2007 (Annex.A/7) requesting grant of back wages. However, his representation was not accepted by the authorities. Thereafter, he filed another OA No.41/2009 which was disposed of by this Tribunal on 09.03.2009 directing the respondents to consider the representation dated 14.12.2007 and to decide it by a speaking order. This matter was decided by the authorities vide their letter No.E/351/CC/500 dated 19.01.2010 (Annex R/7). Dissatisfied by the decision, the applicant made another representation to the respondents dated 11.08.2009 (Annex.A/9). The applicant has made representation



claiming that he was kept out of duty despite his willingness to perform which showed malafide intention on the part of respondents.

6. Per contra the respondents have filed their reply, in which they have refuted the contentions of the applicant. The respondents have contended that the applicant has been making baseless allegations to mislead this Tribunal. They say that as per their records, applicant remained unauthorisedly absent/sick and did not follow the procedure laid down in this regard. The memorandum No.E/351/CC-137 dated 01.03.2013 (Annex A/1) clearly indicated that the applicant had worked for 274 days till 1985, 42 days in 1986, 34 days in 1990 and 34 days in 1995. The medical examination in Railway Hospital for the A2 category declared vide form M13B/R-3 medical certificate No.10610 dated 05.01.1990 (Annex.R1), that the applicant being medically unfit for further Railway service, should be relieved of his duties.
7. It is stated that the applicant has also produced a copy of the Memorandum No.ET/ZM/708 dated 24.09.2012 (Annex.A/12), conveying that he has been regularized as Safaiwala. Respondents have denied the averments of the applicant. This Tribunal vide its order dated 07.12.2010 in OA No.581/2003 had directed the applicant's fresh medical examination in the lowest medical category as per the extant rules. The applicant was directed on 14.02.2005 for medical examination in the lowest medical category of C2, but he was declared unfit in all classes due to poor vision vide medical certificate No.279718 dated 01.03.2005 (Annex.R/2). This renders the contention of the applicant prima facie wrong the respondents' counsel stated. Still, as yet again directed by this Tribunal in its order dated 06.03.2006 in OA

25/2006, the applicant was sent by the respondents for fresh medical examination on 17.07.2006 where he was considered fit in lower category of C2 in visually handicapped quota as per the medical certificate No.BO242523 dated 04.10.2006 (Annex. R/3) and after that, the applicant was re-engaged as a substitute under SS, Anand vide Memo No. ET/891/3/1Vol.III dated 30.01.2007 (Annex.A/6). Respondents have also submitted that as per the order of this Tribunal dated 03.12.2012 in OA 93/2011, the applicant was granted continuity of service from 23.11.1984 for pensionary consideration and other benefits. Keeping in view his work in Railway service vide order No.E/351/CC-137 dated 01.03.2013 (Annex.A/4) the respondents contended that the date from which the applicant had been working was 23.11.1984 and he had remained absent or absent without following the procedure laid down in this regard and without requisite fitness certificate from the Railway medical authorities. For all these, respondents have relied only on the service sheet and the leave documents of the applicant.

8. Respondents have denied that the applicant was forcefully kept out of employment. They have also denied the allegations that they had issued back dated memo dated 11.03.1989 instead of 18.09.1989. During the course of argument, the counsel for the respondents clarified that the applicant was sent for the prescribed periodical medical examination vide G 89B memo dated 11.03.1989 since medical fitness was required to be undergone every three years. Respondents have also annexed pages from leave register (Annex R/5). The respondents have stated in the reply that the applicant was earlier recommended to be retired on medical ground vide memo No.A 10610 dated 05.12.1990. Again vide

certificate No.1/18/05 B 279718 dated 1/3/2005 (Annex.R2) and letter dated MD-21.06.02/ANND dated 1/3/2005, he was declared unfit in all classes due to vision. However, pursuant to this Tribunal order dated 06.03.2006 in OA No. 25/2006, he was again sent for fresh medical examination before the medical board where he was considered fit in lowest medical category Cee Two again (Visually handicapped quota) vide medical certificate No.B243523 dated 04.10.2006 (Annex.R3). On this basis the applicant was re-engaged as substitute vide letter No.ET/891/3/1 Vol.III dated 30.01.2007.

