

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

(1A)

O.A. No. 682/1990  
T.A. No.

199

DATE OF DECISION 05.02.1992.

<u>Shri Khyali</u>	Petitioner
<u>Shri B.B. Srivastava</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India &amp; Another</u>	Respondent
<u>Shri O.P. Kshatriya</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN (J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

JUDGMENT (ORAL)

(of the Bench delivered by Hon'ble Shri P.K. Kartha,  
Vice Chairman (J))

We have heard the learned counsel of both parties. The grievance of the applicant is that his services were terminated by the respondents on the ground that at the time of screening, he was declared medically unfit in B-II category. The learned counsel for the applicant stated that the applicant has continuously worked from 1958 to 1987. The period of service rendered by him has been mentioned in paras 4.1 and 4.2 of the application.

2. The version of the respondents is that the applicant was engaged as casual labourer with PWI Tughalkabad, Delhi with effect from 15.05.1986. The respondents have not stated anything about

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the previous service rendered by the applicant. They have also not stated that the record of service contained in the Casual Labour Card of the applicant is not correct. The casual labour card indicates that the applicant has rendered service from May, 1975 onwards.

3. After the medical authorities declared the applicant as medically unfit, the applicant had made a representation to the respondents along with the medical opinion given by the Safdarjang Hospital, requesting that he may be medically examined again. The applicant is entitled to prefer an appeal to the Appellate Board against the decision of the medical authorities. In fact, the respondents had decided to do so but they did not send the applicant to the Appellate Board for re-examination. The applicant belongs to the Scheduled Tribe community in whose case the instructions issued by the Railway Board on 13.2.1976 would be applicable. According to these instructions, persons belonging to the SC/ST communities, who fail in the medical examination for the particular category to which they have been recommended for appointment, have to be again referred for medical examination to determine their suitability for appointment in a specific lower category. If a candidate fails in the lower medical category also, his/her case be again referred to the medical department to examine if he/she is medically fit for a still lower category. The instructions proceed to state that in the case of the candidates belonging

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to the SC/ST, while initially referring the cases to the medical examination, the Medical Memo should bear the following requisition also:-

" In case he/she is medically unfit for the above medical category please state whether he/she is medically fit for any of the following medical category".

4. There is nothing on record to indicate that the aforesaid instructions issued by the Railway Board were followed in the instant case.

5. The respondents have raised a plea of limitation in filing the application. In our opinion, in a case where the applicant has worked for more than 29 years as casual labourer, the plea of limitation should not have been raised by the respondents. The termination of the services of the applicant was not after following the proper procedure in cases of medical unfitness of the employees concerned.

6. In the facts and circumstances of the case, we set aside and quash the impugned order of termination of the applicant. The respondents shall reinstate the applicant as casual labourer within a period of 3 months from the date of receipt of this order. After reinstating the applicant, the respondents shall <sup>within a month</sup> forward the case of the applicant to an Appellate Medical Board along with the certificate given by the Safdarjang Hospital and any other

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*[Handwritten circle containing '7']*

certificate which the applicant may be asked to produce. While forwarding his case to the Appellate Medical Board, the respondents shall follow the procedure laid down in the Railway Board's instructions dated 13.2.1976 at Annexure A-7 to the application, pages 18 and 19 of the paper book. We further direct that the applicant should also be paid back wages <sup>immediately</sup> for a period of 2 years preceding the date of reinstatement within a period of 3 months. The application is disposed of accordingly.

There will be no order as to costs.

*[Handwritten signature]*  
(D.K. CHAKRAVORTY)  
MEMBER (A)  
05.02.1992

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(P.K. KARTHA)  
VICE CHAIRMAN (J)  
05.02.1992

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