

(S)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

A H M E D A B A D.

O.A. No.
~~Text No.~~

336

1987

DATE OF DECISION 20.09.1988.

Smt. Sushila Jawanji Petitioner

Shri Y.V. Shah Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri N.S. Shevde 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?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(6)

Smt. Sushila Jawanji
 C/o. P.W.I., W.Rly.,
 Mehemdabad.
 Dist. Kheda.
 (Advocate - Shri Y.V. Shah)

.. Applicant

Versus

1. Union of India, through
 General Manager, W.Rly.,
 Churchgate, Bombay.
2. Divisional Engineer(V) (E),
 W.Rly., Pratapnagar,
 Baroda.
3. Mr.Raval, P.W.I.,
 W.Rly., Mehemdabad.
 Dist. Kheda.

.. Respondents.

CORAM: Hon'ble Mr. P.H. Trivedi : Vice Chairman
 Hon'ble Mr. P.M. Joshi : Judicial Member

O R A L O R D E R

20.09.1988

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

Heard learned advocates Mr.Y.V.Shah and Mr.N.S.Shevde for the applicant and the respondents respectively. The petitioner's case briefly is that she has served for more than 6 years as casual labour and thereon has been entitled to the benefits of a temporary status which includes the right of being discharged only after a notice under chapter XXIII as stated in para 2511 of the Indian Railway Establishment Manual. The petitioner was sent for medical examination and was not found fit for B-I but was considered fit for C-2 category and thereafter, the respondent authorities have not offered her suitable job for which C-2 category is fitted. The petitioner's grievance is that since 13.10.1986 neither there has been any job given to her for which she is fitted nor has she been issued with any order of termination or any other order granting leave or defining her status in the employment of the respondent.

The petitioner has also cited the case 1981 L.A.B. I.C. 219 in which the Kerala High Court has decided that on acquiring temporary status, the benefit of rule 2302 is applicable and termination can be caused only after service of 14 days' notice on either side.

The case of the respondents is that the petitioner is not a temporary servant and she does not have right of being continued in employment on medical decategorisation. However, the petitioner was sent for such examination and was not being found fit for B-I category but was subsequently found fit for C-I category and an attempts has been made for alternative job for her which have not been yet fruitful. The petitioner has contended that she should be continued in service. According to the learned advocate for the petitioner, the period until which she is not offered a suitable appointment has to be adjusted against leave or Extra Ordinary Leave. It was pointed out that the provisions of adjustment on decategorisation is not applicable to the casual labourers who are not entitled to leave of any kind and that such a provision only apply to the temporary servant. The petitioner has no title or right to be continued in service but until her services are terminated by following proper procedure by valid orders she has to be upheld in her cause of being treated as continuous in service and to be paid accordingly. The respondent authorities are free to pass valid orders regarding termination or to pass orders applicable to the petitioner regarding adjustment of her period after decategorisation against leave if applicable in accordance with instruction at

Annexure 'C'. In this case, the respondents have neither found a suitable job for the petitioner nor passed an order of discharge against the petitioner under rule 2302 or passed any other order continuing the status of the petitioner or granting leave of any kind. In the absence of any order from the respondent, the petitioner is justified in claiming relief that she be paid wages until such orders passed.

Accordingly, we hold that the petitioner be treated to have been in continuous service from 13.10.86 and be reinstated and her wages be calculated in terms of her last appointment and be paid accordingly within a period of 3 months from the date of this order. We must also make it clear that the respondents are at liberty to pass orders regarding termination of the services of the petitioner in terms of rule 2302 and also consider that instructions at Annexure 'C' are applicable. With this direction, the case is disposed of. There shall be no order as to costs.


(P.H. Trivedi)
Vice Chairman


(P.M. Joshi)
Judicial Member