9. In their reply, the respondents have also averred that as per the order dated 03.12.2012 in O.A.93/2010 passed by this Tribunal, the applicant was granted continuity of service from 23.11.1984 for pensionary and further benefits, keeping in view his working days in Railway service vide order No.E/351/CC-137 dated 01.03.2013 (Annex.R4). Respondents have denied that they had acted arbitrarily or illegally. They have contended that the applicant frequently remained absent or reported sick without following the procedure laid down in this regard, including the procedure for fitness certificate. Respondents have relied upon the service sheet and the leave documents of the applicant. Respondents have also contended that the applicant would not be entitled to any wages for a duration for which he did not work. They also asserted that the order dated 01.03.2013 was factual and legal. In fact, all this has happened despite the fact that the applicant had not produced any documents to support his claim that his father was working in Railway and died on 31.07.1977.

10. The counsel for the applicant Mr.O.P.Khurana submitted written arguments, mostly reiterating his contentions/averments made in the OA, and also rebutting the reply of the respondents.
- 10.1 It is stated that the respondents had erroneously treated the period of one year and 19 days only as qualifying service as out of the total service for more than 22 years from 15.07.1984 to 31.01.2007 as per impugned order dated 01.03.2013 (Annex.A/1). It was averred that the working days mentioned in the said order are quite arbitrary and illegal and it is believed to be based on the manipulated record of applicant's service.
- 10.2 It is stated that the issue of alleged absence of the applicant had been raised by the respondent for the first time since 1984 and that too without attracting disciplinary action under the provision of R.S.(D&A) Rules, 1968. The applicant has been forcefully kept out of work without assigning any reason and without any warning letter or charge sheet to prove the unauthorized absence, the counsel submitted. Since the applicant was granted Temporary Status in the year 1984, the respondent ought to have initiate disciplinary action for such alleged unauthorised absence; in absence of it, the allegation of the respondent does not sustain. Therefore, continuity of service of the applicant cannot be snatched away by the respondents arbitrarily.
- 10.3 The respondents have not complied in letter and spirit, with the order dated 03.12.2012 passed by this Tribunal.
- 10.4 The applicant was always willing to work but forcefully and arbitrarily he was kept out of work for years causing financial hardship almost to the brink of starvation.

- 10.5 The respondents have violated the provision under Rule 11(5) of the CCS (CCA) Rules, 1965 for not taking any action if the applicant was really absent from duty as alleged.
- 10.6 The counsel had quoted a few judgments in support of his contentions. *Ramdhan v. Union of India* is one where the Jaipur Bench of this Tribunal had observed on 20.05.1999 that if an employee was kept out of duty for no fault of his, he was entitled to wages. In *B.M Jha v. Union of India*, the Principal Bench of CAT had ruled in OA No.23 OA/1992 that, “no work no pay would not apply where the employee was kept out of work for no fault on his part.” The counsel for the applicant also referred to the judgment of the Kerala High Court in *Alappat Narayana Menon v. State of Kerala* (1977 (2) SLR 656) to argue that none can be penalised for no fault of his. He has also quoted Apex Court’s observation reported in the *Manager, Branch Press & Anr. v. D.B. Beliappa* (AIR 1979 SC 429) that while terminating the service, it is necessary to disclose the reasons. He has quoted one more judgment of Full Bench of CAT in OA 529/2000 dated 11.09.2001 reported as 2002 (I) ATJ of CAT in which it was ruled that while fixing pay of a temporary status group D officials, increments claimed by him in temporary status as casual mazdoor would also count.
11. Subsequent to that, M.A. No.182/2016 was filed to amend the O.A informing the demise of the applicant and impleading his wife in his place. With the amended title, wife of the applicant was impleaded who preferred yet another M.A.No.260/2016 for bringing the legal heir on record. Lastly, M.A.No.175/2017 was preferred by the applicant (the widow of the original applicant) for restoration of OA No.297/2013 with

M.A.No.57/2014. In this sequence, there was yet another M.A. No.251/2018 informing the demise of the applicant (widow of the original applicant) and amending the title of the OA as Smt.Alkaben Maganbhai S.Parmar (deceased).

