

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

**O.A.NO. 287/91
T.A.NO.**

DATE OF DECISION 9.10.98

Shri Pradhan Pama-----Petitioner

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

Versus

Union of India & Ors.-----Respondent

Mr.R.M.Vin-----Advocate for the Respondent(s)

CORAM

The Hon'ble Mr.V.Radhakrishnan : Member (A)

The Hon'ble Mr. P.C.Kannan : Member (J)

JUDGMENT

1. Whether Re porters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Shri Pradhan Pama
Opp.Burma Shell Godown
Kharwavad
Porbandar

: Applicant

(Advocate: Mr.P.H.Pathak)

Versus

1. Union of India
Notice to be served through
Divisional Railway Manager
Bhavnagar Para
Bhavnagar.

2. Permanent Way Inspector,
Western Railway,
Railway Station,
Bhimnath.

: Respondents.

(Advocate: Mr. R.M. Vin)

ORAL ORDER
O.A.No.287/91

Date: 9.10.98

Per: Hon'ble Mr.V.Radhakrishnan : Member(A)

Heard Mr. P.H. Pathak and Mr.R.M.Vin, learned counsels for the applicant and the respondents.

In this O.A. the applicant has approached this Tribunal praying for the following reliefs: -

- (A) The Hon'ble Tribunal be pleased to declare the impugned order of the respondent No.2 at Annexure A as illegal, invalid and inoperative in law and be pleased to quash and set aside the same and be pleased to direct the respondents to reinstate the applicant with full back wages and continuity of services and further direct to absorb the applicant as regular employee of the respondent deptt.
- (B) Be pleased to declare the impugned action on the part of the respondent No.2 terminating the services of the applicant, as violative of principle of natural justice and without jurisdiction and be pleased to set aside the same.
- (C) Be pleased to direct the respondents to pay Rs.2000/- as special cost of this application because the applicant is a casual labourer and this is the third application required to be filed by the applicant against the arbitrary

exercise pf powers by the respondents and further direct the respondents to pay 18% interest on th back wages as are withheld by the rspondents without any reason.

- (D) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice."

It may be mentioned that this is the second round of litigation. The applicant had earlier filed O..A.No.61/86 which was decided on 21.4.87 directing the respondents to allow the applicant to resume duty along with the backwages. The applicant's contention is that as per Annexure A the respondents have terminated the services of the applicant on the ground that on he passed the medical examination in C/2 category only he shall be paid ~~leave~~ leave salary for leave due and thereafter no wages was to be paid.

The contention of the applicant is that as he has passed the medical examination in C/2 category he should have been adjusted in one of the posts available under C/2 category . However, the respondents did not give any alternative job to the applicant. The applicant obtained interim order directing the respondents to allow the applicant to resume duty but when he approached the Respondent (PWI) , Bhimnath, he was not allowed to join duty and he was told that he had to produce medical certificate. It is also mentioned by the applicant that no memo has issued by the PWI directing him to go for medical examination. The applicant's contention is that as he was fit for medical examination for C/2 category he should have been absorbed in one of the post in that category and his services should not have been terminated without any notice. The applicant has completed more than 10 years service and having temporary status with effect from 1.1.1993 and as per Rule 2505 of the Indian Railway Establishment Manual, he has to be issued with notice before termination. The applicant also argued that under Section 25(F) of the Industrial

Disputes Act , he should have been given one month's notice or retrenchment compensation before termination of his services

The respondents have contested the application. They have stated that after completion of work of VOP project the applicant was directed to PWI , Bhimnath . According to them, the applicant fail to inform the respondents that he had passed the medical examination in C/2 category. When it came to notice, the Railway Administration directed the applicant to remain on leave under IREM Rule No.2604 & 1306, according to which the employees should be granted leave as due to him, and if no alternative employment can be found in this period he shall be discharged. They have denied that the applicant's services was terminated. They have also stated that the Railway Administration issued order to absorb him as substitute Safaiwala, he is at liberty to resume duty as per orders. This is contested by the applicant who states that when he approached the Railway Administration, they refused to take him on duty.

After going through the facts of the case, it is seen that there has been inordinate delay on the part of the respondents to allot alternative employment to the applicant as per C/2 medical category. They have not denied that as per the applicant number of posts in C/2 category were available for posting the applicant, but still he was not posted in any of the posts and ultimately when he was posted as Safaiwala he was not allowed to resume duty. It is also seen that the respondents have not complied with the interim order of the Tribunal to allow the applicant on duty when he reported to them on 9.3.93. He was asked to produce medical certificate. It is not clear as to how the applicant was refused to join duty on the above ground and all the documents were available with the respondents and in case the respondents

wanted the applicant to undergo the medical examination, they should have issued medical memo to him. This was not done. This shows arbitrary action of the respondents in dealing with a poor paid employee.

