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CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH ALLAHABAD

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T. A. NO. 1671 of 1986 (T)

in

Suit No. 155 of 1984.

Mohammad Jameel Petitioner.
vs.

Union of India & ors Respondents.

Hon'ble Mr K. Nath, V.C.

Hon'ble Mr K. Obayya, A.M.

(By Hon. K. Obayya, A.M.)

The above described suit is before us on transfer from the Court of Munsif, Sadar, Faizabad for disposal under Section '29' of the Administrative Tribunals Act, 1985. The plaintiff has sought a decree against the defendants to reinstate him in service as 'KHALASI' in Electrical, in the Northern Railway at Faizabad and to treat him as a permanent employee. There is also a prayer for award of costs.

2. The case of the plaintiff is that he is a qualified 'Electrician' and holds a licence issued in 1965 by Electrical Inspector, U.P. State Government. He was employed as a Casual Electrical Wireman in the Rly. Workshop at Faizabad, in the Northern Railway against temporary sanction received from time to time. During the period of 14.04.1967 to 09.05.1978, he worked in spells for a total number of 1200 days. He rendered satisfactory service and performed duty as a loyal employee during the strike in 1974. He was sent for screening for regularisation of service, but was not selected. He appeared

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before the Chief Medical Officer, Faizabad, and was given a fitness certificate on 05.07.1976. He represented to the authorities to give him another opportunity to be sent for screening, but was informed by a letter dated 08.01-1983 that he has not been selected.

3. It is contended by the plaintiff that in spite of his long service and Medical Fitness Certificate, he has not put to duty though there are vacancies. Candidates who were junior to him have been absorbed as Permanent Employees. This is against the principles of "LAST COME FIRST GO". It is further contended that his termination without opportunity or notice is against the principles of natural justice. It is further contended that the plaintiff is workman under the Industrial Disputes Act; as such his termination without one month notice and retrenchment compensation is illegal. The order for termination was passed by Sr. Electrical Chargeman who being not the appointing authority, is not competent to pass orders terminating service of the applicant.

4. The respondents contested the suit by filing a written statement in which they have denied the claims of the plaintiff for permanent absorption. According to them, the plaintiff was appointed as a Casual Wireman against a temporary sanction from time to time. After completion of 120 days of service, he was sent for medical examination, but he was declared unfit for 'B-I' category. He was again allowed to appear for a Lower Medical Classification, but there also he was found medically unfit. He was sent for screening for

empanelment to the post of 'Electrical Khalasi', but he was found unsuitable. As he was unfit medically and also found unsuitable in screening, his name was removed from the Muster Roll on 01.09.1978. It is their further contention that they have given full opportunity to the plaintiff by sending him for screening and also for medical test for 'B-I' category and, also for a lower category; as he was not found medically fit, he was not entitled for regularisation as per rules. It is alleged by the respondents that the Medical Certificate produced by the plaintiff cannot be relied upon as it has been secured by the plaintiff on his own and the certificate was not issued by the competent authority to whom his case was referred to by the Rly. Administration.

5. In the Rejoinder, the plaintiff mentioned that he has worked for 240 days; it was mandatory for the defendants to give him 14 days notice and also pay retrenchment compensation in accordance with the provisions of the Industrial Disputes' Act. He also stated that according to the Rly. Board Circular dated 16.11.1960, minimum 14 days notice is mandatory as he has worked for 240 days continuously in a year.

6. We have heard the counsel for both the parties and also perused the record. It would appear from the record that after completion of 120 days of service as 'Casual Employee', the plaintiff was given the temporary status and he was sent for screening for regularisation to the post of Khalasi Electrical but in screening he was found unsuitable. ^{W&I} He was also sent for Medical Fitness in the 'B-I' category; there also he was

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found unfit. The plaintiff has filed the Medical Fitness Certificate issued by the Chief Medical Officer, Faizabad dated 05.07.1976 along with his Rejoinder. We have carefully examined this certificate. This certificate was no doubt given to the plaintiff but it is noted in certificate that he was examined for employment in the Soil Conservation Deptt. and not in the Rlys. As against this, the certificate dated 22.05.1976 issued by the Assistant Medical Officer, Northern Rly. under reference by the Rly. Admn. indicates that the plaintiff has been found unfit for 'B-I' category, which has to be relied upon for a post in the Rly. Service and not a Fitness Certificate which found him fit in Soil Conservation Deptt. in the State Government. In the circumstances, we hold that the claim of the plaintiff for regularisation has no merit. The Rly. Admn. has given him opportunity to appear for screening and also for Medical Fitness, as he was found unfit there was no alternative for them to except to terminate his service.

