

(83/1)

Reserved.

Central Administrative Tribunal, Allahabad.

Registration T.A.No. 1376 1986 (Civil Appeal No.433 of 1982)

Narain Singh Applicant

Vs.

Union of India ... Respondent.

Hon. Ajay Johri, AM
Hon. G.S. Sharma, JM

(By Hon. G.S. Sharma, JM)

This transferred application is an appeal against the judgment and decree dated 28.7.1982 passed by the II Addl. Munsif Moradabad dismissing suit no.628 of 1980 filed by the applicant and has been received by transfer from the Court of III Addl. District Judge Moradabad under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The case of the applicant (hereinafter referred to as the appellant) is that he was appointed as casual labour-Gangman in the Moradabad Division of the Northern Railway on 7.11.1975 and during the course of employment he sustained an injury on 22.11.1976 on account of which, he remained on medical leave till 18.2.1977. After resuming his duty from 19.2.1977, the appellant was satisfactorily discharging his duties and for absorbing him in regular service, he was sent for medical examination. He was however, declared medically unfit. He accordingly filed the suit giving rise to this appeal after serving the respondents with a notice under Section 80 Civil Procedure Code for a declaration that after completing the prescribed period of qualifying service, he is entitled to absorption as Gangman in regular vacancy and also prayed for a mandatory injunction directing the respondents to absorb him as a Gangman in regular capacity.

3. The suit was contested by the respondent and in the written statement filed on its behalf, it was admitted that the appellant had been working as a casual labour from

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29.11.1975 against work-charge sanction and on 22.11.1976 while posted at Babugarh, he sustained an injury and thereafter he resumed his duty on 19.2.1977. The appellant was not working continuously and it is also not correct to say that his performance was satisfactory. The respondent, however, took a sympathetic attitude to give the appellant light duty on account of his being permanently disabled by losing his right hand ring finger in the accident in which the injury was sustained by him on 22.11.1976. For his regular absorption, the appellant was sent for medical examination of B-1 class in which he failed and as such, the question of his absorption as regular gangman did not arise. The appellant had never worked as a Gangman and he was working only as a casual labour for irregular periods. Though medical fitness was necessary for the absorption of the appellant in regular service, the administration took a lenient and sympathetic view of his failure and offered him to give the chance of working as casual labour whenever it arose but the appellant did not turn up since 14.9.1980 and he is not entitled to any relief.

3. The learned trial court after considering the evidence produced before it by the parties came to the conclusion that the applicant was never appointed as a casual labour Gangman but was appointed only as a casual labour and without passing the required medical test, he is not entitled to absorption in regular service as Gangman. The suit was accordingly dismissed with costs.

4. Aggrieved by the findings recorded against him, the appellant filed this appeal and at the time of arguments before this Bench, it was contended on his behalf that the

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appellant had worked as a casual labour for more than 120 days and thereby he acquired the status of temporary railway employee and without initiating the proceedings under the Railway Servants (Discipline and Appeal) Rules, 1968, he could not be removed from service and he is entitled for absorption in the regular railway service with retrospective effect with all benefits of continuity and arrears of pay. The appeal has been contested on behalf of the respondent and it was contended that the appellant did not claim any absorption with retrospective effect nor claimed any consequential benefits and as he himself did not turn up to discharge his duties w.e.f. 14.9.1980, he is not entitled to any relief and his suit was rightly dismissed by the learned Munsif.

5. We have carefully considered the contentions raised before us and find that the appellant did not come to the Court with clean hands and the required full facts. He had examined himself as P.W.1 before the Munsif and it was stated by him that he worked regularly under the respondents upto 14.9.1980 and after his being declared medically unfit, he was not given duty by the respondent. In his cross-examination, he admitted that he had worked only as a casual labour and not in any other capacity and even on his resuming duty after medical leave, he was kept as casual labour. He further admitted that for appointment as Gangman, it is necessary to pass the medical examination and on account of his losing one finger he was found medically unfit. The suit was filed by the appellant on 29.11.1980 while according to the respondent he had already stopped working in the Railway from 14.9.1980. There is no allegation in the plaint that the respondent did not allow the plaintiff to work even as a casual labour from 14.9.1980. Even in the notice dated 17.9.1980 under Section

(A7u)

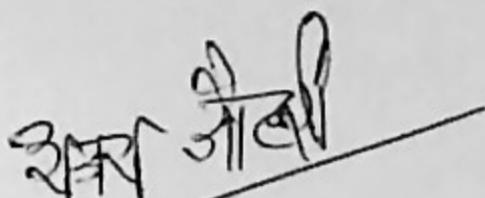
80 CPC, copy paper no.15-C, given by the appellant to the respondent before the filing of the suit, the appellant made no allegation that he was not being allowed to perform any duty from 14.9.1980. We are, therefore, not inclined to accept his case as developed in the witness box that he was not given any job after being declared unfit in the medical examination.

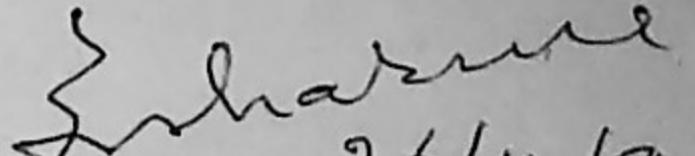
6. In reply to appellant's letter dated 1.5.1977 for providing him permanent job, the Divisional Superintendent Moradabad had informed the appellant on 13.5.1977 that for the injury sustained by him, he will be paid compensation but no advantage of this fact can be given to him for his permanent absorption in railway service. It appears from the service card of the appellant on record that from 19.11.75 to 14.9.80, he had worked for about 1630 days. It appears from the service card that from 15.1.1980 to 14.7.1980, he worked for 180 days with a break of only 2 days. He had thus acquired the status of temporary railway employee. As it has not been established on the record that from 14.9.80 the respondent did not allow the appellant to discharge his duties, the question of his reinstatement with retrospective effect in all respects does not arise. In case he himself did not turn up to discharge his duties on the refusal of the respondent to absorb him permanently on being declared medically unfit, the appellant cannot take advantage of his own mistake. We will, however, like to observe that in case the appellant had failed in the medical test of B-1 he could be sent for other tests of lower category/class and in any case, he could be considered for regular absorption against vacancies for disabled and handicapped persons and as the appellant had lost his one finger during the course of employment, even on compassionate grounds the respondent should consider the question of his absorption in permanent service according to his suitability for other jobs in case he is

not fit for absorption as a Gangman.

7. The appellant has placed his reliance on Ahsan Vs. Union of India (1987 (1) UPLBEC (Tri)-91) in which Allahabad Bench of this Tribunal had ordered the reinstatement of a casual labour with the advantage of continuity of service and back wages. In our opinion, the case law relied upon by the applicant has no application to his case as in the present case there is no order of termination or removal of the appellant from service. In case he himself stopped working as alleged by the respondent he cannot be held entitled to the back wages. The appeal, therefore, succeeds in part.

8. The appeal is accordingly allowed in part and the judgment and decree passed by the trial Court are hereby modified and the respondent is directed to consider the absorption of the appellant in regular service on the basis of his past service as casual labour according to his suitability in the light of the observations made above. The parties shall bear their own costs throughout.


MAMBER (A)


26/11/87
MEMBER (J)

Dated 26th Nov. 1987

kkb