

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Original Application No. 985 of 1992

Allahabad this the 20th day of May, 1996

Hon'ble Dr. R.K. Saxena, Member (J.Jud.)

Hon'ble Mr. D.S. Baweja, Member (Admn.)

Man Singh S/o Shri Babu Lal, R/o Village-Nagla  
Deshraj, Post Office - Beer Nagar, Distt.-Aligarh.

APPDICANT

By Advocate Sri Anand Kumar

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager(P), Northern Railway, Ambala.
3. Assistant Engineer(PQRS), Northern Railway, Ambala.
4. Divisional Railway Manager(Engg.), Northern Railway(Delhi Division), New Delhi.

RESPONDENTS.

By Advocate Sri P. Mathur

O R D E R ( Oral )

By Hon'ble Dr. R.K. Saxena, Member ( J )

The applicant has approached the Tribunal seeking remedy that the respondents, in accordance with the Judgment given by this Bench in 'Makhan Singh Vs. Union of India and Others', be ~~made and directed to~~ <sup>the</sup> ~~the~~ <sup>the</sup> applicant ~~he~~ should be appointed on a suitable post.

2. The facts of the case are that the applicant was engaged as Casual Gangman on 18/9/84 and continuously worked till 14/4/86. Since, he

:: 2 ::

8  
had worked for about 180 days without any break, he had become entitled for being granted temporary status in terms of para 2007 of Indian Railway Establishment Manual, Vol.II, Edition 1990.

3. The applicant was subsequently engaged as Gangman on 15/4/86 and worked till 14/7/87. He was then transferred to Delhi, where he worked from 15/7/87 to 14/7/88. He was then sent to Ambala.

It is said that the applicant continued work till 14/12/89 and thereafter his salary was stopped.

The reason given by the respondents that the applicant was made to undergo the medical test for regularisation and since he had failed in the said medical test, his salary was stopped. The contention of the applicant is that on being declared medically unfit in particular category, <sup>was</sup> ~~have been~~ the employee should be allowed to undergo the medical test for lower category. In terms of para 2007(IV)(b) of the Manual, the applicant made request to the respondents but, all in vain. He had also brought to the notice of the respondents, the view taken by the Tribunal in the matter. Since, nothing was done, this O.A. was preferred with the relief already disclosed.

4.

The respondents resisted the case

:: 3 ::

on the ground that since the applicant had failed in the medical examination for a particular category, he was not entitled to remain in the service and, therefore, his services were dispensed with and salary stopped.

5. We have heard Sri Anand Kumar, counsel for the applicant and Sri Prashant Mathur, counsel for the respondents. We have also perused the record including the various copies of the Judgments given by the Tribunal on the point.

6. The contention of the learned counsel for the applicant is that the mere fact that the applicant failed in medical examination for one category, was not ~~entitled~~ <sup>aground to disentile</sup> him to serve for the respondents. In this connection, our attention has been drawn to para 2007, which authorises an employee for medical test in lower category if, he failed in the higher category. This view was upheld by this Bench in the cases 'O.A.No.679 of 1990 Makhan Singh Vs. Union of India and Ors. dated 10/9/91, O.A. 823/89 Hari Singh Vs. Union of India and Others and O.A. 1125/89 Sri Chand vs. Union of India and Others decided on 16/1/ 96 In all these decisions, the validity of para 2007 of the Manual, was upheld.

(9)

:: 4 ::

7. During arguments, we wanted to know from Sri Prashant Mathur, learned counsel for the respondents as to why the opportunity of medical test in the lower category, was not allowed to the applicant. Sri Mathur fairly conceded that in view of the para 2007 of the Manual, the opportunity ~~should~~ <sup>non-giving of</sup> would have been given but it could not be given. In our opinion, ~~no~~ opportunity to the applicant for medical examination in the lower category, was not justified. We, therefore, direct that the applicant be allowed to be medically tested in the lower category of post and if he is found fit, his appointment may be considered by the respondents. The entire process of medical examination and consideration of the case of the applicant for appointment, must be concluded within a period of 4 months from the date of receipt of the copy of the order. The O.A. is disposed of accordingly. No order as to costs.

MEMBER (A)

MEMBER (J)

/M.M./

1868

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
A\_L\_L\_A\_A\_H\_A\_B\_A\_D

DATED : Allahabad this the .... day of January, 1996.

