

Court No. 1.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 406 of 1988

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Applicant.

Versus

Union of India & others

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Respondents.

Hon'ble Justice K. Nath, V.C.
Hon'ble K.J. Raman, A.M.

(By Hon. Justice K. Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is for quashing the alleged verbal termination orders dated 21.3.1987 followed by written termination order dated 1.6.1987 contained in the letter dated 10.6.1987 (Annexure '2' to the counter affidavit).

2. The admitted facts are that the applicant was initially appointed as Casual Labour in 1972 and was ceased in March, 1976, but he was again re-engaged as a Casual Labour in October, 1984 under the PWI, Aligarh. Sometime in 1985 he was transferred to Allahabad Division under the PWI, Manda Road. On 5.9.1985, he sustained injury while working and was given medical treatment. After medical treatment the competent Medical Officer recommended on 6.3.1986 (vide Annexure 'C') that the applicant's was a case of Potts' fracture (left ankle) and was advised resumption to a job not requiring heavy manual work or long walking for a period ^{of} three months. Accordingly, the applicant was placed on the post of a Chaukidar.

3. After about a year, i.e. on 11.3.1987, he was again sent for medical examination to the Chief Medical Officer for consideration as a Gangman of category 'B-1'. It is admitted that on this medical examination the applicant was declared to be medically unfit for 'B-1' category of Gangman.

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4. According to the applicant, he was not allowed to work from 21.3.1987 which amounted to termination and was invalid.

5. In the counter affidavit the respondents filed the termination letter dated 10.6.1987 mentioning the order of termination dated 1.6.1987. The order mentions that medical examination reveals that the applicant was medically unfit for being retained as a Gangman in Category 'B-1' and, therefore, his services were terminated for reasons of his unfitness. The applicant then prayed for quashing the order and letter dated 10.6.1987 and says that this order was never served upon the applicant. The case of the respondents is that the letter was sent to the applicant which he refused to accept. The letter contains endorsement of the concerned official along with signatures of two witnesses made on 11.6.1987 of the applicant's refusal.

6. The applicant's case is that the applicant had attained temporary status on account of long employment since October, 1984 and, therefore, he could not be terminated. The answer of the respondents is that since the applicant had been recruited as a Casual Labour to work as a Gangman he was found medically unfit to work as a Gangman and, therefore, there was no obligation upon the respondents to continue to retain the applicant in service. Out attention has not been invited to any provision of law which shows that once a Casual Labour, even if he has attained temporary status, is found unfit medically for the category for which he was appointed, his services cannot be terminated or that he is entitled to some sort of formalities, like a notice or compensation, before the termination of the services. An employee medically unfit for the job for which he was recruited, on the face of it, is not entitled to remain in service ^{as} soon ^{as} the competent authority determines to do so.

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7. The next point urged by the learned counsel for the applicant is that even otherwise the respondents should have considered the applicant's case for a lower category. Reliance has been placed upon a circular dated 28.2.1976 Serial No.6478 (Annexure 'D' to the application) which speaks of certain benefits conferred upon SC/ST candidates in alternative categories on being found medically unfit. Admittedly, the applicant belongs to the SC category. This circular of the Railway Board mentions that normally candidates who are sent for medical examination are examined only for the category for which they have been recommended for appointment, but under the practice then prevailing the candidates belonging to the SC/ST communities who failed in the medical examination for the particular category to which they had been recommended for appointment have to be again referred for medical examination to determine their suitability for appointment in a specific lower category. The circular also says that if a candidate fails in the lower medical category also, then his case is again referred to the Medical Department to see if he is medically fit for a still lower category. The stand of the respondents is that this circular applies only to those persons who have already been recommended for appointment by being placed on some panel. This objection seems to lose its value in view of an order dated 28.7.1988 of the DRM's office (Annexure '1' to the rejoinder affidavit) which shows that cases were brought to the notice of the DRM where the issue of medical memos in lower category was being denied to casual labours because of non-availability of vacancy against posts in the lower category. The letter indicates that the question of consideration of a lower medical category is also to be considered in respect of Casual Labour. We think, therefore, that the justice in this case demands that the applicant, who is a SC candidate, should be re-examined medically for a lower category and if found suitable for any lower category then he may be given appointment on the next

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available vacancy within the Allahabad Division.

8. This application is disposed of with a direction to respondent no.2 to direct the applicant to be examined medically for a category lower than category 'B-1' by a competent medical authority and if he is found suitable for any of the lower medical categories then he may be given appointment in such category in the next available vacancy within the Allahabad Division. The Respondent no.2 shall comply with these directions within a period of three months from the date of receipt of a certified copy of this judgment. The applicant is also directed to make an application to respondent no.2 for his medical examination, as indicated above, within a period of 15 days from today. There will be no order as to costs.

MEMBER (A).

VICE-CHAIRMAN.

Dated: August 16, 1990.

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