

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 AHMEDABAD BENCH
~~XXXXXXXXXXXXXX~~

O.A. No. 190 OF 1986
~~XXXXXXXXXX~~

DATE OF DECISION 13.10.1988

Shri Kantilal Bawabhai Petitioner

Shri M.D. Rana Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

Shri D.K. Vyas Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. D.S. MISRA : ADMINISTRATIVE MEMBER

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? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

1. Shri Kantilal Bawabhai,
Railway Office,
Vissavadar,
Dist. Junagadh.

.....Petitioner

Versus

1. The Union of India,
Western Railway,
Bombay.
2. The Divisional Railway Manager,
Western Railway,
Bhavnagar para.

.....Respondents.

13/10/1988

O R A L - O R D E R

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

The petitioner, Shri Kantilal Bawabhai of Viasavadar, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 in January 1986, which was initially registered as O.A./7/86 and renumbered as O.A./190/86. According to the case set up by the petitioner, he was initially engaged as Casual labourer on 7.4.1976, and in the year 1979 he was sent for Medical Examination, but he was found medically unfit for B-I category i.e, required category for the post of substitute gangman. It was further stated that he was again directed for Medical Examination and he was found unfit for the same category on 28.3.1979. In the meantime he was however, placed on panel of successful candidates for the sanctioned post in scale of Rs.196-232 (R) as Beldar on pay of Rs. 196/-. Initially, when the petitioner was found eligible for engagement as substitute gangman in the pay scale of Rs. 200-250 (R), he was required to qualify himself for B-I category of Medical fitness, wherein he had failed. Later on, when he was sent for examination for the post of Beldar, where the category C-I, ~~was~~ was

.....3/-

required to be ascertained, medical memo was issued and given to the petitioner. But, he did not present himself before the concerned Medical Officer. It is however averred by the petitioner that again when he was sent for such examination under Memo dated 21.1.1985, the petitioner was declared unfit for (C-I) category. But he was found fit for C-II category. It is therefore, alledged that ~~EVER~~ ^{it is} even though he had worked for nearly three years and found fit for C-II, category, the Respondents Railway Administration has not absorbed him, and he has therefore, prayed that the respondents railway administration be directed to reinstate him as peon with all consequential benefits including the pay scale and the arrears as he is found fit for C-II category and vacancies are available.

2. The respondents railway administration have resisted the petitioners' application and contended in their counter that the petitioner, being on panel and unfit for medical category B-I, was directed for medical examination of C-I, category while memo dated 22.12.1979, but the applicant did not submit any certificate from Railway Doctor Junagadh and absconded with the said original memo (Annexure-D), and in January 1985, when the petitioner returned with the torn memo alongwith the Railway Doctor's letter dated 1.1.1985, and pleaded that due to unavoidable circumstances he could not attend the Railway Hospital and requested to issue a fresh memo. It is further submitted that accordingly, a fresh memo dated 5.1.1985 was issued. But after medical examination, the petitioner was again declared unfit for medical category C-I, as per Railway Doctor's certificate dated 7.1.1985 (Annexure-E), However, again the Railway Doctor's in terms of memo dated 18.1.1985 issued by the PWI, Visavadar, examined

the applicant and declared him fit for C-II, medical category as per certificate dated 15.1.1985. The respondents' stand is therefore, that the petitioner can not be absorbed and he is not entitled for any relief as claimed for.

3. When the matter came up for hearing, we have heard Mr. M.D. Rana and Mr. D.K. Vyas the learned counsel for the petitioner and the respondents respectively. We have also perused and considered the materials placed on record.

4. During the course of his arguments, it is strenuously urged by Mr. Rana, the learned counsel for the petitioner, that eventhough under the rules governing the field the petitioner may not be absorbed. But, having regard to the fact that he had served for 3 years and satisfied the requirements admissible for a lower category., i.e., C-II, he should be allowed to join duty without back wages. Mr. D.K.Vyas the learned counsel for the respondent, however, has vehemently submitted that the petitioner had not completed 6 years of service as casual labourer, and therefore, he can not claim any alternative job. In this regard he has pressed in service the instructions contained in Railway Board's letter dated 8.6.1981 (Annexure-F) which reads as under : -


F. Absorption of casual labour in regular vacancies :


- (ix) (a) When Casual labour who have put in six years service whether continuous or in broken periods are included in a panel for appointment to class IV posts and are sent for medical examination for first appointment to regular service, the standard of medical examination should not be 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 requiring 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.

5. The fact that the petitioner worked as a Casual Labourer for the period from 7.4.1976 to 22.12.1979 is not indispute. Moreover the fact that the petitioner left the job and did not report there after, ~~xxx~~ i.e., after 22.12.1979, is not controverted. The fact that a fresh memo was issued at the request of the petitioner for sending him for medical examination again and ~~he~~ having found fit for C-II, category only, does not help the petitioner to claim any right for either absorption or reinstatement. Admittedly, the petitioner has approached the Tribunal for such relief of reinstatement and absorption after a lapse of nearly 6 or 7 years. Even apart from it, in view of the instructions and the rules governing the field, do not entitle the petitioner to claim ~~by~~ any benefit even in the terms of alternative job as casual labour. Thus, the petitioner has failed to establish his claim.

For the reasons stated above, we do not find any merit in the application and accordingly the same is dismissed with no order as to costs.


(P.M. Joshi)
Judicial Member


(D.S. Misra)
Administrative Member