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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

No  
Allow to  
work

O.A. No.  
~~T.A. No.~~

31 OF 1989

DATE OF DECISION ~~N~~ 01.03.1993.

Shri Natvarji Thakor Petitioner

Shri C.S.Upadhyay Advocate for the Petitioner(s)

**Versus**

Union of India and ors. Respondent

Shri N.S.Shevde Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. N.V.Krishnan : Vice Chairman

The Hon'ble Mr. R.C.Bhatt : Member (J)

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 ? ✓

Shri Natvarji Thakor  
Son of Viramji Thakor  
resident of Gothwa  
Taluka Visnagar, District Mehsana,  
last employed as Gangman,  
at Asarva, with M.G. Gang No.1,  
Ahmedabad.

...Applicant.

( Advocate : Mr.C.S.Upadhyay )

Versus

1. The General Manager,  
Western Railway,  
Churchgate,  
Bombay - 20. representing  
the Union of India.
2. The Divisional Railway Manager,  
(Engg./Estt) Western Railway,  
Baroda.
3. The Medical Superintendent,  
Railway Hospital, Pratapnagar,  
Baroda.
4. The Chief Permanent Way Inspector  
Western Railway,  
Ahmedabad.

...Respondents.

( Advocate : Mr.N.S.Shevde )

ORAL JUDGMENT

O.A.NO. 31 OF 1989.

Dated : 01.03.1993.

Per : Hon'ble Mr.N.V. Krishnan : Vice Chairman

The applicant was a gangman under the PWI,  
Sabarmati, from 27.1.1963. He states that he was posted as  
Gangman at Asarva with the M.G. Gang No.1, ADI in Feb.1967.  
Nevertheless, he was asked verbally to work as a Chowkidar as  
a reliever. His case is that he was assaulted by goondas  
on that day and badly beaten up. He became unconscious.  
He was admitted to a private doctor's clinic at Visnagar  
from 15.2.1967 till 30.9.1986, where he was under treatment.  
He contends that he could not attend duties because of  
this accident.

2. After recovery, when he reported for duty, letter dated 24.11.1986, was addressed to the C.P.W.I., Ahmedabad (Respondent no.4), by the Divisional Office, Baroda, directing the former to take the applicant for work if he is found fit as per the medical certificate and if this was not possible, he was directed to give his reasons in detail. The fourth respondent replied (Annexure-A/5), that as the applicant was unauthorizedly and absent from 15.2.1967, he is deemed to have been removed from service. He also stated that he cannot be taken back, without medical examination by the Medical Supdt., Baroda.

3. Subsequently, the Medical Supdt., Western Railway, Baroda, referred his case to the Department of Psychiatry SSG Hospita, Baroda, a Govt. institution (Annexure-A/6). A reply was given to the Medical Supdt. which is also at Annexure-A/6 and indicates that the applicant was admitted in the hospital on 28.3.1983 and he was discharged on 5.4.1983, with Regd. no. 115570-PSY/88/532. The Medical Superintendant, Western Railway, Vadodara, was informed that the applicant had not shown during his stay in the hospital any feature suggestive of any psychiatric illness. It was also stated that he was fit for duty but that he should not be given any work which involves public safety.

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4. Even after this certificate, the applicant was not re-engaged by the Railway which is his substantive grievance. He has prayed for a direction to the respondents to allow him to resume duty immediately and to regularise the period of absence from 15.2.1967 till the date of his resumption of duty and pay allowances for the intervening period.

5. The respondents have filed a reply stating that it is not correct to say that the applicant met with such a serious accident in Feb. 1967 and was continuously under treatment till Sept. 1986. According to the respondents, the applicant had been marked present in May/June, 1967, in the BG-I Asarwa Yard gang and he worked upto 14.7.1967 in the said gang. He did not remain present from 15.7.1967 onwards. Hence, serious doubt is cast on the story of the applicant's illness. Therefore, the respondents contended that the application deserves to be dismissed.

6. We have heard the learned counsel for the parties. If the applicant had really been absent for such a long time, without any reason whatsoever, the respondents could very well have initiated action to terminate his services on the ground of abandonment by the issue of a proper notice. As the applicant's name was on the rolls of the Railways, his services could not be terminated without taking such an action. The learned counsel for the respondents did not produce any evidence to show that on the ground of abandonment his services were terminated after the

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issue of a notice. He however, submitted that as this appears to be an old matter it was not been possible for the Railways to lay hands on the concerned records.

In fact, there is a letter dated 12.4.1988 of the fourth respondent (Annexure-A/7), stating that he is not able to verify whether he was on his muster roll. We are satisfied that as of today, no evidence has been produced and hence it is clear that the service of the applicant has not yet been terminated according to law.

7. That position ~~is~~ seems to be strengthened, by the direction given in the Annexure-A/4 letter written on 29.11.1986, to the 4th respondent. If the applicant's services had been terminated, perhaps this letter would not have been issued at all. This, coupled with the subsequent reference to the SSG Hospital, seems to suggest that the applicant's services were not terminated according to ~~xx~~ law, even though he was absent for 19 years.

8. In the circumstances of the case, we are of the view that this case has to be dealt with a certain amount of sympathy in view of the averments made about the long illness of the applicant. It is only fair that <sup>he</sup> is given an opportunity to serve the Railways if he is now found fit. Considering the fact that his services has not been terminated, despite his absence and that the SSG Hospital, Baroda had stated (Annexure-A/6) that he is fit for duty but not for work which involves public safety, we are of the view, that, in the interests of justice the applicant deserves to be granted some relief. Accordingly, we dispose of this

application with the following directions :

(i) In the circumstances, we direct the applicant to report with a copy of this order to the second respondent, the DRM Western Railway, Baroda, within 15 days from the date of its receipt by him.

(ii) In case, the applicant so reports, the second respondent is directed to consider on the basis of the letter addressed by the Department of Psychiatry, SSG Hospital, Baroda Division, to the Medical Supdt. (Annexure-A/6 series),

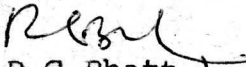
~~(iii)~~ <sup>Q</sup> Whether the applicant cannot be taken on duty straight away. <sup>(iii)</sup> If, however, he feels that a medical examination is again necessary, he shall send the applicant for such medical examination and, on the basis of the medical examination if the applicant is found fit for engagement, he shall be so engaged on any post for which he is found fit within three months from the date on which the applicant reports to him. We make it clear that it would be open to the applicant to approach this Tribunal ~~xx~~ if he has a ny grievance in this regard.

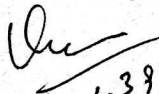
(iv) In so far as his previous service is concerned, we make it clear that in case the applicant is now engaged on duty, the period from 15.7.1967 - from which date he was not present according to the respondents - until the date on which he resumes duty in accordance with this order, shall not count for any purpose but it will also not be a break in service such that the services rendered by the applicant before 15.7.1967 will be joined with the service he may now render, for all purposes.

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9. The application is disposed of with the  
aforesaid directions.

  
( R.C. Bhatt )  
Member (J)

  
1.3.93  
( N.V. Krishnan )  
Vice Chairman

AIT