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MA/557/87 in St.No: 563/87, OA/340/87, OA/345/87, OA/352/87, OA/386/87, OA/391/87, OA/488/87, OA/527/87, OA/537/87, OA/590/87, OA/629/87, OA/ 24/87, OA/148/87, OA/267/87, MA/332/87 in OA/266/87, OA/276/87, OA/324/87, OA/327/87, OA/332/87, OA/336/87, OA/339/87, OA/13/88, OA/ 18/88, OA/ 19/88, CA/253/87, TA/485/86, TA/426/86, TA/623/86, TA/621/86, TA/1316/86, TA/1340/86, TA/1353/86, TA/1376/86, OA/219/86, OA/234/86, OA/277/86, OA/312/86, OA/435/86, OA/123/87, OA/149/87, OA/152/87, OA/204/87, OA/255/87, MA/124/88 with OA/223/87, OA/225/87, OA/248/87, OA/333/87, OA/334/87, OA/358/87, OA/469/87, OA/508/87, OA/10/88, MA/380/87 with OA/257/87, MA/401/87 with OA/147/87, MA/410/87 with OA/159/87, MA/411/87 with OA/331/87, MA/412/87 with OA/330/87, MA/413/87 with OA/299/87, OA/541/87, OA/363/86, TA/1373/86, OA/274/87, OA/346/87, OA/344/86, OA/478/87, OA/335/87, OA/451/86, OA/22/87, OA/23/87, OA/180/87, OA/622/87, OA/4/88, OA/13/87, OA/437/86, TA/1336/86, TA/1347/86, TA/1381/86, OA/644/87, OA/645/87, OA/ 1/88, OA/14/88, EA/83/88 in OA/522/87, OA/5/88, TA/1346/86, OA/646/87, OA/311/86, OA/139/87, OA/289/87, OA/294/87, TA/608/86, TA/1338/86, TA/1366/86.

CORAM : HON'BLE MR. P.H. TRVEDI : VICE CHAIRMAN
HON'BLE MR. P.M. JOSHI : JUDICIAL MEMBER.

16-2-1988.

The 92 cases filed by different persons against Union of India and Railway Administration are on Board today. They are fixed for hearing with the consent of the advocates representing the parties. The parties' advocates are present and heard Mr. R.M. Vin, Mr. B.R. Kyada and Mr. N.S. Shevde learned advocates for the respondent who represent for all the cases are present. They viz. Mr. Vin, Mr. Kyada and Mr. Shevde state that all the matters cannot be heard together in as they do not involve common questions of law and facts and that each matters has got distinct facts and, therefore, it is required to be argued separately. The learned advocates representing the applicants said that they involve common question of law and facts and all the matters are almost similar and they should be heard together. They further state that the applicants are poor labourers placed in strvation and in these days of draught the matters may be heard expeditiously.

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(10)

Smt. Lilaben Mavji,
9-A, Nr.Bungalow No.10,
Railway Colony,
Sabarmati,
Ahmedabad....

..... Petitioner

(Adv. : Mr. P. H. Pathak)

Versus

1. Union of India, through
The Divisional Rly. Manager,
Pratapnagar, Baroda;
2. Assistant Executive Engineer
(Construction-I),
Ahmedabad;
3. Medical Officer(Divisional),
Sabarmati,
Ahmedabad...

..... Respondents

(Adv. : Mr. N. S. Shevde)

ORAL ORDER

OA/384/86

Date : 21-07-1989

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

This case OA/384/86 arises from an application under Section 19 of the Administrative Tribunals Act, 1985 the petitioner's grievance is that from 18-10-1985 she has not been allowed to be given work as Casual Labourer. She gathered that this is on account of medical unfitness and filed a representation dated 20-10-1985 which was followed up by another representation dated 5-11-1985, neither of these representations has been replied to. The petitioner obtained interim relief dated 22-10-1986 and has been reinstated from that date. The petitioner has urged that even if she is terminated from service on the ground of medical unfitness she is entitled to an order preceded by a notice and compensation under Section 25F of the Industrial Disputes Act and she is also entitled to an appeal against medical

unfitness after which the order of termination can be made effective.

The learned advocate for the respondents stated that the medical unfitness is made known to the petitioner by Annexure-B dated 18-10-1985. On perusal of this communication there is no proof that the copy has been served upon the petitioner but it is clear that no order of termination accompanied so far as the petitioner is concerned with this Annexure. It is, therefore, reasonable to conclude that no order of termination has been passed or communicated to the petitioner and discontinuance from 18-10-1985 cannot, therefore, be regarded as proper and legal.

So far as the protection of Section 25F is concerned, we do not consider it necessary for the purpose of this case to give any definite conclusion in view of our decision in the following paragraph:

The petitioner has been reinstated from 22-10-1986. The discontinuance of the petitioner as Casual Labourer is not upheld. The respondents are at liberty to pass fresh orders which are legal and in ^{view} so, may examine the entitlement of the petitioner under Section 25F also. If the petitioner is being terminated from service on account of medical unfitness the certificate of medical unfitness indicating clearly the nature of her infirmity must be made known to the petitioner along with a specific order of termination and the petitioner must be allowed an opportunity to appeal against that order. It is noted that in the reply the respondents have stated that they relied on the said medical certificate but, during the hearing the learned advocate could not throw any light on the nature of the

infirmity of the petitioner nor could make available the medical certificate, although there is a clear statement in the reply that they relied upon it and, therefore, are obliged to keep it ready if it is so relied upon. Learned advocate for the respondents also stated that they have denied the nature of medical infirmity as what is surmised by the petitioner. This denial is not adequate because it is for the respondents to inform the petitioner of the nature of the medical infirmity and not merely ~~denied~~ deny of the petitioner. In the circumstances ^{even} ~~it~~ only to surmise, as to serve.

With the above observations and directions ~~as stated~~ we find the petition is found to have merit. The petitioner is declared to be in service from the date of termination viz. 18-10-1985 subject to ~~as~~ the above extent with consequential benefits. No order as to costs.

P. H. Trivedi
(P. H. Trivedi)
Vice Chairman

P. M. Joshi
(P. M. Joshi)
Judicial Member

Shah/-