

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A. No. 136 OF 1988  
~~L.A. No.~~

DATE OF DECISION 22-07-1991

Mr. Chhagan Popat Petitioner

Mr. P. H. Pathak, Advocate for the Petitioner(s)

Versus

Union of India and Others. Respondent

Mr. B. R. Kyada Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M. M. Singh : Administrative Member

The Hon'ble Mr. S. Santhana Krishnan : 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*

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Mr.Chhagan Popat,  
Bhagavatipara Street No.10,  
Rajkot.

...Applicant.

( Advocate : Mr.P.H.Pathak )

Versus

1. Union of India,  
Notice to be served through,  
The General Manager,  
(Western Railway),  
Churchgate,  
Bombay.
2. The Divisional Railway Manager(E),  
Western Railway,  
Kothi Compound,  
Rajkot.
3. Inspector of Works (M),  
Western Railway,  
Kothi Compound,  
Rajkot.

...Respondents.

( Advocate : Mr.B.R.Kyada )

J U D G M E N T

O.A. No. 136 OF 1988

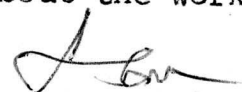
Date : 22-07-1991

Per : Hon'ble Mr.S.Santhana Krishnan : Judicial Member

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant challenges the oral order of termination dated 1.10.1984 and also the order dated 23.2.1987 and medical certificate dated 1.4.1985.

2. The allegations in the application in short is as follows :

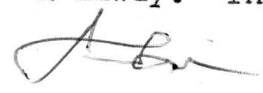
The applicant was working as casual labourer with the respondents prior to 1970-71. There was an accident in the year 1970-71, and he got injury in his eye. There was no complaint about the work of the applicant



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till 1984. He was doing the work satisfactorily till 1.10.1984. Services of the applicant is terminated under the guise of 'medical unfit'. He took treatment under the Special Eye Medical authority who found him fit for the work and issued necessary certificate. The applicant has put in more than 240 days of services and his services cannot be terminated. He was not provided even job as per C-2 category. The action of the respondents is violative of Section-25 (F) (G) (H) of the Industrial Disputes Act, as well as Rules 77 of the Industrial Disputes Act. Secondly, the Medical Certificate which declared he was medically unfit was issued by a Medical Officer who was not competent to issue the same. The applicant is declared fit by the Special Medical Authority. There is no necessity for medical examination for a casual labourer. Hence this application.

3. The respondents in their reply claim that the applicant was engaged originally for Construction Work along with other several thousands of labourers for the work of V.O.P. Project. At the time of engaging the casual labourer no medical examination had to be done as they had to do only manual work. The date of birth of the applicant is 3.11.1959, and as such, it is false to state that he joined as casual labourer prior to 1970-71. The major part of the V.O.P. Project was over in middle of 1984 and therefore, the casual labourer who were working on V.O.P. Project were directed for medical examination with a view to engage them or use their services against vacancies in work caused and therefore, passing of medical fitness was essential for appointment in any category of Railway. The applicant



(11)

was working in Civil Engineering Department and minimum requirement for medical fitness is in the B-1 Category. The applicant was sent for medical examination, but he was found unfit as per the certificate dated 12.10.1984. The applicant again approached the administration on 20.3.1985 and requested to send him for re-medical examination on the plea that he had taken medical treatment and that the vision of his eye had improved. He was again sent for re-medical examination on 1.4.1985. He has never approached them thereafter, probably because he was again declared unfit. On 1.3.1986, the applicant again approached the respondents with a certificate from the private hospital. He was again sent for medical examination on 23.9.1986, and the Divisional Medical Officer considered him unfit for B-1, but considered him fit in C-2, Category. After the completion of the Project work, they wanted to place the applicant for regular work but he was found medically unfit for the same. There are several persons in similar position waiting for their turn in the Waiting list. The applicant will get his change as per the Waiting List and his case will be considered according to the length of service. If the applicant is willing to work as Safaiwala in other department of this division, they are prepared to consider his case, if there is any chance. For this the consent of the applicant is necessary. The certificate is issued by the competent authority and as such the applicant cannot question the same.

4. The applicant filed rejoinder denying the allegations made in the reply.



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5. Heard counsel for the applicant as well as the respondents. Records are also perused.

6. The applicant in his application originally claimed that he was working as casual labourer under the respondents prior to 1970. Annexure-A is the Service Card copy produced by him refers his date of birth as 3.11.1959. When the respondents point out that the applicant could not have been appointed by them at the age of 11, the applicant in his rejoinder claims that he was not aware of his date of birth given in the service card. Annexure-A shows that the applicant was engaged as casual labourer with the respondents only from 1979. The respondents contended that the applicant was engaged under them only from 22.6.1979 onwards. The fact that the applicant had attained temporary status is not disputed. It is the contention of the respondents that the applicant was originally working in V.O.P. Project, and, the work was over in the middle of 1984. They have also admitted that for the casual labourer no medical examination is necessary. As they wanted to engage him as regular worker, he will have to pass the medical examination. Accordingly he was sent to the concerned medical officer for test, who found him unfit for B-1 category. Annexure-A-1, is the copy of the certificate produced by the applicant. The applicant requires this Tribunal to declare the same as void. Annexure-A-1, dated 23.2.1987 is the letter sent by the respondents informing the applicant that he is found unfit in B-1 category and fit in C-2 category with present vision. Since no post was available in C-2, category, they are not able to provide him any alternative post. Annexure-A-2, is letter sent by the applicant which does not contain any date. It is admitted that the applicant worked under

