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CENTRAL ADMINISTRATIVE TRIBUNAL, ALIAHABAD BENCH,
ALIAHABAD.

O.A. No. 960 of 1987
Brig Nath Dubey Applicant.

Versus

General Manager, Northern Railway, New
Delhi & others Respondents.

Hon'ble Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, A.M.

(By Hon'ble Mr. Justice U.C. Srivastava, V.C.)

The applicant was appointed as Motor Vehicle Driver and was granted authorised scale of pay with effect from 1.11.77. Since then the applicant continued to work with the result that he attained the temporary status, not permanent as contended by him. During inspection of driving, the applicant was found unsafe on account of poor health and weak eye-sight and his medical-examination took place and the applicant was declared unfit for category A-3. He was also found unfit for further two lower categories B1 and B2. He was found fit only for category C1 and that too with glasses. The question of alternative appointment was referred to the Divisional Superintendent Engineer, Northern Railway vide letter dated 11.8.87 to accommodate the applicant in some alternative job. The copy of this letter was also served on the applicant and the applicant was required to submit his willingness to work in lower categories but the applicant, it appears, did not give his willingness. According to the applicant, he was waiting for appointment but no appointment was ever given to him. While according to the respondents, the applicant rather absconded from duties from 15.9.87 to 19.10.87 without any permission or intimation. It was decided

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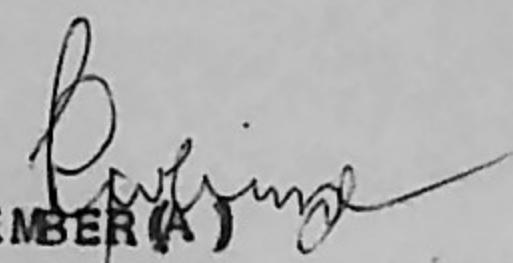
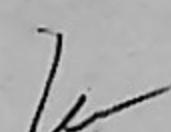
that the applicant, being fit in lower category of casual labourer and being not screened and panelled as permanent staff, may be terminated with immediate effect. Accordingly the applicant's services were terminated vide order dated 20.10.87. Efforts were made to serve the said order on the applicant more than once and ultimately it was posted on the notice-board in presence of the witnesses.

The applicant feeling aggrieved against termination order has approached this tribunal contending that the termination order was illegal and he already reported for duty but he was not allowed to join the duty. The applicant was declared medically unfit and was fit for C1 category. When an ~~offer~~ offer was given to him, he should have either given his acceptance or refusal. The respondents were clearly at fault in not giving alternative appointment and in that event the applicant could have been deemed to be in service entitling him to get salary for C1 grade but that event never occurred. In the mean time the applicant attained the age of superannuation and now he cannot be directed to go back in service.

2. Learned counsel for the applicant ~~exclusively~~ ^{strangely} contended that the termination order in these circumstances is illegal and there was no offer to the applicant to accept the lower category. When the copy of the letter was received by the applicant in which it was mentioned that in case he is willing to accept the lower category, the applicant should have either accepted or refused it but the applicant kept quiet. As such the

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respondents were within their right to presume that the applicant was not interested in accepting the same and that is why his services were terminated. But so long his services were not terminated, the respondents should have paid salary to the applicant excluding the period when the applicant was on leave. Let the salary of the applicant for the period when the applicant was on leave be paid to the applicant within a period of three months from the date of communication of this order. The application is otherwise dismissed. No order as to costs.


MEMBER (A)
VICE CHAIRMANDATED: MARCH 23, 1993.

(ug)