नियुक्त प्रतिरिदि

CORAM : Hon'ble Mr. T. L. Verma, Member-J  
Hon'ble Mr. B. S. Bajaj, Member-A

Original Application No. 823 of 1989

Hari Singh son of Sri Satya Ram,  
Temporary Gangman in the office  
of CFMI/(Special) Northern  
Railway, Allahabad resident of village  
Nangla Himmat, Post Office  
Tindauli, District Mainpuri. ....Applicant.  
(By Advocate Sri Anand Kumar)

Versus

1. Union of India through General Manager,  
Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager,  
Northern Railway, Allahabad.
3. Divisional Engineer (Special),  
Northern Railway, DRM's Office,  
Allahabad.
4. Chief Permanent Way Inspector,  
(Special), Northern Railway, Allahabad.

....Respondents.

(By Advocate Sri Amit Sthalekar)

O\_R\_D\_E\_R

(By Hon'ble Mr. T. L. Verma, Member-J)

*TK*  
This application has been filed for issuing a  
direction to the respondents to allow duty to the  
applicant after re-medical examination with relax  
standard in C-1 and below category and absorb and  
regularise him in that category and also for issuing

a direction to pay arrears of pay and allowances from the date he was allowed to work.

2. The applicant was initially appointed as Casual Gangman under P.W.I. Northern Railway, Mainpuri on 21.11.1977. He acquired temporary status on 25.3.78 in terms of Para 2501(B)(1) of the Indian Railway Establishment Manual. Thereafter he was transferred to work under P.W.I.(PQRS) Northern Railway, Allahabad. *He reported duty on 15.7.1987. He worked under P.W.I. (Special) Allahabad upto 31.7.1988, He was allowed C. P. Scale with effect from 1.1.1988 and his pay was fixed at Rs. 775/- per month. He was sent for medical examination on 1.8.1988 for B-1 Category. The applicant, it is stated, requested P.W.I. to issue him medical memo for re-medical examination in B-1 Category with relax standard and in lower medical category for which he was fit. No such order was issued inspite of verbal assurance given to him, in that behalf. He therefore, submitted a representation in writing. The further case of the applicant is that after being declared medically unfit in B-1 category, he received medical treatment from Dr. R. D. Purang of Mainpuri Hospital from 9.9.1988 to 26.9.1988 who declared him fit vide medical certificate dated 28.9.1988. He thereafter submitted another representation dated 13.10.1988 for issuing another medical memo for re-medical examination in B-1 category. Request of the applicant, however, went unheard. He has, therefore, filed this application for the relief mentioned above.*

: 3 :

3. The respondents have contested the claim of the applicant. In the counter-affidavit, filed by the respondents, it has been stated that the applicant is not entitled to relax standard of medical examination as he has not completed 6 years of service as Casual Labour and that on being declared medically unfit in B-1 category his name was rightly struck off from muster roll.

4. We have heard the learned counsel for the parties and perused the record. Sub-para 4(A) & 4(B) of para 2007 of Indian Railway Establishment Manual Vol. II contains provision regarding medical examination of Casual Labourers. According to the above provision, casual labour should be subjected to medical examination as early as possible and preferably before grant of temporary status. Sub-Para 'B' of sub para 4 reads as follows :-

"Such of the Casual Labour as are found, on medical examination, unfit for the particular category for which they are sent for medical examination despite the relaxed standard prescribed for re-examination, may be considered for alternative category requiring a lower medical classification subject to their suitability for the alternative category being adjudged by the screening committee, to the extent it is found possible to arrange absorption against alternative posts requiring lower medical classification."

5. A plain reading of the provisions of Indian Railway Establishment Manual extracted above, make it absolutely clear that such of the Casual Labourers who are found medically unfit may be considered for an alternative category requiring a lower medical classification subject to his suitability for the alternative category being

adjudged by the Screening Committee. Admittedly the applicant was not considered for alternative category requiring lower medical classification after he was declared medically unfit for B-1 category. We therefore, find that the respondents have not complied with the above provisions of the Indian Railway Establishment Manual.

6. In view of the above and having regard to the fact that the applicant has worked for more than 1000 days in different spells as Casual Labour, under the respondents and also to the fact that he was subjected to medical examination for being absorbed in B-1 category, we find that the respondents should have considered him for absorbing in some other alternative category for which he was found to be medically fit.

7. In view of the above, we dispose of this application with the direction to the respondents to re-examine the applicant medically and consider him for being absorbed in alternative category requiring lower medical classification subject to his suitability and availability of post in the lower category, to be adjudged by the Screening Committee. The direction should be complied with within a period of three months from the date of service of this order. There will be no order as to costs.

TRUE  
COPY

S/ Member-A

S/ Member-J

D. S. Dubei  
Section Officer  
Central Admin. Tribunal  
Allahabad

ey/-

today

SS  
20/1/96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
ADDITIONAL BENCH AT ALLAHABAD.