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the respondents as casual labourer only from 22.6.1979, and that he was sent for medical examination for regular appointment. He also admits that he was declared unfit in B-1, category. Another communication sent by the applicant without any annexure mark and also without any date is filed along with the application. In this letter the applicant claims that he had worked under the respondents from 31.5.1973, which cannot at all be <sup>in time</sup> as discussed already. Another letter dated 11.6.1985, is filed wherein the applicant claims for alternative job.

7. Annexure R-1, produced by the respondents show that the applicant was working under the respondents as casual labourer. The respondents do not dispute the contentions of the applicant that he is entitled to claim temporary status. They are not able to provide him necessary job on regular basis as he was found unfit in medical test for B-1 category.

8. The counsel appearing to the applicant produced the copy of the rules for medical examination of the Railway Employees which contemplate vision test examination as <sup>was included</sup> ~~considered~~ by the respondents. Reliance was placed on the decision reported in Oral order in O.A./346/87, dated 20.4.1988. In this case the applicant has established that his services were terminated. Though the applicant claims that the respondents terminated his services on 1.10.1984, he has not chosen to produce any order. The applicant claims that the termination was only oral. He has filed along with the application M.A.No.184, of 1990 for condonation of delay. It is specifically stated, therein that if the respondents raised the plea of limitation, the applicant will have to satisfy the court that the same is filed in time.

*Ad*



9. The applicant will have to show how the application filed by him in 1988 challenging the oral order of termination dated 1.10.1984, is in time. There is no explanation in the application. Hence the application is barred by limitation.

10. The counsel appearing for the applicant contends that the respondents terminated his services. On the other hand the service card produced by him only shows that he left the service on his own accord on 30.9.1984. Further the applicant failed to send any application to the respondents immediately questioning the termination. Hence, the applicant failed to establish that the respondents terminated his services. It follows that there is no necessity to consider whether any provision of the Industrial Disputes Act are violated.

11. The counsel for the applicant further contends that even if the applicant left the services on his own accord, the respondents ought to have taken action against him by issuing necessary notice and as such his services cannot be terminated. On this, the counsel appearing for the applicant placed reliance on the decision reported in A.T.R. 1988 (1) C.A.T. page-427, (Bajal Ramji Vs. Union of India & Ors.). A perusal of the facts of this case show that the applicant was absent from 31.8.1971, and hence his services were terminated by a memo on the ground that he was deemed to have resigned as per Note 2 of exception II of Rules 732, of the Indian Railway Code, Volume-I. Hence, it is pointed out that as the petitioner was unauthorisedly absent from duty the respondents ought to have issued show-cause notice to the petitioner. This decision do not apply to the facts of our case.



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12. Reliance was also placed on a decision reported in 1991 (1) SLR Page-28, (Nachhattar Singh Versus State of Punjab & Ors.). Here also the applicant applied for leave which was not granted and hence his absence was treated as absent from duty due to over staying leave. Hence it is pointed out that if the government wants to terminate and services of the government servant on the ground of absence from duty, it is obligatory on the part of the authority concerned to hold an enquiry against the Government servant as per the procedure laid down in Article - 311 (2) of the Constitution. This also is not of any help to the applicant in view of the facts of our case, discussed already.

13. It is seen that the applicant was originally engaged as casual labourer for project work. Thereafter to provide him regular job he was asked to appear for medical examination. He was found unfit for B-1, category. The respondents pointed out that he was in Waiting List for C-2, category and they will be able to provide him employment when his turn comes in the waiting list. To this question, Whether the applicant is willing <sup>to</sup> work as SafaiWala in any other Department, the applicant failed to give any specific reply in the rejoinder. As the applicant's services were not terminated, the applicant is not entitled to call upon the Tribunal to declare the same as void. As the applicant was found medically unfit the applicant cannot require this Tribunal to provide him job, inspite of the fact that he was found unfit in Vision test for B-1, category. If the respondents failed to provide the applicant job for C-2, category ~~was~~ per Waiting list, the applicant is entitled to approach this Tribunal thereafter. The applicant cannot claim any relief now against the respondents in the present application.


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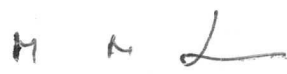


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14. In view of the foregoing decision, the applicant is not entitled to claim any relief in this application and as such the application is dismissed as devoid of merits. But in the circumstances no order as to costs.

  
( S. Santhana Krishnan )  
Judicial Member

  
( M. M. Singh )  
Administrative Member