

(A2/1)

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 9th DAY OF MAY, 1995

Original Application No. 173 of 1989

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. S. DAYAL, MEMBER (A)

Abhay Kumar Karkare Applicant
BY ADVOCATE SHRI A.B. KHER
Versus

1. The Union of India through General Manager, Central Railway, Bombay V.T
2. The Divisional Railway Manager (P) Central Railway, Jhansi

.... Res-pondents

BY ADVOCATE SHRI A.K. GAUR

O R D E R (Reserved)

JUSTICE B.C. SAKSENA, V.C.

Through this O.A. the applicant interalia seeks the following reliefs:-

- (i) A direction to the respondents to reinstate the applicant and provide a job of Sedantary nature.
- (ii) A further direction to regularise the services of the applicant making him permanent.
- (iii) A further direction to the respondents to absorb the applicant with full emoluments/ salary etc due upto date.

The facts in brief on the basis of which the aforesaid reliefs are claimed in this O.A are that the applicant was appointed as a Substitute khalasi on

1/ Bdr

..p2

(A)
2

23.12.73. It is alleged that on 3.5.74 Railway workers went on country-wide strike and the Railway Minister made an announcement that atleast one son of Railway employees w^ho worked during the strike period will be absorbed in Railway Department as class IV employee. It is alleged t that on the basis of the aforesaid policy the D.P.O. prepared a list and the applicant and his brother were called for interview. It is alleged that the applicant was informed that he will be confirmed on the basis and made permanent. The applicant according to his allegations worked in the Loco till 3.3.75. He was sent for medical examination and declared unfit. It is alleged that the applicant ~~can~~ got himself medically examined at Rani Laxmi Bai Medical College Jhansi and the doctor found that the applicant was fit for working. The further allegation is that the applicant preferred an appeal and sought a re-medical examination and he was given a fit letter on 3.6.75 with the following remarks.

" Fit in B-I for Sedantary job and fit for the post of Khalasi. "

2. The father of the applicant is alleged to have sent an application on 30.9.75 to Shri A.N. Saxena Senior D.P.O. Jhansi on which the letter is alleged to have ordered on 4.10.75 for a job of sedantary nature being offered to the applicant. The applicant however was not given any appointment and it is alleged only oral assurances were given. On receiving no response a representation was made

1
Recd

to the Hon'ble Railway Minister on 11.6.78. Thereafter it is alleged that a communication dated 25.3.88 copy of which is Annexure A was sent by the applicants father was informed in reply to his representation dated 26.12.87 addressed to the Railway Minister that the applicant was employed locally by Loco Forman Jhansi as a Substitute by YKC and was declared medically unfit for that post and as such the question of providing any alternative job of sedantary nature does not arise. After receipt of this communication the O.A was filed for the reliefs indicated hereinabove.

3. A detailed written statement has been filed on behalf of the respondents. One of the ~~main~~ point raised in the written statement is that the O.A is highly belated and beyond limitation provided under Section 21 of the A.T. Act and there is no reasonable explanation for the delay in filing the O.A. It is therefore pleaded that the O.A may be dismissed on this ground. As far as the facts averred in the QA are concerned, they have been denied. It has been indicated that no such assurance was extended as alleged. The stand of the respondents is that the railway servant to be continued in service is sent for medical examination. It is further stated that medical certificates from any other authority than a Railway Medical authority is of no consequence. It is further alleged that since there was no certificate by any Railway Medical Authority

4

declaing the applicant fit for sedantary post he was not given any sedantary post. The applicant's father made a representation to the Railway Ministry and it was suitably replied. The applicant has filed a rejoinder and has reiterated the averments made in the O.A. When the case was called out, none appeared on behalf of the applicant. Since it was a 1989 matter it was taken up for hearing.

4. We have heard Shri A.K. Gaur learned counsel appearing for the respondents. Shri A.K. Gaur submitted that the application is highly belated. The cause of action disclosed in the OA pertains to the year 1975, when on the applicant's own showing he was declared medically unfit and discharged. The moot question that arises in this case is whether the communication dated 25.3.88 through which the applicant's father was informed that the applicant cannot be given alternative job of sedentary nature ~~affords a~~ cause of action. The representations indicated to have been made by the father of the applicant are of the year 1987 i.e to say ~~as~~ ^{after} more than 12 years. The communication, copy of which is Annexure A dated 25.3.88, also cannot be said to be a 'final order' within the meaning of Section 20 of the Administrative Tribunals Act. It is ~~as~~ fairly well settled that repeated representations do not stop the limitation ~~from~~ from running. As a matter of fact in respect ~~to~~ ^a ~~the~~ cause of action accrued three years earlier than the date of constitution of this Tribunal viz November 1985, no OA would be maintainable. A communication addressed to the Railway Minister has to be replied but it cannot be ~~constituted~~ ^{constituted} as a 'final order'. It has also been held

Bohr

123
:: 5 ::

on a belated representation a fresh cause of action
(See 1995(29) ATC 450) ~~but~~
does not accrue. This OA, clearly highly belated. Even
on the merits of the case we do not find any error in
the stand taken by the respondents that medical certifi-
cates by any doctor other than competent Medical Railway
Authority is of no consequence. The applicant had been
declared medically unfit by the Competent Railway
Authority, ^{Certified} the applicant was not ~~sentenced~~ ^{to} to be given a
sedentary nature of job.

5. In the light of the discussions hereinabove, the
OA deserves to be dismissed and is accordingly dismissed.
No orders as to costs.

Rangan
Member (A)

B. S. Lakshmi
Vice Chairman

Dated: May, 9th 1995