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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

~~XOAXNOX~~ 705 1986
T.A. No. (R.C.A./38/85)
with
O.A. No. 199/86
with
M.A./8/86 DATE OF DECISION 12/07/1988

Shri Bhikhabhai Khodabhai Petitioner

Shri B.B. Gogia Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

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

CORAM :

The Hon'ble Mr. P.H. Trivedi Vice Chairman

The Hon'ble Mr. P.M. Joshi Judicial Member

T.A./705/86
R.C.A./38/85

1. Union of India,
Western Railway, through,
General Manager,
Western Railway,
Bombay.
2. Divisional Railway Manager,
Western Railway,
Bhavnagar Para.
3. Divisional Mechanical Engineer,
Loco Shed,
Western Railway,
Bhavnagar Para.

.....Applicants

Versus

Shri Bhikhabhai Khodabhai,
Jetalsar Junction.

.....Respondent

O.A./199/86
With
M.A./8/86

Shri Bhikhabhai Khodabhai,
Railway Quarter No. 71/L,
Western Railway,
Jetalsar Junction.

.....Applicant

Versus

1. The Union of India, through
General Manager,
Western Railway,
Churchgate,
Bombay.
2. The Divisional Railway Manager,
Western Railway,
Bhavnagar Para.
3. The Divisional Mechanical, Engineer,
Western Railway,
Bhavnagar Para.

.....Respondents.

O R A L - O R D E R

12/07/1988

Per : Hon'ble Mr. P.H. Trivedi : Vice Chairman

Heard learned advocates Mr.B.B. Gogia and Mr. D.K.Vyas for the applicant and respondents respectively. This appeal in R.C.A./38/85 in R.C.S./23/83 is directed against the judgment and decree dated 31.1.1985 passed by the learned Civil Judge, S.D. Gondal as follow

That the plaintiff in that case should be continued in service on the post of Cleaner Mukadam in the grade and salary from the date of accident he suffered i.e., from 3.6.1981 and further that the defendants be restrained from interfering with the status of his duties as Cleaner Mukadam.

Against this judgment and decree, the Union of India filed an appeal which has been transferred under Section 29 of the Administrative Tribunals Act, 1985 and renumbered as T.A./705/86. In the meantime, the petitioner filed O.A./199/86 in which he obtained by way of interim relief the order that he should be taken as Peon-Waterman vide order dated 12.6.1986 whereupon the respondent authority passed the order dated 13.8.1986 by which he was so taken in service. The petitioner retired on 17.10.1986 and learned advocate Mr.B.B. Gogia states that his relief is therefore now restricted to the retirement benefits and leave as due for the pay which he last enjoyed as Cleaner Mukadam without any claim for back wages. The appeal is based upon the D.M.E. having opined that the petitioner was not fit to perform duties of Cleaner Mukadam which are strenuous and after the accident with the handicap he has

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suffered he would not be physically in a position to perform such duties. Had this plea had to be acted upon, it would have been proper for the respondent authorities to have a medical opinion. Under the policy of the respondent authority the screening committee has to find out the post to which the petitioner on decategorisation is found fit. The petitioner cannot be caused loss in his financial position, therefore the instruction strictly enjoin that if the post giving equal or equivalent pay or pay scale is not available the post which is next to that post should be offered. The petitioner as II Fireman enjoyed pay scale of Rs.260-350 in which his pay drawn was Rs.272/-. He was offered pay scale Rs.200-250 in the post of Peon which causes financial loss to the petitioner. When he was to be absorbed as Cleaner-Mukadam it was therefore, necessary that he should have been considered for it and if he was found unfit by medical authority, the lower post might have been given. This was not done. The petitioner has again stated that there was another person who was employed as Cleaner Mukadam and who is also handicapped in the same manner as he is, and was working until his retirement in that post. Against him no plea of non fitness was alleged or entertained.

The petitioner has retired and has limited his relief to merely protecting his pay in the pay scale of Cleaner Mukadam for the purpose of his retirement benefit and to the extent admissible for leave due on the basis for that pay scale and continuity of service. We do not see any good ground to interfere with the judgment and decree, except as stated below we therefore, order as follows.

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The respondent (Plaintiff) be allowed retirement benefit on the basis of continuity of service and pay and pay scale in the post of Cleaner Mukadam alongwith leave due without any claim for back wages within a period of 6 months. To this extend the judgment and decree appealed against stands modified. There shall be no order as to costs.

Sd/-
(P.H. TRIVEDI)
VICE CHAIRMAN

Sd/-
(P.M. JOSHI)
JUDICIAL MEMBER
