(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 251/1990 Date of Decision March 18, 1991

ROHTAS ... APPLICANT

VS.

UNION OF INDIA & OTHERS ... RESPONDENTS

SHRI V. P. SHARMA ... COUNSEL FOR APPLICANT

SHRI JAGJIT SINGH ... COUNSEL FOR RESPONDENTS

CORAM : HON'BLE SHRI T. S. OBEROI, MEMBER (J)
HON'BLE SHRI P. C. JAIN, MEMBER (A)

J U D G M E N T

Shri P. C. Jain, Member (A) :

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for :

(1) a declaration that the action of the respondents in not considering the applicant to a post commensurate with his medical categorisation is illegal, unjust and liable to be declared as null and void; and

(2) that the respondents be directed to consider him for the post where medical standard of C-II is required.

2. The relevant facts, in brief, may be stated as below.

The applicant was initially engaged as a casual labour on 6.11.1976 as Gang Man. He worked as such during various periods up to 31.1.1982. When he appeared for

medical examination, he was declared medically unfit on 3.2.1982 before he could have been screened for a regular post. He prayed for medical re-examination and on such re-examination on 29.3.1984 he was declared fit only for category C-II. His grievance is that since then he has not been given any alternative job. The applicant states that he was told that whenever there is a vacancy in C-II category he shall be called for such appointment. He made a representation on 28.5.1988 (Annexure A-5) to which no reply is said to have been received so far.

3. The applicant's case, in brief, is that he was granted temporary status on completion of 120 days of service; that as per the seniority list prepared for casual labour his name appeared at serial No. 62 but persons junior to him who were similarly placed were absorbed but he has been ignored; that as per the Railway Board policy instructions issued on 8.6.1981 he having put in six years service, whether continuous or in broken periods, should have been included in a panel for appointment to Class IV post and he should have been medically examined on the basis of relaxed standards and thereafter even if found unfit for the particular category despite the relaxed standards should have been considered for appointment against an alternative post for which 25 per cent posts have been reserved; and that casual labour who have put in 120 days of service in broken periods are also required to be screened if in the seniority list of casual labour maintained in the unit, their juniors become eligible and come up for screening.

4. The respondents have contested the application by filing a reply and have also taken up the plea that the application is barred by limitation.

5. We have carefully perused the material on record and also heard the learned counsel for the parties. The relevant portions of the Railway Board policy circular dated 8.6.1981 may first be referred to. These instructions clearly provide that such of the casual labour who continue to do the same work for which they were engaged or other work of the same type for more than 120 days without a break will be treated as temporary after expiry of the 120 days' continuous employment on open line and 180 days on projects (emphasis supplied). The service details given by the applicant in his application show that though he was engaged from time to time between 6.11.1976 till 31.1.1982, yet he never put in 120 days of continuous service. Thus, he could not have been granted temporary status. His contention in the O.A. that he was granted the temporary status on completion of 120 days of service has also not been substantiated with any other evidence.

6. The applicant has relied on clause vi of para F of the aforesaid Railway Board circular, which is reproduced as below :

> "vi) Casual labour who have not put in 120 days continuous service, but who have over 120 days of service in broken periods may also be screened if in the seniority list of casual labour maintained in the unit, their juniors become eligible and come up for screening."

The applicant has also averred that persons junior to him who were similarly placed were absorbed whereas he has been ignored for such absorption. The respondents in their reply have stated "that no junior person not included in a panel of Class IV post for regular post and was medical de-categorised as in the case of the applicant has been absorbed/given an alternative employment by the answering respondent." The relevant provision of the aforesaid Railway circular, as reproduced above, provides only for screening if persons junior in the seniority list become eligible and come up for such screening. The fact that even though the applicant has not mentioned particulars of the so called juniors, it would suffice to state that the fact that the applicant was sent for medical examination is indicative of the position that the case of the applicant was also considered but he was found medically unfit for the post for which he was sent for such medical examination. For the lower medical category, the respondents' reply as referred to above negatives the plea of the applicant.

7. The other relevant portion of the Railway Board circular dated 8.6.1981 and on which the applicant has relied upon is as below :

> "ix) a) When casual labour who have put in six years service whether continuous or in broken period, are included in a panel for appointment to Class IV post and are sent for medical examination for first appointment to regular service, the standard of medical examination should not be the one that is required forfirst appointment but should be a relaxed standard as prescribed for re-examination during service.
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> b) Such of the casual labour as are found, on medical examination, unfit for the particular category for which they are sent for medical examination despite the relaxed

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(13)

> standard prescribed for re-examination 25% be considered for alternative category requiring a lower medical classification subject to their suitability for the alternative category being adjudged by the screening committee, to the extent it is possible to arrange absorption against alternative posts requiring lower medical classification."

From the perusal of the above, it is clear that this is applicable in cases where a casual labour has put in six years service whether continuous or in broken periods, and are included in a panel for appointment to Class IV post. In the case before us the applicant has not put in six years service inasmuch as he was first engaged on 6.11.1976 and never engaged after 31.1.1982, and this period is short by about 9/10 months of six years. Even otherwise, the total number of days of service put in by him during the above period is shown to be 564 days which is less than two years. Further, he was never included, after screening, in the panel for Class IV post. As such, on both counts the above provisions do not apply to the applicant.

8. Learned counsel for the applicant also referred to a judgment of a Division Bench of the Central Administrative Tribunal in Shri Beer Singh & Others vs. Union of India & Others delivered on 16.3.1990 in O.A. 78/1987. The said case is not relevant as it relates to the issue of abandonment of service by a casual labour who had acquired temporary status. In the case before us neither the applicant acquired temporary status nor is it a case of abandonment of service.

9. The plea of bar of limitation taken by the respondents is also not without force. In this application the applicant seeks a direction for giving him job

commensurate with his alternative medical categorisation of C-II which was given in March/April, 1984, and also a declaration that the action of the respondents in not giving him a job as above is illegal. The cause of action, therefore, accrued in April, 1984 but the applicant has filed this O.A. in January, 1990. The only explanation is that he was awaiting the offer from the respondents as and when a vacancy in C-II category became available, and that his representation dated May, 1988 has not been replied to. Legally this does not give any satisfactory explanation for the delay. There is no prayer for condonation of delay either.

10. In view of the foregoing discussions, we are of the view that the application is devoid of merit and the same is accordingly dismissed with cost on parties.

18/3/1991
(P. C. Jain)
Member (A)

18.3.91
(T. S. Oberoi)
Member (J)