

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. /316/89 with M.A. /448/92
T.A. No.

DATE OF DECISION 29-4-1993

Shri P.D.Kolacha

Petitioner

Shri R.T.Dave

Advocate for the Petitioner(s)

Versus

Union of India & others

Respondent

Shri N.S.Shevde

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt : Judicial Member

The Hon'ble Mr. M.R.Kolhatkar : Administrative 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?

Parsinghbhai Dalubhai Kolacha,
of Dohad, District Panchmahals.

....applicant

Advocate Mr. R. T. Dave

versus

1. Union of India,
Representing, General Manager,
Western Railway, Churchgate,
Bombay.
2. Permanent Way Inspector,
Western Railway, Dohad.

....respondents.

Advocate Mr. N. S. Shevde

O R A L O R D E R

O.A./316/89

Date : 29-4-1993.

Per : Hon'ble Mr. R. C. Bhatt,
Judicial Member.

None is present for the applicant.

Mr. N. S. Shevde is present for the respondents.

2. This application under section 19
of the Administrative Tribunal Act, is filed by the
applicant as a Casual Labourer seeking the reliefs that
the oral order of removing the applicant from service as
Khalasi be declared illegal and the same be quashed and
the respondents be directed to take the applicant on duty

forthwith and to pay him his salary for 4 months or whatever is found due.

2. The case of the applicant as pleaded in the application is that he was working as Casual Labourer since 1982, under the respondent no.2 and was paid 700/- as monthly salary and he worked continuously for more than 5 years. It is alleged by him that he was asked ~~to go~~ for medical test regarding whether he was suffering from T.B. or not and the doctor opined on 23rd September, 1986 that he was not suffering from T.B. and thereafter, he was allowed to work for some time, but all of a sudden since last 4 months, he is not given any work and he was orally told by respondent no.2 i.e. P W I, Western Railway, Dohad, that the applicant is dismissed ~~to go~~ the service, but no written order is given nor any notice or retrenchment allowances were paid to him before removing him from service and hence the oral order of the respondent no.2 is bad in law.

3. The respondents have filed detailed reply. It is contended by respondents that the application is barred by limitation because the cause of action arose to the applicant on 12th July, 1986 and the present application has been filed by him on 1st August, 1989. The respondents have denied that the applicant was asked to go for medical test to find out whether he was suffering from T.B. or not and denied that the doctors opined on 23rd

23rd September, 1986 that he was not suffering from T.B. and that thereafter he was allowed to work for some time as alleged. The respondents have contended that the applicant was sent for absorption in railways service in the month of July, 1986 for medical examination of category B-I for Gangman and his vision was not found upto the mark for the category B-I by the Assistant Divisional Manager Officer, Western Railway, Dohad who has issued a medical certificate dated 12th July, 1986 declaring ~~that~~ the applicant unfit for such appointment. The respondents have produced the said certificate along with the letter dated 29th September, 1989 from D M O to the A E I. It is contended that the result of the medical examination was known to the applicant at ~~the~~ time and he wilfully absented himself from duty since 1986. The respondents have denied that since last 4 months before filing the application, the applicant was not given any work and denied that the applicant was orally told by the respondent no.2 that he was dismissed from service. It is contended that the applicant having ^{been} ~~declared~~ unfit in B-I medical category was immediately required to be discontinued as Gangman but the applicant himself, knowing the result absented from duty ~~and~~ and hence, ^{the} hence question of giving any written order or any notice or retrenchment compensation did not arise. The respondents have denied that ~~the~~ any request was made by the applicant for giving him an order in writing about his removal.

5. The applicant has filed written submissions.

The learned advocate for the respondents submitted that the application is barred by limitation because the application is filed on 1-8-1989 while the applicant was declared unfit in medical examination on 12th July, 1986 as per the medical certificate produced by the respondents.

6. It is true that the applicant has not come within one year from the date of the medical certificate dated 12th July, 1986 where he was declared unfit but according to his written submissions, the result was not made known to him by the respondents. The applicant has not produced any documentary evidence in support of his case. Though there is substance in the respondents contention about the limitation, but as the matter is admitted as back as on 24-1-90, we do not propose to dismiss the application on the ground of limitation but we proceed to decide the matter on merits.

7. The applicant in his written submission does not dispute that he was not found up to the mark for category-B-I and was declared unfit for Gangman for B-I. The respondents therefore, ought to have considered engaging the applicant as a Casual Labourer. According to the written submissions, of the applicant, he ought to have been given an opportunity of hearing before his actual termination. The respondents in reply have denied that the applicant was dismissed or terminated

as alleged-. They have contended that the applicant himself knowing the result of medical examination ^{himself} absented ^{himself} from duty. The applicants' case is, that prior to his application, he was not given work and he was dismissed from service. The applicant has not produced any documentary evidence in support of his case that he worked till ~~4~~ 4 months prior to the date of this application and hence, we do not believe his written submission on that point and we do not believe him that he was either dismissed or terminated from service by respondent no.2 as alleged . As observed above, the applicant ~~has~~ ^{has} not produced any documentary evidence about the number of days, he worked ~~or prior to or~~ last date of work ^{or} ~~prior to~~ alleged termination, He has failed to establish that the respondents have violated the provision of section 25 F of I D Act,. We have carefully perused the written submissions and we find no substance in his written submissions. The applicant has been declared unfit for category-B-I for Gangman which is not disputed by him. It would be just and proper , therefore to direct the respondents to consider to re-engage the applicant as Casual Labourer i.e. in the lower category and whether he could work inspite of defective vision. Hence, we pass the following order.

10.

O R D E R

^N The respondents are directed to consider to re-engage the applicant in the lower category as

Casual Labourer and whether he could work inspite of defective vision as per the medical certificate.

The respondents may if permissible according to the rules, then ~~not~~ re-engage the applicant for the ~~XXX~~ work as Casual Labourer as early as possible. The application is disposed of accordingly. No order as to costs.

M.R.Kolhatkar

(M.R.Kolhatkar)

Member (A)

Tenzl

(R.C.Bhatt)

Member (J)

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