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Court no.2
reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Transfer Application no. 727 of 1986

K.N.Odichya

... plaintiff
applicant.

Versus

Union of India and others ...

Defendants
respondents.

Hon'ble D.S.Misra-AM

Hon'ble G.S.Sharma-JM

(Delivered by Hon'ble D.S.Misra)

This is an original suit no. 325 of 1982
instituted in the court of Munsif-I Jhansi, which
has come on transfer under Section 29 of the
Administrative Tribunal Act XIII of 1985.

2. In the plaint, the plaintiff has sought
a relief of declaration that the defendants should
treat his previous service of 17 years in continua-
tion of his present service and give him all the
benefits accruing therefrom.

3. The plaintiff's case is that he joined
his service as Points Man in the Central Railway
at Orai on 17.5.1955 and he was promoted as
Cabin man in 1970 and in the same year he was
promoted as Switchman and posted at Farah Station.
On 30.5.1972, Divisional Medical Officer, Jhansi
declared him physically unfit for any service in
the Railways. On appeal, he was declared fit for Category-C
post.

A2/2

The plaintiff's grievance is that instead of appointing him on Category-C post, the General Manager Central Railway appointed him as Workshop Khalasi under A.E.N.Bina. However, later on his cadre was changed and ^{he has been} made a peon. The plaintiff was not given any benefit of his previous service since 1955 and illegal break in his service was caused. The plaintiff made several representations to the higher authorities requesting for appointment against category-C post and also for giving him the benefit of his previous service, but no orders were passed in his favour: Hence the suit.

4. Defendants filed written statement stating that after the plaintiff was declared medically unfit for all classes by D.M.O. Jhansi on 30.5.1972, he had filed a civil suit (O.S.no. 729/73) in the court of Munsif Jhansi for declaration that the order of D.M.O. Jhansi declaring him unfit for all classes was void. The said suit was dismissed on 27.5.1975 and the appeal thereafter was also dismissed on 2.1.1976. The defendants denied the allegation of the plaintiff made in para 7 of the plaint that any assurance was given to the plaintiff while his suit was pending in the civil court. It is alleged that on his being declared medically fit for Class-C post by the Medical Board, the plaintiff had refused to work on alternative Class-C post and at his own request he was paid his all settlement dues and his service had ended. It is added that the question

of continuance of plaintiff in service had closed after dismissal of the plaintiff's suit and the appeal filed by him. It is further alleged that on receipt of a mercy appeal from the plaintiff, the Railway Board purely on humanitarian ground had decided to provide him a job suiting his physical fitness as a fresh entrant. It is further alleged that the defendants after examining the physical fitness found the plaintiff fit for the post of peon and the plaintiff was appointed afresh as a peon. The defendants denied the claim of the plaintiff for being given any benefit to his present post for the service rendered by him in the past. The defendants stated that after receiving the settlement dues the plaintiff had no lien on any post in the Railways. The allegations made in paras 15, 16, 17, 18 and 19 of the plaint are denied. The defendants also stated that the suit is barred by principle of res judicata as his earlier suit for the same relief was dismissed on 27.5.1975 and the appeal filed by him was also dismissed on 2.1.1976. Neither the plaintiff, nor the defendants filed any paper in support of their case.

5. We have heard the arguments advanced on behalf of the plaintiff, but were deprived of the assistance likely to be rendered on behalf of the defendants as their learned counsel did not appear before us when the case was taken up. It is unfortunate that no party has filed any document in support of its allegations in this case. The burden to prove that on appeal the C.M.O. Bombay had declared the plaintiff

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fit for category -C job as alleged in para 5 of the plaint was on the plaintiff as this fact was admitted by the defendants in their written statement with the qualification that it was done purely as an act of clemency, to provide him a job as a fresh entrant vide letter dated 27.3.1979, hence the plaintiff is not entitled to get any benefit of his past service. The plaintiff having failed to discharge his burden by producing the necessary evidence, we are, therefore, unable to accept his contention that he was found fit for category C post in continuation of his past service. His suit further appears to be barred by res judicata. It has therefore no force and merits dismissal.

No other point was pressed or arises for consideration.

6. The suit is accordingly dismissed without any order as to costs.

A.M.

J.M.

J.Singh. 19.1.1987.