

CL Terminated (Jud)

(IN) THE CENTRAL ADMINISTRATIVE TRIBUNAL

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A H M E D A B A D B E N C H

O.A. No. 200 OF 1988
~~XXXXXXXXXX~~

DATE OF DECISION 25-04-1991

Shri Shiva Jiva Parmar, Petitioner

Shri M.D.Rana Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Shri N.S.Shevde 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?
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?

- 2 -

Shri Shiva Jiwa Parmar,
Near Parahuram Pottery Sapara,
Dhrangadhra.

...Applicant.

Versus

The Union of India,
Notice to the G.M.,

1. Western Railway,
Churchgate,
Bombay.
2. DRM Vadodra Division,
Vadodara,
Western Railway,
3. Health Inspector,
Dhrangadhra Railway Station,
Dhrangadhra.

... Respondents.

J U D G E M E N T

O.A. NO. 200 OF 1988.

Date: 25-04-1991

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

The applicant had come forward with this application under Section 19 of the Administrative Tribunals Act, 1985.

2. The main grievance of the applicant is that he was initially taken in the Railway Service as Khalasi on 21st Sept.1968 and was working as casual labourer till 1986. He was appointed as a ^aSafiwala Khalasi in the pay scale of Rs.750-940, by the memorandum dated 2nd July, 1987. He was working as substitute from 25.9.1985. He was appointed as temporary safi^awala with effect from 22nd December 1986. The Railway Medical Officer also granted him the physical fitness certificate on 21st September, 1985 adjudg^ging his fitness for 'C' 1 Category. It is a rude shock and surprise that his superior authority issued a medical Memorandum on 23-12-87 declaring him unfit for the post of safaiwala.

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He was orally given the marching order from the Railway service. He was told that he is not fit on account of his failure in the vision test. Even if the vision acuity is not proper no rigid standard is strictly adhered to with regard to the inferior post like the one which the applicant held. Further, the Railway Establishment Manual, states that when a Railway servant fails in vision test or otherwise physically incapable of performing the duties which he was performing before his unfitness, every effort must be made by the Railway Administration to offer him the alternative employment. As he was not given any notice prior to termination and as he was not offered alternative employment, the oral termination is not valid and hence he has come forward with this application for setting aside the oral termination and claiming back wages.

3. The respondents point out in their reply that the applicant was appointed as a substitute safaiwala in the vacant post of Sanitary Jamadar from 25.9.1985. He was found suitable for the post of safaiwala by the screening committee. He was therefore, required to be medically examined by the medical officer before his oral appointment as safaiwala. He was examined by the Divisional Medical Officer Sabarmati and was found medically unfit as ^{rpa} certificate dated 14.1.1988. He was verbally informed about the same, and hence he could not continue as substitute safaiwala and was accordingly discontinued



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by respondent No.3. ~~the~~ applicant was screened and placed on panel, he was sent for medical examination as per the letter dated 23.8.1979. As he was found fit, he was appointed provisionally as a temporary safaiwala. As per letter dated 2-7-87 the applicant who was a substitute to be first sent for medical examination in C/1 category for safaiwala and could be appointed only after declaring fit by the Medical Officer. As he was found fit at that time he was engaged as substitute safaiwala. Subsequently he was found unfit on account of his failure in the vision test. No relaxation is allowed in certain cases and it is not applicable to the applicant's case. There is no question of offering alternative employment to the applicant as per Chapter XXVI of the Indian Railway Establishment Manual. This is not applicable to the case of applicant. No notice is required to be given as the applicant found unfit in the medical examination. Hence the applicant is not entitled to claim for any relief.

4. Heard Mr.M.D.Rana and Mr.N.S.Shevde, learned counsel for the applicant and the respondents respectively. We have perused the records.

5. There is no dispute that the applicant was originally appointed as Safaiwala Khalasi. The respondents pointed out in their reply that when the applicant was originally screened and placed on panel, he was sent for medical examination. Annexure A/3, the medical certificate shows that he was found fit in C-I, category and hence he was engaged as substitute safaiwala. It is the contention of the respondents that the applicant

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worked as Safaiwala, he was screened for the post of safaiwala by the screening committee. He was therefore, required to be examined by the Medical officer before his regular appointment as safaiwala. Accordingly he was examined by the Divisional Railway Manager, Sabarmati who found him medically unfit as per Annexure R-I, the certificate dated 18.2.1988. It is pointed out in the certificate that the applicant is not having the vision test as required under the Rules.

6. Mr.M.D.Rana, counsel for the applicant points out, para 2302, the terms and conditions applicable to the Railway Servants ~~and~~ which states that the service of a temporary railway servant shall be liable to termination on 14 days' notice. On this aspect our attention was drawn to a decision reported in 1981 L.I.C. P. 219, (T.Rateeshbabu, Vs. Loco Foreman, S.Railway, Shoranur and another), wherein it is clearly pointed out ^{that} ~~and~~ even a casual labourer having worked for a prescribed period, is entitled to this notice. Even if he was found medically unfit, he was not liable to be terminated otherwise than by the notice postulated under para 2302. Admittedly in our case the respondents failed to serve any such notice, on the applicant. Hence the order of oral termination is liable to be set aside even on this short ground.



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7. Even otherwise our attention is drawn to the Manual ~~paras~~ 2601, to 2605. They contemplate that a railway servant who fails in a vision test or otherwise becomes physically incapable of performing the duties of the post which he occupies should not be discharged forthwith but every endeavour should be made to find alternative employment for him as expeditiously as possible. A perusal of the facts of our case show that though the respondents found that the applicant is unfit for the post of safaiwala as per Annexure R-I, dated 14.1.1988, no attempt is made to found him a alternative employment as provided in para 2601. This provision is mandatory and though the respondents try to claim that the provision of ~~this~~ chapter is not applicable to the applicant they are unable to substantiate the same. It is evident that as soon as the respondents received the medical certificate dated 14.1.1988, they have chosen to terminate the service of the applicant ~~brakly~~ without providing any alternative employment. This is without any basis and ~~it~~ violates ~~the~~ the mandatory provision of para 2601. It is for the respondents to provide alternative employment to the applicant and if he refuses to accept the same then the respondents can consider ~~or~~ termination of his services. As the respondents failed to give any notice to the applicant before termination as per para 2302 of the



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Manual and as the respondents fail to provide alternative employment to the applicant as per para 2601, we find no option but to hold that the order of oral termination is not valid and it is liable to be set aside. It follows that the applicant is entitled to claim that the oral termination ^{order of} ~~order~~ is not valid and hence it is hereby set aside and the respondents are hereby directed to re instate the applicant within three months from the date of the order with all back wages from the date of oral termination. ^{order of} ~~order~~ ^{within the same time period} No order as to costs.


(S. Santhana Krishnan)
Judicial Member.

M. M. Singh
(M. M. Singh)
Administrative Member.