

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.1309 of 1999.

Allahabad, this the 4th day of April, 2005.

Hon'ble Mr. V.K. Majotra, V.C.
Hon'ble Mr. A.K. Bhatnagar, J.M.

Keshav Dev
Son of Late Jagdish Prasad,
Aged about 40 years,
Village : RATHERA,
Post : Tindoli,
District : Mainpuri (U.P.)

...Applicant.

By Advocate : Shri S.S. Sharma.

Versus

1. The Union of India,
Owning & representing
'Northern Railway',
notice to be served to the
General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway, D.R.M., Office,
Nawab Yusuf Road, Allahabad.
3. The Divisional Personnel Officer,
Northern Railway, D.R.M., Office,
Allahabad.
4. The Divisional Engineer,
Northern Railway, Firozabad.
5. The Senior Section Engineer/P.Way,
Northern Railway, Mainpuri.

...Respondents.

By Advocate : Shri S.N. Gaur.

Shri

O R D E R

By Hon'ble Mr. A.K. Bhatnagar, J.M. :

By this O.A., the applicant has prayed for the following relief(s) :-

- (a) That the Hon'ble Tribunal may graciously be pleased to quash /set-aside impugned orders dated 21.3.1998 and 09.9.1999, Annexure-A-1 & A-2 (Compilation No. I) to this application, being absolutely illegal and void orders.
- (b) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to absorb the applicant in suitable alternative job with the same pay scale and service benefits as per Railway Board's orders issued vide letter No.E(NG)1/96/RE3/9(2) dated 29.4.1999 (RBE 89/99 and letter No.E(NG) 1/96/RE3/9(1) dated 29.04.1999 (RBE No.99/99), Annexure A-20 & A-21 or as per the rules applicable for absorption of medically de-categorized staff in alternative employment.
- (c) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to treat the period from 08.04.1998 to 07.05.1999, the period during which the applicant was in District Jail, Mainpuri as suspension and may be pleased to direct to make payment of subsistence allowance to the applicant for this period as per rule.
- (d) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to treat the period from 08.05.1999 and onwards as working of the applicant against a special supernumerary post in the grade of gangman pending location of suitable alternative employment for the applicant as per Railway Board's orders in this respect and may kindly direct the respondents to arrange payment of salary in the grade of gangman since 08.05.1999 regularly every month to the applicant.

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- (e) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to pay damages to the applicant as deemed fit and proper under the facts and circumstances of the case.
- (f) That the Hon'ble Tribunal may graciously be pleased to direct Respondent No.1 to initiate strict action and pass strict structures against the respondents/officers at fault in this case.
- (g) That the Hon'ble Tribunal may graciously be pleased to allow heavy cost of application and legal fee to the applicant for compelling a poor employee / applicant to take shelter of Hon'ble Court by filing the instant application.
- (h) That the Hon'ble Tribunal may graciously be pleased to pass any other order/direction or grant any other relief in favour of the applicant as deemed fit and proper under the circumstances of the case."

2. The brief facts as per the applicant are that he was initially appointment as Casual Gangman under the P.W.I., Northern Railway, Mainpuri on 22.12.1977. He was given temporary status on 7.11.1988 and thereafter in October, 1996 he was regularized after due screening and absorbed as permanent Gangman. He was deputed to perform duty as Gateman. While serving as such he was attacked by some persons who fired on him injuring the applicant's left leg. Knowing ~~in~~ the incident the Station Master of Mainpuri informed the police. He was admitted in Tej Singh Hospital by the police, where he was treated for a week as his condition was serious. Thereafter, the applicant was referred to Northern Railway Hospital at Mainpuri for

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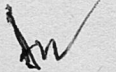
treatment. He remained under medical treatment of Railway Doctors from 7.3.1997 to 7.4.1998. He was declared fit on 7.4.1998 vide medical fit memo Annexure-A-6, whereby he was found unfit to work as Gangman and was recommended for a duty of Sedentary nature in B-I category. This medical report was also confirmed by C.M.S., Northern Railway and Medical Superintendent of Tundla (Annexure-A-7 & 8). On 10.4.1998, the applicant was arrested on the charge of murder and remained in Jail from 10.4.1998 to 8.5.1999 till he was released on bail.

3. After being released from jail, he reported for duty mentioning the facts in writing that he was in Jail since 10.4.1998 by means of letter dated 8./5.1999 duly received by the Office (Annexure-A-13), which was forwarded to Divisional Engineer, Northern Railway, Firozabad vide letter dated 15.5.1999 (Annexure-A-14). The applicant represented on 4.6.1999 and 26./8.1999 (Annexure-A3 & A4) for providing alternative job, which was ultimately rejected by order dated 9.9.1999 (Annexure-A-2) informing him that he has been discharged vide Annexure-A-1 dated 31.12.1998. Aggrieved by this, he filed this O.A.