In the above result, the application is allowed. We direct the respondents to allow the applicant to resume duty in any of the vacant posts available under medical category C/2 for which he has been declared as fit, within eight weeks from the date of receipt of a copy of this order. The applicant also will be entitled for backwages from the date of his termination until he is retaken on duty after making an enquiry regarding his employment during the intervening period and if any, amount he had earned during that period, will be adjusted against the backwages payable to him. The intervening period will also count for continuity in service for pension purpose.

O.A. stands disposed of accordingly. No costs.



(P.C.Kannan)
Member (J)



(V.Radhakrishnan)
Member (A)

AAB

Sr.No. 2/2000

Dated: 03/01/2000

Submitted: Hon'ble Vice Chairman &

Hon'ble Mr. V. Radhakrishnan, Member (A)

Hon'ble Mr. P.C. Kannan, Member (J)

Hon'ble Mr. A.S. Sanghvi, Member (J)

Certified Copy of order dated 7.12.99 in CA/
Spl.C.A. No. 1699 of 99 passed by the
Supreme Court/ High Court against the Judgment/ Oral Order
passed by this Tribunal in OA/287/91 is placed for perused
please.

3/1/2000

S.O.(J) AmRat
23-1-2000

D.R.(J) 3/1/2000

Hon'ble Vice Chairman

Hon'ble Mr. V. Radhakrishnan, Member (A)

Hon'ble Mr. P.C. Kannan, Member (J) Ph
3/1/2000

Hon'ble Mr. A.S. Sanghvi, Member (J) A
4/1/2000

passed by this Tribunal in OA/287/91 is placed for perused
please.

Sr.No.

S.O.(J)

D.R.(J)

Dated:

Hon'ble Vice Chairman

Submitted: Hon'ble Vice Chairman

Details of Expenditure under 'SALARY'
Annexure to the Expenditure Statement for the

SR.NO.	NATURE OF EXPENDITURE	Expendi ture up to the previous month	Expendi ture up to the current month	Expendi ture up to the Current month (2+3)
1	Pay of Gazetted Officers			
2	Pay of Non-Gazetted Staff			
3	Interim Relief			
4	Special Pay & Deputation (Duty) allow.			
5	Dearness Allowance			
6	Compensatory (City) Allow.			
7	House Rent Allowance			
8	Honorarium			
9	Ad-hoc Bonus			
10	Festival Advance			
11	Reimbursement of Tuition Fee			
12	Children Education Allow.			
13	Reimbursement of Medical Charges			
14	Leave Travel Concession			
15	Sumptuary Allowance			
16	Remote Locality Allow.			
17	Washing Allowance			
18	Encashment of E.L.			
19	Others (Specify & give seperately)			
	TOTAL			

Hon'ble Mr. P.C. Kannan, Member (U)
Hon'ble Mr. A.S. Sankar, Member (U)
Hon'ble Mr. P.C. Kannan, Member (U)
Hon'ble Mr. A.S. Sankar, Member (U)

URGENT/TIME LIMIT

Decree Despatch No.

Date 7.12.99

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 1699 of 1999

1. UNION OF INDIA & ANOTHER

Petitioners

Vs

1. PRADHAN PAMA

Respondent

To

1. UNION OF INDIA

2. PERMANANT WAY INSPECTOR

THROUGH DIVISIONAL RAILWAY
MANAGER, BHAVNAGAR PARA
BHAVNAGAR

WESTERN RAILWAY,
RAILWAY STATION
BHIMNATH

3. THE CENTRAL ADMINISTRATIVE
TRIBUNAL, STADIEM ROAD,
A.BAD. (REF. O.A.NO.2870F 1991)

Upon reading the petition of the above named Petitioners presented to this High Court of Gujarat at Ahmedabad on 06/03/1999 praying to grant the prayers and etc....

And Whereas Upon hearing

MR UM SHASTRI for the Petitioner no. 1-2

MR MS TRIVEDI for the Respondent no. 1

MR PH PATHAK for the Respondent no. 1

Court passed the following order :-

CORAM : J.N.BHATT AND D.C.SRIVASTAVA, JJ.

DATE : 25.11.99

In this petition, the petitioners-original...

.....within period of eight weeks.

(COPY OF THE ORDER/JUDGEMENT IS ATTACHED HEREWITH)

Trall.

