

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL(ALLAHABAD BENCH)
ALLAHABAD.

T.A. NO.
T.A. NO. 3/88

OF * 199

Date of decision:-- 9-9-92

.....Banne Ali (Deceased)..... Petitioner

.....Shri A. S. Divekar..... Advocate for the Petitioner.
Versus

.....Union of India & others... Respondent

.....Shri Prashant Mehta..... Advocate for the Respondent's

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CORAM:-

The Hon'ble Mr. Justice V. C. Shastri, V. C.

The Hon'ble Mr. K. Obayya.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether to be circulated to all other Benches?



Signature

Nagvi/

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

T.A.No.3 of 1988

Banne Ali(Died)Applicant

Versus

Divisional Engineer & othersRespondents

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 sole applicant in this case has died during the pendency of this application and in his place his legal representatives have been substituted

2. The applicant was appointed as Fitter in North Eastern Railway on 10.6.44. He was placed as the Fitter in the Carriage in North Eastern Railway and continued in the service. On 25.3.71 when the applicant was on duty as Fitter in the Carriage at Kathgodam, Distt. Nainital, the applicant got injuries on his head and therefore, the applicant was placed on hurt on duty which continued till 25.5.71. As the applicant had completed 45 years of age, as provided under rules, he was medically examined and was found medically fit for Lower Medical Category in C-2. Even though he was found medically fit for Lower Medical Category, but he was not provided any duty for about five years from 1971 June onward and ultimately he was appointed afresh as a peon w.e.f. 1.1.77. The applicant received papers regarding pension on 19.9.79 and he was made to retire on 30.6.84 but no pension or gratuity etc. was given to him and that is why he made representation after representation and ultimately knocked the door

of the court by filing a writ petition.

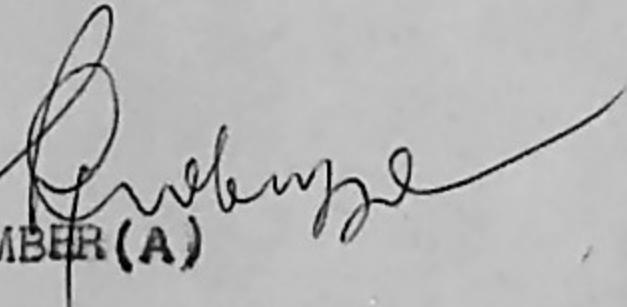
3. According to the respondents, the applicant was officially appointed on the post of Carriage Cleaner in 1971. He was medically examined and was found unsuitable whereby discharged from service w.e.f. 14.3.72 but was re-employed on 1.1.77 on the post of peon and thereafter from that post retired on 30.6.84 on attaining age of superannuation. According to the respondents, as the applicant was re-appointed in 1977, he was not entitled for any pension or pensionary benefits and that is why the same has rightly been denied to him. It has been stated that the applicant, after medical-examination, was not entitled to remain on the post of Fitter and as such he was granted leave from time to time which were due and thereafter he was discharged from service on 14.3.72. There was no occasion for the railway Administration to provide any duty to the applicant. After issue of order of discharge, the applicant filed a Civil suit which was dismissed by the trial court. The appeal was allowed and the Railway Administration was directed to provide alternative service to the applicant and it is in this context that a fresh appointment was given to the applicant as a peon from 13.2.77. Before the applicant was to reach the age of superannuation, he was advised by the Railway Administration to deposit the amounts which were paid to him at the time of his being discharged from service in the year 1972, which were Rs.10,283-75P but the applicant did not deposit the said amount and later on the applicant expressed his inability to deposit the same and said that he is unable to deposit the funds received by him and the amount which fell

due towards him under the orders of the Court will be adjusted towards the said requirement under the Railway Administration's letter. There is no provision of adjustment and, therefore, his prayer could not be allowed and the Railway Administration had no choice but to provide the applicant only the amount which was due ^{fell} to him as permissible under the rules and the permissible amount comes to Rs.7,385 which was paid to the applicant in the month of July, 1984 after ^{Railway} his retirement and the Administration was prepared to exercise its discretion in favour of the applicant permissible under Para 1316 of the Indian Railways Establishment Code Volume I but nothing could be done as the applicant expressed his inability to refund the amount of payment received by him in the year 1972.

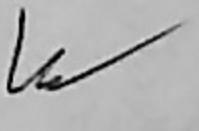
4. Thus, from the facts, stated above, it appears that the Railway Administration was inclined to accept the prayer of the applicant. It appears that this offer was made to the applicant. Of course the railway administration chose to provide only Rs.7,385.43P, on retirement in 1984 the applicant could not have been asked to refund the amount Rs.10,283.75P as he was not supposed to keep the said amount in his bag and the same was utilised for the purpose. In case, the applicant's prayer could have been allowed, this amount could have been adjusted. The applicant has served the Railway Administration for 18 years. He was entitled to pension for service of 18 years. When he was declared medically unfit for category in which he was working but was found fit for a lower medical category-C2, it was the duty of the Railway

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Administration under the paragraph on which reliance has been placed and the said paragraph provides for giving an alternative appointment to the applicant. But he was not provided an alternative appointment for which the applicant is not to suffer. Even otherwise the applicant has worked for 18 years, he becomes entitled for pension. Accordingly, the respondents are directed to consider the case of the applicant in the light of the fact that he has served the railway administration for 18 years and it is because of the fault of the railway administration that he could not continue the service thereafter, in view of the fact that he was declared medically unfit and was categorised for a lower category and was not provided that lower category's job by the Railway Administration. Let a decision in this behalf be taken within a period of three months from the date of communication of this order in accordance with law and without taking a strict view but a sympathetic view in the matter. With these observations the application stands disposed of. No order as to costs.



MEMBER (A)



VICE CHAIRMAN.

DATED: SEPTEMBER 9, 1992.
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