4. Learned counsel for the respondents pressed on the ground taken in para 05 of the O.A. and submitted that the applicant remained in Jail from 10.4.1998 to

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8.5.1999 on a falls report. Therefore, the period between 10.4.1998 to 8.5.1999 be treated as the period of suspension and the applicant is entitled for the payment of subsistence allowance for the period. That being declared medically decatgorised, ~~he~~ he was entitled for alternative job according to medical advise. Learned counsel further submitted that on the date of screening so fixed by the respondents on 28.7.1998, 26.10.1998 and 7.12.1998 for providing alternative job, the applicant could not be present for screening as he was in jail during that period. The respondents were aware of the fact that he was in jail since 10.4.1998. Because of which he could not present himself for screening on the date fixed. As soon as he was released, he reported for duty on 8.5.1999, therefore, he should have screened by the respondents on that date for providing him alternative job as per rules applicable in this matter. Learned counsel further submitted that the applicant became fit to perform his duty but even then the respondents have discharged the services of the applicant and rejected his representation for alternative job on medical ground also. Learned counsel further submitted that both the orders passed by the respondents (Annexure-A-1 & A-2) are arbitrary unfair and against the principles of natural justice, which deserve to be quashed.



5. Resisting the claim of the applicant, the respondents filed counter affidavit and submitted that no information was ever sent to the respondents by jail authority about the confinement of the applicant in jail. As he was confined in jail for several months so could not be considered for retention for railway service. Learned counsel further submitted that it is not known ^{whether} ~~when~~ the applicant was arrested by the police on 10.4.1998. Learned counsel finally submitted that there is no illegality in the orders passed by the respondents.

6. We have heard the learned counsel for the parties and perused the records.

7. We have gone through Annexure-A-1 in which on Sl. No.9 under the name of the applicant it is mentioned as under :-

"He may be discharged on medical ground as his EOL is expired on 3.12.1998 and could not be given alternative job for want of suitable vacancy".

8. We have also perused Annexure-A-2 order dated 9.9.1999 in which it is mentioned that he was called for screening on 27.8.1998, 26.10.1998 and 27.12.1998 for providing alternative job due to his decategorisation but he did not appear. Therefore, he has been discharged vide order dated 31.12.1998 (Annexure-A-1) and he could not be considered for his re-appointment on the said post. While, in Para 22 of


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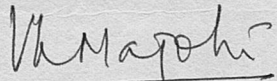
the counter affidavit, it is stated that the applicant who was confirmed in jail for several months for the offence of murder could not be considered for retention in railway service. In letter dated 9.9.1999, the claim has been rejected on the ground that he could not appear on the date for screening so his services were discharged. From the perusal of these documents, it is found that 03 different versions were given in discharging the applicant from his railway service. It is an admitted fact that the applicant was in Jail from 10.4.1998 to 8.5.1999, which was also in the knowledge of the respondents, as shown in Annexure-A-9 & A-10. It is also found that the applicant remained in jail from 10.4.1998 to 8.5.1999 so it was not possible for him to be present on the date of screening as the applicant had no knowledge of these dates. From the perusal of Annexure-A1, it is also noticed that the employee at Sl. No. 5, 11, 13, 14 and 16 have been found fit and given appointment accordingly and the applicant was denied his claim under the pretext that there is no suitable vacancy. We have also seen the judgment given by Sessions Judge, Mainpuri in S.T. No.6 of 1999 under Section 148, 302/149, 302/120B I.P.C., in which the applicant along with other^{cor} accused, have been found not guilty and was acquitted accordingly. It is not understandable how the applicant was informed about the dates for screening for giving alternative job being medically decategorised while during that period

22

the applicant was in Jail. We have also gone through Annexure-A-7 report of Chief Medical Superintendent, Northern Railway, Allahabad, in which he was found unfit to work as Gangman and recommended duty of Sedentary nature. Even than, the case of the applicant was not considered for appointment of alternative job. From Annexure-A18, it is evident that the information was sent to the applicant's residence where no body was available so it cannot be accepted that any information regarding the dates for screening were in the knowledge of the applicant.

9. Under the facts and circumstances and in view of the aforesaid discussions, we are of the view that the O.A. ⁿ ~~is~~ deserves to be allowed. Accordingly it is allowed. Order dated 21.03.1998 and 09.09.1999 (Annexure A-1 and A-2) are quashed and set aside in respect of the applicant. The respondents are directed to fix a date for medical examination of the applicant for screening for alternative post within a period of one month. Thereafter, consider his case for the said post within a period of two months from the date of receipt of copy of this order. However, he will not be entitled for back wages for the period he has not worked in the department. No order as to costs.


Member-J


Vice- Chairman

4.4.05

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