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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

Registration O.A. No. 660 of 1988

Jhurai Lal Applicant.

Versus

Divisional Railway Manager,
Northern Railway, Allahabad
and others Respondents.

Hon'ble Mr. D.K. Agrawal, J.M.

Hon'ble Mr. K. Obayya, A.M.

(By Hon'ble Mr. K. Obayya, A.M.)

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed challenging the order dt. 6.5.1988 by which the applicant was terminated from service. The applicant has also prayed for regularisation of service with back wages.

2. The applicant was engaged as 'Casual Khalasi' in the Northern Railway, Fatehpur on 14.6.1968 and continued to be in service till 15.8.1981. Thereafter, he filed a writ petition No.2789 of 1982 in the High Court of Judicature at Allahabad but the petition was dismissed as infructuous. The applicant was re-engaged in service as Casual Labour on 29.7.1982 and continued to work till 6.5.1988 after which he was terminated.

3. The case of the applicant is that he has rendered continuous service of 13 years in 1st spell and in 6 years in second spell. As the result of which, he attained the status of temporary employee, as such, his termination without notice and opportunity or without departmental proceedings is arbitrary and illegal. His juniors who were found unfit in B-I category were absorbed.

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in the B-II category, as such, he was also entitled for such benefit.

4. In the counter filed by the respondents, it is stated that the applicant was a Casual Labour. He was sent for medical test and was found unfit for B-I category, consequently, he was terminated on 19.8.1981. It is also their contention that there is no provision for sending a candidate for second medical examination in the same category. It is admitted that persons junior to the applicant were appointed in B-II category as they were found medically fit in that category, as such, they were eligible for regularisation. With regard to re-engagement after a break in 1982, it is stated that this was done on legal advice as the applicant had filed a writ petition. The termination is justified on the ground that the applicant was declared medically unfit and as such, can not be retained in service.

5. Heard the learned counsel of the parties. The fact that the applicant was in continuous service from 1968 to 1981 and thereafter, from 1982 to 1988 is not in dispute. It is also not in dispute that the applicant was medically tested for B-I category and found unfit. It is clear from this that the applicant was not entitled for regularisation for B-I category but it is not known why the applicant was not medically tested for a lower category as according to the rules, there is a provision to consider candidates for regularisation in the ^{category} lower on the basis of the length of service. It would appear that the applicant was taken back in 1982. Presumably, recognising that the applicant had a right for continuation of service and be regularised if found fit in the lower

6. Taking the facts and circumstances of the case, we are of the view that the termination of the applicant by order dated 6.5.1988 is arbitrary and can not be sustained and accordingly it is set aside. The applicant is entitled for consideration for regularisation in the lower category, on the basis of his long and continuous service. The respondents are directed to take back the applicant to work, protecting his seniority and pay him back wages, treating him to be continuing in service, ignoring the termination order dt. 6.5.1988. The respondents are further directed to send the applicant for medical test in the lower category and regularise him if found fit in accordance with rules. The application is allowed as above. Parties to bear their costs.

R. B. Singh
Member (A)

DR. C. S. Rao
22.7.91.
Member (J)

Dated: 22.7.91

ALLAHABAD

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