1781

\*\*\*\*\*

नियुक्त प्रतिलिपि

Allahabad : Dated 16th January, 1996

Original Application No. 1125 of 1989

District : Firozabad

CORAM:-

Sri Chand, son of Sri Mahaj Singh,  
Temporary Gangman  
Under C.P.W.I. Northern Railway,  
Allahabad resident of Village  
Naygla Gwalior, Post Paigo,  
District-Firozabad.

✓ (By Sri Anand Kumar, Advocate)

..... Applicant

Versus

1. Union of India  
Through General Manager  
Northern Railway,  
Baroda House, New Delhi.
2. Divisional Railway Manager,  
Northern Railway, Allahabad.
3. Divisional Engineer (Special),  
Northern Railway,  
D.R.M.'s Office, Allahabad
4. Chief Permanent Way Inspector,  
(Special), Northern Railway,  
Allahabad.

(Sri N.K. Verma, Advocate)

..... Respondents

Bar



ORDER (O-ral)

By Hon'ble Mr. Justice B.C. Saksena, V.C.

In this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks the following reliefs :-

(i) a direction to the respondents to allow duty after re-medical examination with relaxed standard of B-1 category and in lower medical categories as railway serving employee and to absorb him in alternative lower medical category regular post in which he is found fit with consequential benefits of regularisation and seniority. In the alternative the applicant also prays that the respondents be directed to issue medical memo for re-examination of the applicant in C-1 and below medical category post for absorption in alternative category.



2. The facts in brief are that the applicant was initially appointed as casual Gangman during which he put in service with broken periods and lastly he was re-engaged on 15-7-1987. He was sent for medical examination in December, 1988. The Addl. Divisional Medical Officer found the applicant unfit in B-1 category which is the prescribed category for the Gangman. The applicant's grievance is that since the applicant was a serving railway employee, according to the Railway Board Circular he should have been sent for medical examination of ~~recent~~ <sup>requisite</sup> standard and ~~if~~ if he was found unfit in category B-1, he should have been examined for lower medical category and given the alternative appointment. His case is that when he was

1  
B.C.

sent for medical examination, the memo. did not indicate that it was for a fresh entrant or for a serving railway employee. This has resulted in not having <sup>his</sup> ~~been~~ medical examination ~~of~~ ~~to~~ lower medical category. The learned counsel for the applicant has cited a few decisions including the decision in O.A. No.809/89- Mauji Ram Vs. UDI & Ors and O.A.

No.163/92 - Ram Murat and Ors. Vs. UDI & Ors. In the said two decisions, the provisions of Para 2007(4)(b) has been considered. In the said case also the applicant was sent for medical examination and was found unfit in medical category B-1. The direction for the re-medical examination for lower medical category was given by the Tribunal. The relevant provisions of Para 2007(4)(b) of the Manual reads as under :-

"2007(4)(b). Such of the casual labour as are found, on medical examination, unfit for the particular category for which they are sent for medical examination despite the relaxed standard prescribed for re-examination, may be considered for alternative category requiring a lower medical classification subject to their suitability for the alternative category being adjudged by the screening Committee, to the extent it is found possible to arrange absorption against alternative posts requiring lower medical classification."

3. The respondents in their counter affidavit have taken the plea that since the applicant has not completed six years of service either continuous or in broken period, he was not sent for medical examination for his ~~first~~ appointment to the regular service. The Defendants overlook the provision of Clause (b)(4) of Para 2007 of the Manual which has been extracted hereabove. The said provision clearly entitles the applicant on being found medically unfit in medical B-1 category to be examined for lower category and that has not been done. In our opinion, the applicant has made out a case for grant of relief.

Back

4. We accordingly direct that the respondents shall send the applicant for re-medical examination of medical category lower than B-1 category and in the event of the applicant being found fit in any of the lower medical categories, he may be given a suitable alternative job commensurate with the medical category for which he qualifies.

5. The learned counsel for the applicant submits that since the applicant was discharged from service for having failed to qualify in B-1 medical category and that having been found to be erroneous, he further submits that a direction be issued to the respondents to treat the applicant as having continued in service and is entitled to consequential wages. In our opinion such a direction is not called for in the present case. The OA is allowed to the extent as per observation made above.

6. The parties shall bear their own costs.

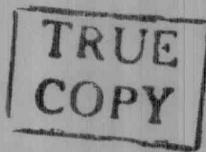
Sd/-

Member (A)

Sd/-

Vice Chairman

Dube/



D. S. Dubey  
Section Officer  
Central Admin. Tribunal  
Allahabad

ed to day  
88  
5/1/96