7. So far as the case of the plaintiff as a Workman in the Industrial Disputes Act is concerned, admittedly he has served for more than 1200 days, but this service is over a period of 11 years between 14.04.1967 to 31.08.1978. As he was given temporary status, evidently he has put in 120 days ^{in an year} of service, but the plaintiff has not filed any statement nor furnished any data to show that he has served for 240 days in an year which alone will entitle him for benefit under the section 25(f) of the Industrial Disputes Act, 1947. The respondents have denied the entitlement of the plaintiff ^{on offer}

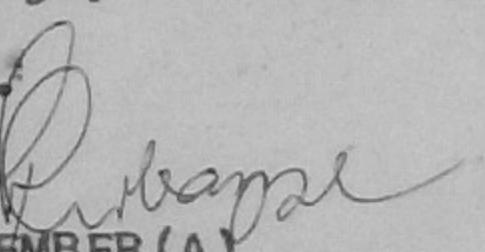
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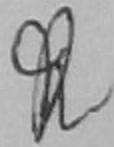
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the ground that he has not been in service for continuously for 240 days.

8. Reliance by the applicant on the decision in the case of Syed Hussain Vs Station Master, Rauzagaon, 1988 U.P. & B.E.C. 87 (Tri) is misplaced because that was not a case of Medical unfitness. Further the claim under section -F 25 of the Industrial Disputes Act was rejected on the ground that the petitioner had not completed one year's continuous service for the purpose as here. Similarly, the decision in the case of Union of India vs Chaturi Prasad 1985 F.L.R. 603 is of no help to the applicant because there the petitioner although found unfit for one category was found fit for a lower category. That is not the case before us. We also notice that while the applicants name was struck off from the rolls on 01.09.1978, he filed the Original Suit on 31st May, 1984 and it is admitted in para 13 of the plaint that the suit has been filed after the statutory period of limitation.

9. Taking the facts and circumstances of the case, we are of the view @ that plaintiff's case for regularisation has no merit since he was found unfit both at screening and also at Medical Examination. He was found unfit medically even for a lower category. With regard to his benefits under the Industrial Disputes Act, there is no supporting data to establish that he has put in 240 days in the Northern Railway. In the result, the suit fails and accordingly the suit is rejected. Parties to bear their costs.


MEMBER (A)

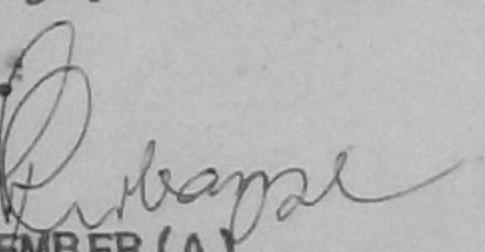

VICE-CHAIRMAN

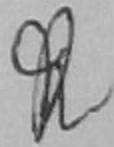
September 7, 1990

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8. Reliance by the applicant on the decision in the case of Syed Hussain Vs Station Master, Rauzagaon, 1988 U.P. & B.E.C. 87 (Tri) is misplaced because that was not a case of Medical unfitness. Further the claim under section 25 of the Industrial Disputes Act was rejected on the ground that the petitioner had not completed one year's continuous service for the purpose as here. Similarly, the decision in the case of Union of India vs Chaturi Prasad 1985 F.L.R. 603 is of no help to the applicant because there the petitioner although found unfit for one category was found fit for a lower category. That is not the case before us. We also notice that while the applicants name was struck off from the rolls on 01.09.1978, he filed the Original Suit on 31st May, 1984 and it is admitted in para 13 of the plaint that the suit has been filed after the statutory period of limitation.

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