12. Heard the counsels for both the parties and perused the records and documents produced before this Tribunal and the contentions raised by the applicant and counter contentions of the respondents. Facts of this case as it emerges from documents and records produced before us are briefly mentioned in the succeeding paragraphs.

12.1 It is claimed by the original applicant Mr.Maganbhai S. Parmar that his father was in the service of the Railway but died in 1977 in harness and at that time, he could not get compassionate appointment since his age was only 15 years. Nor did his mother get any compassionate appointment. Later, the applicant was engaged initially as a substitute w.e.f. 15.07.1984 as the Memorandum No.ET/615/3/1/1988 dated 09.03.1989 indicates (Annex. A/2). The applicant was sent for the medical examination, which was a compulsory procedural requirement and he appeared at the said medical examination on 22.06.1984. He was granted Temporary Status (TS) w.e.f 23.11.1984 as disclosed by the memo dated 09.03.1989. As per the records maintained by the Railways (Annex. A/1) the applicant had worked for 274 days in the year 1984-1985, 42 days in the year 1986 and 34 days in 1990. He did not work in the years 1987 to 1989, 1991 to 1994 and 1996 to 2007. Further, the applicant had joined the service on 15.07.1984 with having cleared the A2 Grade medical examination. As per the records of the respondents, he was given temporary status on 23.11.1984. Details are available in the

respondents' communication No.ET/ 615/3/1/1988 dated 09.03.1989 (Annex.A/2). Para 2 of this communication clearly mentions that the temporary status does not entitle to any claim as to continuation of service and a temporary status employee will be paid, depending upon the days of working during a month.

- 12.2 Medical certificate Form G89B dated 11.03.1989 mentions that the originally the applicant had passed A2 medical examination on 22.06.1984. Besides, there is an endorsement on this certificate by the Sr.D.M.O. (BRC) dated 19.09.1989 asking why the candidate was not directed for medical examination every three years as per rules. Thereafter, vide form M13B Medical Certificate No.A10610 dated 05.12.1990 (Annex.R/1) the applicant was declared medically unfit and was recommended for retirement. Upon having been directed by this Tribunal in OA No.581/2003 dated 07.12.2004, he was subjected to medical test in the year 2005 and vide medical certificate No.B279718 dated 01.03.2005, in Form M4B, he was declared unfit in all categories due to poor vision (Annex.R/2). However, the applicant approached this Tribunal, yet again. Thereupon, as directed by this Tribunal, he was sent for fresh medical examination and vide form M4B medical certificate M4B No.B243523 dated 04.10.2006, he was declared fit for service in C2 class (visually handicapped) (Annex. R/3). However, the applicant once again approached this Tribunal through O.A. No.41/2009 in which this Tribunal had directed the respondents to examine his representation and give a speaking order/reply. Tribunal's order in OA No.41/2009 was complied with by the Respondent vide letter No.ET/351/CC-500 dated 19.01.2010 (Annex.R7).

- 12.3 The main issue in this case is engagement of the original applicant and payment for the duration for which he had worked. In his written arguments, the counsel for the applicant reiterated his assertion that the applicant was forcefully kept out of work since 11.03.1989 till 29.01.2007. He has also questioned striking off the name of the applicant from the muster roll w.e.f 01.04.1990 (Annex.R/5Colly) without following any disciplinary proceedings under R.S (D&A) Rules 1968 and without any approval of the competent authority. The counsel for the applicant has contended that the PPO issued to the original applicant was defective as it did not show the entire period from 23.11.1984 to 08.04.2016 as qualifying service. He had also contended that salary details showing Rs.8,900/- as the last pay was not correct because there was no compliance of this Tribunal's order in OA No.93/2010 dated 03.12.2012 (Annex.A/13) on fixation of applicant's pay on notional basis from 23.11.1984 to 31.01.2007 with arrears from 01.02.2007. Nor was continuity of service provided, the counsel submitted. Finally, the counsel for the applicant argued that that the PPO issued by the respondents showed the total service only as 9 year 10 months and 18 days in the column 15 of the PPO and showed the net qualifying service as 10 years. The service verification sheet also shows 9 years 10 months and 18 days as period for which the original applicant had actually worked, ignoring all these years that have been impugned by the respondents.
13. The counsel for the respondents argued that since the applicant was on temporary status and was not regularized, his total actual duration of work as admissible had been shown in the PPO. He reiterated that