30/11/99

30-12-99

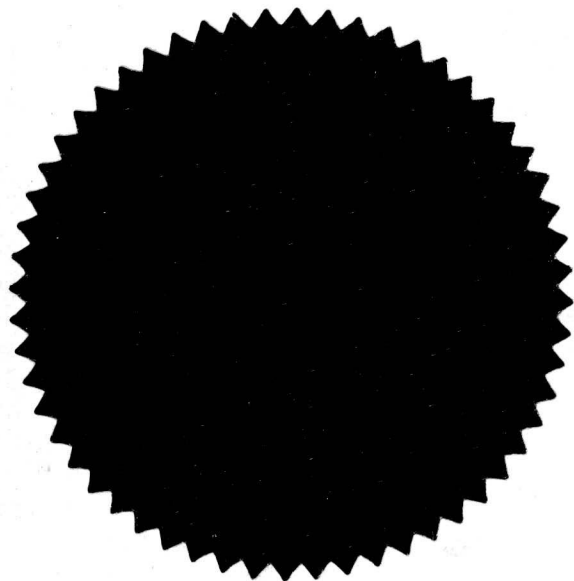
Witness CHUNILAL KARSANDAS THAKKAR, Esquire Acting Chief Jus
aforesaid this 25th day of Nov, 1999.

By the Court

For Deputy Registrar

This day of Dec 1999

Note : This writ should be
duly certified with
(610)



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1699 of 1999

UNION OF INDIA
Versus
PRADHAN PAMA

Appearance:

MR UM SHASTRI for Petitioners
MR MS TRIVEDI for Respondent No. 1

CORAM : MR. JUSTICE J.N. BHATT and
MR. JUSTICE D.C. SRIVASTAVA
Date of Order: 25/11/1999

ORAL ORDER

In this petition, the petitioners-original-opponents, have challenged the order recorded by the Central Administrative Tribunal, Ahmedabad Bench in O.A. No.287 of 1991 on 9.10.98, whereby, the application of the respondent employee of the Railway came to be allowed with a direction to the petitioner authority to allow the respondent to resume duty in any one of the vacant post available under the medical category C/2 for which he had been declared as fit and with a further direction that it should be done within a period of 8 weeks from the date of receipt of the copy of the order. In the said order, it was further directed that the employee would be entitled to claim backwages from the date of his termination until the date of re-taking or resuming duty after making inquiry regarding his employment during the intervening period and if any amount he had earned during that period, the same would be adjusted against the

arrears of backwages and the intervening period was directed to be considered as continuing period in service for the purpose of pension.

The petitioner-original-respondent has challenged the aforesaid order and has reiterated the same grounds which were, in our opinion, rightly, rejected by the Tribunal. The termination order of the workman was held to be illegal, invalid and unjust and therefore the order was quashed by the Tribunal. Nothing has been, successfully, pointed from the record of the present case that the view taken by the Tribunal and the reasons assigned by it and the ultimate conclusion recorded are in any way tainted with any vices requiring our interference exercising extraordinary, plenary, discretionary, constitutional power under Article 226/227 of the Constitution of India. The Tribunal, in our opinion, was justified in taking the view in the impugned order and we are fully satisfied. Therefore, this petition deserved to be rejected. Accordingly, it is rejected.

At this stage, learned advocate appearing for the respondent workman has drawn our attention that the workman is yet not allowed to join duty. He has also placed on a record a copy of the letter dated 5.12.98 addressed to the Western Railway Authority by the workman and the reply thereto dated 27.1.99. It is, categorically, stated in the reply that the Railway Administration has filed an appeal against the order of the Tribunal in the High Court of Gujarat, Ahmedabad and probably on that ground the Authority did not comply with the direction. In the circumstances, the petitioner is

directed to comply with the direction for reinstatement
within a period of ^{four}~~two~~ weeks and remaining direction
within period of eight weeks.

sd/-
(J.N.Bhatt, J.)

sd/-
(D.C.Srivastava, J.)

(vjn)

TRUE COPY

27.12.99
ASSISTANT REGISTRAR
THIS DAY OF

NATIONAL CRIMINALS CENTRE

GUJARAT HIGH COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

Application No.

of 19 . .

Transfer application No.

Old Write Pet. No.

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided).

Dated: 06/11/98

Countersigned.

Section Officer/Court Officer.

Dr 01/11/98

[Signature]
Signature of the Dealing
Assistant.

MGIPRRND—17 CAT/86—T. S. App.—30-10-1986—150 Pads,

USE TITLE

04/287/91

NAME OF THE PARTIES

Shri Prashant Pansare

VERSUS

4018

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CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD.

Submitted: C.A.T./JUDICIAL SECTION.

Original Petition No: 289
of 91

Miscellaneous Petition No: _____
of _____

Shri Poadhan Pama Petitioner(s)

Versus.

Union of India & Ors. Respondent(s).

This application has been submitted to the Tribunal by Shri P. H. Pathak. Under Section 19 of the Administrative Tribunal Act, 1985. It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985 and Central Administrative Tribunals (Procedure) Rules, 1985.

