

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1056 of 1998

Allahabad this the 25th day of November, 2004

Hon'ble Mr. A.K. Bhatnagar, Member (J)
Hon'ble Mr. D.R. Tiwari, Member (A)

Raj Kumar, aged about 31½ years, Son of Shri Ghasite,
resident of 20 Harijan Basti, Karela Bagh Colony,
Allahabad.

Applicant

By Advocate Shri R.K. Nigam

Versus

1. Union of India through General Manager, Northern
Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway,
Allahabad.

Respondents

By Advocate Shri A.K. Gaur

O R D E R

By Hon'ble Mr. A.K. Bhatnagar, Member (J)

By this O.A. applicant has prayed for the
following reliefs:-

"(1) to issue a writ, order or direction in the
nature of Certiorari, thereby quashing the impugned
order dated 29.08.97 (annexure A-1 of the First
Compilation, in so far as it relates to the petitioner.

(ii) to issue another writ, order or direction in
the nature of mandamus, thereby commanding the ..pg.2/-
respondents to reinstate the petitioner and also
treat him duly regularised in Group (D) and pay all
the consequential benefits and continue him in the
employment till such time as his services are
determined in accordance with law.pg.2/-



(iii) to issue another writ, order or direction in the nature of Mandamus, thereby commanding the respondents to grant pension to the petitioner as per law and to release compassionate appointment in favour of petitioner's wife immediately after the petitioner's services are terminated on medical ground, after his fresh reinstatement and full payment of back wages. "

2. The brief facts, as per the applicant, are that he joined as casual Safaiwala for T.T.E's Rest Room, Northern Railway, Mughalsarai. He acquired temporary status and was remained to be a temporary servant. Thereafter, his services were terminated vide order dated 10.02.1990 without following the mandatory provisions of Indian Railway Establishment Manual(Vol.II). The illegality of the above order was challenged in O.A.No.545 of 1990 Makkhan Lal & Others Vs. Union of India and Others, in which the applicant was also a party, which was decided on 05.07.1993 by the following order:-

9. We direct the respondents to place the names of the applicants in the Live Casual Register and thereafter to take up their cases for screening and regularisation in their turn. In any case, the applicants are entitled for re-engagement and they should be re-engaged with immediate effect by giving preference over juniors and outsiders. With these observations, the application is allowed. The parties shall bear their own costs."

3. When the above order was not implemented, a contempt petition no.88/95 was filed and notices were issued to the opposite parties. After that, the applicant was called in the Office of respondents and he was reinstated vide order dated 02.11.1995(ann.A-4). As per the applicant he has worked in Class IV(Group D)

post in the grade of Rs.750-940. The grievance of the applicant is that neither the backwages were paid to him nor any regularisation order was passed in his favour. In the intervening period hundreds of juniors/counter parts were regularised on Group 'D' post. Therefore, he claims to be through out in the service from the date of removal i.e. 10.02.1990 to the date of reinstatement i.e. 02.11.1995. He also claims that he was entitled for the entire wages for this period, and for regularisation as per rules. His work and conduct after his reinstatement on 02.11.1995 was found to be excellent as shown by annexure A-5. Suddenly on 29.08.1997, the applicant was surprised to see a letter thereby informing him that the applicant is subjected for medical examination in which he was declared unfit by the Medical Superintendent for all classes, so there was no provision to continue the applicant in railway service. Hence, he filed this O.A. challenging the order dated 29.08.1997.

4. Learned counsel for the applicant submitted that as per the Judgment passed in O.A.No.545 of 1990 the applicant is entitled for reinstatement with full backwages from the date of discharge and further was entitled for regularisation of his services with all consequential benefits. Learned counsel further submits that he is entitled for pension if he is being declared unfit on medical ground and his entire period of service should be counted. He has further argued that his wife ought to have been offered ^{ad} a compassionate appointment also.

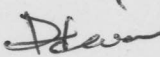
5. On the other hand learned counsel for the respondents filed Counter Affidavit, inviting our attention on paragraph nos.7, 14, 15 and 24 of the counter affidavit


and submitted that the applicant has worked from 16.11.1985 to 09.02.1990 for 1398 days, thereafter services of the applicant were dispensed with vide order dated 21.02.1990, then the applicant filed an O.A. In pursuance of the order passed in the O.A. the applicant was appointed as Safaiwala w.e.f. 02.11.95 but due to non receipt of post facto approval the applicant was not granted the C.P.C. scale. After receiving the post facto approval from the General Manager at the time of screening, the applicant was sent for medical examination in the lowest cadre C-2 but even in that category, the applicant was not found successful. Therefore, it was not possible to retain the applicant in railway service. It is further submitted that in pursuance of the order of this Hon'ble Court dated 05.07.1993 the respondents ensured full compliance of the order and in pursuance thereof the applicant was appointed/engaged w.e.f. 02.11.1995 after registering his name in the Live Casual Labour Register. He was not given the scale of Rs.750-940/- in C.P.C. scale as no approval was received from the Headquarters' Office, New Delhi. Learned counsel finally submitted that as the applicant could not clear the medical test, which was necessary for inducting in the railway service and after the medical examination, the applicant was informed vide letter dated 27.08.1997 that the candidates who have been not found successful in the medical, are not allowed to work in the railways. The letter dated 27.08.1997 and the medical examination certificate of the applicant are filed as annexure R-1 and annexure R-2 respectively to the counter affidavit.

6. We have heard the learned counsel for the parties and perused the record.

7. Admittedly, the applicant worked as Safaiwala from 16.11.1985 to 09.02.1990 in the respondents establishment. Thereafter his services were dispensed with by the respondents and he filed an O.A. against the same. On the direction of this Tribunal, he was re engaged on 02.11.1995 but as he could not cleared the medical test, which ^{was} ~~is~~ necessary for induction in the railway service, his services were not regularised. We have also gone through annexure R-1 by which the applicant was informed regarding unfitness of the applicant in the medical test. The respondents have also annexed annexure R-2, which clearly stated that the applicant is unfit for appointment in all categories.

8. In view of the above, we find no merit in the O.A. and the same is accordingly dismissed with no order as to costs.


Member (A)


Member (J)

/M.M./