(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 234 OF 1986
~~T.A. No.~~
~~R.A. No.~~

DATE OF DECISION 24.10.1988

SHRI PERIYASWAMI RAYAPEN Petitioner

MR. B.B. GOGIA Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS. Respondent s

MR. B.R. KYADA 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 ? No
4. Whether it needs to be circulated to other Benches of the Tribunal. Yes

Shri Periyaswami Rayapen,
Adult, Occupation: Service,
Residing at Wankaner
(Dist: Rajkot). ..... Petitioner.

(Advocate: Mr. B.B.Gogia)

Versus.

1. The Union of India,
Owning & Representing
Western Railway, through:
General Manager,
Western Railway, Churchgate,
Bombay.

2. The Divisional Railway Manager,
Western Railway,
Kothi Compound,
Rajkot.

3. The Chief Engineer(Construction),
Western Railway, Station Building,
Railwaypura, Ahmedabad. ..... Respondents.

(Advocate: Mr. B.R.Kyada)

J U D G M E N T

O.A. NO. 234 OF 1986

Date:24.10.1988

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

The petitioner Shri Periyaswamy Rayapen of Wankaner (Rajkot District) has filed this application on 24.7.1986, under section 19 of the Administrative Tribunals Act, 1985. He has prayed that the respondents No.2 be directed to treat the petitioner on leave as per Clause-B of Rule 2604 of the Indian Railway Establishment Manual i.e., he be granted leave due, plus leave without pay to the extent of six months and the respondents may further be directed to find out alternative employment in the department in which he was working i.e., in the Engineering Department of the Respondent No.2 or in any other department, if no such vacancies of C-categories or below are

the matter came up for hearing Mr. B.B.Gogia appeared for the petitioner; whereas, Mr. B.R.Kyada, the learned counsel appeared for the respondents. Both of them preferred to file written submissions within 10 days, however no written submission were filed and hence the case again posted for hearing on 12.7.88 when written submissions were filed on behalf of the petitioner and Mr. B.R.Kyada was allowed to file written submissions within 15 days as prayed for. Accordingly he has filed his written submissions, wherein he has contended inter-alia that the petitioner was found medically unfit and as there was no vacancy he could not be directed for open line in Construction Department. According to him, the rules and the provisions referred to by the petitioner are not applicable in his case and the application deserves to be dismissed. Mr. B.B.Gogia, the learned counsel for the petitioner has however contended that he has neither been assigned duty by the Construction Department nor he has been provided with alternative employment by the open line and the net result is that he has not been permitted to discharge his duty from 6.1.1986. The main grievance of the petitioner is that he has not been taken on duty without issuing any lawful order and he stands discharged from 6.1.86 even though he is in continuous service from 6.6.83. In his written submission the petitioner has claimed all consequential benefits such as backwages, seniority etc. In this regard, he has sought reliance on the judgment dated 8.4.1988 in O.A.No.311 of 1986 (Shri Dhamji Jadav V/s. Union of India & Ors). It is not understood how the reliance is sought on the said judgment. The said case is distinguishable as the petitioner in the said case had put in service for more than 6 years. However, the

fact of the matter is that even in a case of casual labourer who had acquired temporary status and worked for more than one year (more than 240 days), even if he is found medically unfit, his service do not automatically stand terminated. The question whether the benefits of alternative employment are available to a casual labourer, has been discussed by us in our decision dated 22.10.1986 in O.A.No.165/86, at a great length by referring to the instructions contained in para 152, 2511, 2601, 2605 of the I.R.E.M. and more particularly circular dated 6.8.81 the relevant portion whereof is reproduced as under :-

> (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.

4. In the said case we have held that the casual labourer who had acquired temporary status is found medically unfit 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. In the said case it has been further observed as under :-

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 <u>First Appointment</u> (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.

5. In the present case, however, it is significant to note that after the petitioner was sent for medical examination, he has not been permitted to discharge his duties from 6.1.1986, possibly on the ground that he was not found medically fit for the required category. However, admittedly the respondents have not so far passed any order terminating the service of the petitioner on the ground that he has been found medically unfit. It is not understood how he has been sent for Jamnagar when he was already working last at Rajkot. It seems that he has been sent from one place to another and the result of the entire episode is that the petitioner is out of job since 6.1.86 and that too without any lawful order passed by the competent authority. In great number of instances, it has been brought to the notice of the railway administration by the higher authorities that a casual labourer who has worked continuously for more than 240 days in a year, he can not be discharged abruptly and even in the case of such persons have failed in the screening

unless the conditions precedent to retrenchment of workmen are followed. The said conditions are :

(1) The employee should be given one months' notice in writing indicating reason for retrenchment and the period of notice should have expired.

(2) The workmen at the time for retrenchment is given retrenchment compensation equivalent is given average pay for every completed year of continuous service.

(3) Notice in prescribed form is served on the Labour Commissioner.

In the present case, admittedly, the petitioner has been re-engaged as Casual Labourer from 6.6.83 and worked till 6.1.86 i.e. for more than two years, none the petitioner can not discharged or restrained from resuming his duty in absence of any valid order of termination of service by the competent officer. Thus, the predicament in which the petitioner is placed would justify us to direct the respondents to take the petitioner back on his original job. Before we record final order in this case it may be pointed out that the petitioner, in para-7 of his application, has not claim any backwages, however in his written submissions an attempt has been made to claim such backwages. In our opinion, therefore, there would be no claim for backwages.

6. In the result, we direct that the respondents No.2 the Divisional Railway Manager, Rajkot 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 respondents 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 give consideration to the 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 costs.

(P.M. JOSHI)
JUDICIAL MEMBER

(P.H.TRIVEDI)
VICE CHAIRMAN