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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI

O. A. NO. 1205 OF 1987.

DATE OF DECISION: 11-9-1991.

Kamal Singh.

.. Applicant.

vs.

Divisional Railway Manager,
Central Railway and another.

.. Respondents.

Sri

Shri A.Kalia for/R.L.Sethi, Counsel for the Applicant.

Shri M.L.Verma, Counsel for the respondents.

CORAM:

Hon'ble Mr.G.Sreedharan Nair, .. Vice-Chairman.

Hon'ble Mr.S.Gurusankaran, .. Member(A)

JUDGMENT

Hon'ble Mr.S.Gurusankaran, Member(A):

The applicant was engaged as a substitute Assistant Postman ('AP' for short) at Lonavala under Station Master, Lonavala from 21-11-1981 to 3-7-1983 and his services were then discontinued. He was again reengaged against casual leave vacancies in a different unit under Traction Foreman (Loco), Lonavala from 13-2-1984 as a Box Boy upto 19-4-1984 and later was continued in the same unit as a substitute AP. He was then sent for medical examination for A/2 category prior to screening and absorption against any temporary or permanent Group-D post. Since the applicant filed in the medical examination for A/2 category, applicable to AP, his services were discontinued with effect from 20-7-1985. He then gave a representation dated 19-8-1985 to send him for another medical examination and take him back on duty and went to his native place. Since he has not been re-engaged again after that, he has filed this application praying for issuing a direction to the respondents to take

him back to duty immediately and pay him all back wages from 20-7-1985. He has also prayed for directing the respondents to continue him in service with all benefits and send him for medical examination for B-2 category; as they have done in a few other cases.

True

2. In his application, the applicant has stated the results of the medical examination were never communicated to him and his services have been orally terminated without complying with the provisions of Section 25F, 25G and 25N of the Industrial Dispute Act (ID Act for short). He has also referred to the mandatory provisions of Rule 2501 of the Indian Railway Establishment Manual ('Manual' for short) and contended that the termination of his services is null and void. He has submitted that the respondents should have sent him for remedical examination in lower category of B/1 or B/2 and engaged him in an alternative post. He has alleged that his juniors are still being continued in service, while he has been discharged. He has also alleged that one Sri R.C. Dhurve, who had also failed in A/2 medical examination was sent for B/2 medical examination and after he was declared fit in that category, was engaged as a Khalasi. Since the termination of his service is in violation of Section 25-F of the ID Act and Rule 2501 of the Manual, he should be reengaged immediately along with back wages.

3. The respondents have in their reply resisted the claims of the applicant and stated that his services were terminated as per the Rules only, because he could not qualify in the medical examination. They have, therefore, submitted that the provisions of ID Act do not apply in the present case. They have pointed out that the said Sri R.C. Dhurve was engaged in 1978 and when he failed in medical examination in 1982, he was sent for re-medical examination

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in B/2 category as some vacancies were available in the category of Box Boys/Khalasis. The applicant is much junior to the said Sri R.C.Dhurve and at the material point of time in 1985, no vacancies were available in the posts for which medical category was B/2. Hence, the applicant was not sent for re-medical examination in B/2. The provisions of the Manual for giving alternative employment does not apply to casual labour/substitutes, who fail in the initial medical examination. The respondents have, therefore, submitted that they have not violated any Rules in discontinuing the services of the applicant in the circumstances explained above.

4. We have heard both the parties. There is no dispute about the facts and the services of the applicant were discontinued only because of his failure to pass the medical examination and not for any other reason. There is no other allegation also except about the failure of the respondents to re-engage him in suitable category. The counsel for the applicants could not produce before us any Rule of the Manual or instructions stating that the casual labour/substitutes, who fail to pass the medical examination in the ^{Required} ~~recognised~~ category, have to be necessarily given alternative employment. In fact Rule 2604 of the Manual mentions about giving alternative employment only in case of medically ~~decategorised~~ Railway servants, who are permanent or temporary Railway servants. Even in the case of temporary Railway servants, Rule 2604 states that it is not obligatory to give alternative employment, even though every effort should be made to find a suitable alternative employment. No such provision has been shown to us in case of substitutes/casual labour, who have only attained "temporary status" and not actual holders of civil posts. On the other hand we find that the respondents have stated that there is no vacancy in the posts having lower ^{medical} middle classification at the relevant point of time. The contention of the applicant

that the termination of his service on his failure to pass the required medical exam would amount to retrenchment under clause 2(oo) of the ID Act cannot be accepted, since the termination of a workman on the ground of continued illhealth would not amount to retrenchment. We, therefore, find nothing illegal in the action of the respondents in terminating the services of the applicant from the date of his failure to pass the medical examination.

5. In the light of the above, we do not find any merit in the application and the application is dismissed.

Parikh
11/9/1941
MEMBER (A)

Disco
11/9/1941
VICE-CHAIRMAN.