

3
0

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 165 OF 1986
~~MAX NOX~~

DATE OF DECISION 22-10-1986

T. KOLANJI TEDAR Petitioner

Y.V. SHAH Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS (W.RLY) Respondents

R.P. BHATT Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No*

✓
88

JUDGMENT

O.A.NO. 165 OF 1986.

Date : 22-10-1986

Per: Hon'ble Mr.P.M. Joshi, Judicial Member.

This is an application, filed by the petitioner T. Kolanji Tedar, (Casual Labour) of Jamnagar, under section 19 of the Administrative Tribunals Act, 1985. He has assailed the action of the Respondents, whereby he has not been allowed to resume his job and hence seeks direction that he should be restored to his original post or absorbed in any other alternative post. According to him, he was recruited as casual labour with effect from 5.2.1980 and he had worked continuously upto 30.9.1985 (mistakenly shown as 1984 in paragraph -1 of the petition) in the V.O.P. Project. It is alleged that he has been tossed between Respondent No.3 & 4 and has been rendered jobless.

The questions under circumstances are; firstly, whether the impugned action of the respondents in not allowing him to resume his duty is bad in law ? and secondly, whether the petitioner has any legal claim for absorption as contended ? Our answer is in the affirmative with regard to issue No.1 and in the negative with regard to issue No. 2.

For the sake of convenience we prefer to deal with the issue No.2 whereby the claim of absorption has been raised. It is conceded that when the petitioner was sent for medical examination, he was declared unfit for category B-1 on 23.9.1985 by the ADMO., Mehsana. However

it is contended that since the petitioner was in continuous service of more than 5½ years, the respondents are not entitled to discharge the petitioner, but on the contrary they are obliged to offer some alternative employment on reasonable emoluments. In support of the said contention Mr. Y.V. Shah has relied on the unreported judgment dated 18th October, 1984 of the Gujarat High Court in Special Civil Application No. 2289/84 (Puria C. Khalasi Vs. Union of India). He has also invited our attention to the instructions contained in para 152, 2511, 2601, 2605 of the Indian Railway Establishment Manual. More particularly, he has pressed in service, the following abstract of circular dated 8.6.81 issued by the Government of India (Ministry of Railways) Railway Board, para No. 6 F Clause IX (a and b)

- (a) When casual labour who have put in 6 years service whether continuous or in broken period are included in a panel for appointment to class IV post and are sent for medical examination for first appointment to regular service, the standard of medical examination should not be the one that is required for first appointment but should be a relaxed standard as prescribed for re-examination during service.
- (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 required in a lower medical classification subject to their suitability for the alternative category being adjudged by the screening committee, to the extent it is possible to arrange absorption against alternative posts requiring lower medical classification.

Before advertiring to the contention canvassed by Mr. Y.V. Shah, the learned counsel for the petitioner, it may be stated that the petitioner has not produced any relevant documents regarding his appointment or posting or to show that he had worked continuously

6
⑨

upto 30.9.1985. However, the respondents while opposing the application in the Affidavit-in-reply has stated that the petitioner was first appointed on 5.2.1980 and was retrenched on 28.3.1981 with all retrenchment benefits observing the provisions of I.D.Act, as the Railway had no work at that time. Subsequently the petitioner was recruited as casual labour purely on temporary basis on 22.2.1983 when the Railway took up the work of Phase II of Viramgam-Okha-Porbandar Conversion Project. It is further stated that on completion of the said project, in response to the demand of the Divisional Railway Manager, Western Railway, Rajkot, the petitioner and other labourers were directed to him. According to the respondents, the petitioner had worked for a period of more than one year under Permanent Way Inspector, Mehsana of Rajkot Division and thereafter petitioner was sent for medical examination for regular absorption on open line division, but the petitioner could not pass the prescribed medical examination.

The case of Puria C. Khalasi (Supra) cited by Mr. Shah will not be applicable to the present case as the petitioner in the said case was recruited on 11.6.1966. He was awarded temporary status on 26th March, 1978. Obviously he had put on service for more than 6 years. It was, therefore, rightly held that the termination of the service of the petitioner on the ground of unfitness was improper. The study of the above referred provisions and instructions contained in the said circular reveals that the benefit of the alternative employment will be available to a permanent railway servant who becomes

X
10

physically incapable of performing the duties on the post which he occupies. Where the temporary employee has become medically unfit for the post held by him on account of the circumstances which did not arise out of and in the course of his employment, the benefit of the Rule 152 will not be admissible. It has, however, been decided that while it is strictly not obligatory to find alternative employment for such an employee, every efforts should nonetheless be made to find alternative employment. In this regard the policy seems to have been modified in the case of the casual labour who has put in 6 years service. The relevant instructions prescribed that such employee should be subjected to medical examination on relaxed standard and alternative category of medical classification employments, should be offered to them and should not be discharged forthwith.

When the casual labourer with 120/180 days empanelled for appointment for Class-IV, posts, is sent for medical examination for First Appointment (emphasis supplied) to regular service, the standard of medical examination will be one that is required for first appointment. It is not obligatory on the part of the Railway Administration to find alternative employment for an employee who has become medically unfit for the first appointment. The petitioner, therefore, can not lay a claim as a matter of right for alternative employment.

Now turning to the Issue No.1, at the out set, it may be stated here that the respondents have not, so far, passed any order terminating the service of the petitioner on the ground that he is found, on medical examination unfit for category B-1. According to the petitioner after he was declared unfit for category B-1

56
X

on 23.9.1985 he was sent back to respondent No.3 (Executive Engineer (C) I, Jamnagar,) under the letter dated 24.9.1985 issued by the Respondent No.4, (Chief Permanent Way Inspector (N), Mehsana). It is further stated that the respondent No.3 in his letter dated 30.9.1985 had sent the petitioner back to the respondent No.4 and advised the respondent No.4 to get clarification. Accordingly it is undisputed that the petitioner was tossed between the respondent No. 3 & 4. This is a clear case of shunting of the responsibility by the responsible officers. This becomes more eloquent when the affiant Mr. I.K. Sobti, Asstt. Engineer (Works & Establishment) of Ahmedabad Office, in para 7 of his Affidavit-in-reply states that as the petitioner has been working in Rajkot Division for a period of more than one year, it is for the Rajkot Division to give him alternative appointment or vice-versa, if any post may be available with them. The result of the entire episode is that the petitioner is out of job since 30.9.1985, in absence of any valid order of termination of service by the competent officer. The predicament in which the petitioner is placed would justify us to direct the respondents to take the petitioner back on his original job. The petitioner has not claimed any back wages.

In the result, we direct that the Respondent No.3 will restore the petitioner to his original post when he reports on duty within one month from the date of this order. It is however clarified that the Respondent will be at liberty to take any action in accordance with law qua the petitioner, in the matter of his service. But it is expected of the Railway Administration that they would be considerate to the

9
13

representation, if any made by the petitioner for submission of medical examination for lower category.

With these directions and observations the application is partly allowed with no order as to cost.

P. H. Trivedi
(P.H. TRIVEDI)
VICE CHAIRMAN

J. M. Joshi
(P.M. JOSHI)
JUDICIAL MEMBER