duration of work was based on actual days on which the applicant had worked and there could not be any claim to wages for the period for which the applicant had actually not worked. The days of work on which the applicant actually worked, were clearly mentioned in the Railways communication at Annex. A/2. The counsel also submits that the second para of this letter mentions that upon getting temporary status, the substitute would not acquire any right or entitlement to continuously getting engaged and that he would be entitled to the wages for the days on which he had actually worked in a month. The counsel said that with these stipulations, question of wages for the period of absence would not arise. There are clear rules about taking into account the services including the service rendered on temporary status. As per the extant rules, the duration spent on temporary status cannot entirely be reckoned as qualifying service.

14. Counsel for the applicant has relied on certain judgments of the Principal Bench and other benches of this Tribunal. However, in this particular case, medical fitness is an indispensable requirement as per extant rules. The records placed before us mention the number of days that the applicant had actually worked. If he has not worked, the question of payment would not arise, as stipulated in para 2 of the office order No.ET/615/3/1/1988 dated 09.03.1989 (Annex. A/2). Similarly the stipulation regarding medical fitness is also clear. Learned counsel for the applicant has relied on certain judgments of the Principal Bench and other benches of this Tribunal. In B.M. Jha vs. UOI in OA No.2308/1992, PB had observed on 11.01.2020 that 'No work no pay' rule is not applicable where employee is willing to work. Similar

observations were there in the order in OA No.283/1999 by Jaipur bench of this Tribunal. The applicant has referred to few other orders/judgments of similar nature. The most crucial requirement that emerges from these judgments is whether the applicant was kept out of work by the employer. Though the learned counsel for the applicant averred that the applicant was not at fault, there is no documentary evidence to show that he was deliberately kept out of work by the respondent. The Annexure 1 is self explanatory. The respondents had paid for days that the applicant had rendered service on, even after a gap of 3 to 5 years, which does not give the impression that there was any deliberate attempt on part of the respondents to keep the applicant out of employment. Be it as it may, it is necessary to refer to the note of Annexure A2 which makes it very clear that the casual/substitute workers who were given temporary status were not automatically employed in class IV service as they must appear in all screening that might be required to be undergone from time to time. This being the factual matrix, the judgments relied upon would be of no rescue for the applicant because the context and circumstances here are quite different from ones in these judgments. Evidently the applicant had been approaching this Tribunal on various occasions and this Tribunal had been directing the respondents to consider the applicant's representation and decide the issue. From the entire sequence of events, two things are clear. One, the applicant has remained absent or did not work for various duration as mentioned in the records (Annex. A1). It is difficult to accept any malafide on part of respondents because the applicant was not stopped from working even if he presented himself after long gaps.

Further, we see that the respondents have been complying with direction given by this Tribunal. Even after declaring medically unfit in 2005, respondents put the applicant for fresh medical fitness test in 2006 after having been directed by this Tribunal. There is no record or document to suggest that the applicant presented himself for work and the respondents prevented him from working or did not allow him to work. Under these incontrovertible records of presence for work, we are not convinced that the applicant could not work due to the fault of the employer i.e., respondents and hence, the question of back wages too does not arise.

15. After hearing the counsel for both the parties and going through the records and the documents produced before us, we are constrained to observe that the applicant has not been able to make a valid ground for the reliefs that he seeks. His case lacks merit as his claim follows from a perception that do not emanate from the available records or from the rules governing the service. The OA is therefore, dismissed. MAs, if any pending are also disposed of accordingly. No Cost.

**A.K.Dubey**  
**(Administrative Member)**

**Jayesh V. Bhairavia**  
**(Judicial Member)**