The Applications has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant may be advised to rectify the same within 14 days/draft letter is placed below for signature.

ASSTT:

S.O. (J) :

D.R. (J) :

KNP/15391/****

English Translation of Annex P-9
not supplied.

We may inform accordingly

9/5/91.
K B Sawe
09/may/91
in Gachwan
09/5/91

15/3/91

R. B. 2

CENTRAL ADMINISTRATIVE TRIBUNALAHMEDABAD BENCHAPPLICANT (S) Shri. Roadhan RamaRESPONDENT(S) U.O.L & Co.PARTICULARS TO BE EXAMINEDENDORSEMENT AS TO
RESULT OF EXAMINATION.

1. Is the application competent ?
2. (A) Is the application in the prescribed form ?
(B) Is the application in paper book form ?
(C) Have prescribed number complete sets of the application been filed ?
3. Is the application in time ?
If not, by how many days is it beyond time ?
Has sufficient cause for not making the application in time stated ?
4. Has the document of authorisation/ Vakalat Nama been filed ?
5. Is the application accompanied by D.D./I.P.O. for Rs.50/- ? Number 801 847891 ~~for~~ of D.D./I.P.O. to be recorded.
6. Has the copy/copies of the order(s) against which the application is made, been filed.?
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed. ?
(b) Have the documents referred to in (a) above duly attested and numbered accordingly ?
(c) Are the documents referred to in (a) above neatly typed in double space ?
8. Has the index of documents has been filed and has the paging been done properly ?

PARTICULARS TO BE EXAMINED.

ENDORSEMENT TO BE RESULT OF EXAMINATION.

9. Have the chronological details of representations made and the outcome of such representation been indicated in the application.?
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal ?
11. Are the application/duplicate copy/spare copies signed.?
12. Are extra copies of the application with annexures filed.?
 (a) Identical with the Original.
 (b) Defective.
 (c) Wanting in Annexures
 No. _____ Page Nos. _____ ?
 (d) Distinctly Typed ?
13. Have full size envelopes bearing full address of the respondents been filed ?
14. Are the given addressed, the registered addressed ?
15. Do the names of the parties stated in the copies, tally with Name(s) ~~copy~~ those indicated in the application ?
16. Are the transactions certified to be true or supported by an affidavit affirming that ~~any~~ they are true ?
17. Are the facts for the cases mentioned under item No.6 of the application ?
 (a) Concise ?
 (b) Under Distinct heads ☒
 (c) Numbered consecutively ?
 (d) Typed in double space on one side of the paper ?
18. Have the particulars for interim order prayed for, stated with reasons.?

Y
P
Y
m
Y
Y
Y
Y
Y

checked
by
9/10/91

From :

Advocate,

URGENT NOTE

B/F, Akap Flats, 125, V. N. Road, Gujarat
Jawaharnagar, Varna Road, Ahmedabad

To,

The Registrar,

~~High Court of Gujarat~~ C.A.T.
AHMEDABAD.

Re : OA 287 (91)

District :

Sir,

The above matter is an urgent one and. I want to move the Hon'ble Court for obtaining an order for stay / injunction / bail Be pleased therefore. to direct the Office to place this matter before the Cour for admission no 24-3 1991 I personally undertake to remove all office abjection and to pay the defoirt court fee stamps, if any
*The petitioner is facing starvation situation
Urgent order is require to be obtained*

Ahmedabad.

Yours faithfully,

Date

18/3/91

[Signature]
Advocate for Petitioners.

58/150/91
20/3/91

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

O.A. NO. 287 OF 1991.

Shri Pradhan Pama.

..Applicant.

Vs.

Union of India & Ors.

..Respondents.

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2.	A	A copy of the order	9
3.	A/1	A copy of the Judgement of this Hon'ble Tribunal	10 to 12
4.	A/2	A copy of the letter addressed by the applicant	13
5.	A/3	A copy of the notice dated 18.1.91.	14 to 15

Date :-
Ahmedabad.

P.H. Pathak
Advocate for the applicant.

Recd Copy
R. Mahajan
18/3/91

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

O. A. NO. 287 OF 1991

- I Applicant : Pradhan Pama
Opp. Burma Shell Godown
Kharwavad
Porbandar
- II Respondents : 1) Union of India
Notice to be served through
Divisional Railway Manager
Bhavnagar Para
Bhavnagar
2) Permanent Way Inspector
Western Railway
Railway Station, Bhimnath
- III Order Under Challenge : Order of termination by the
respondent No.2 w.e.f. 27.8.90
and non absorption of the
applicant.
- IV Jurisdiction & Limitation : The applicant declare that
& V. the subject matter of this
application is within the
jurisdiction of this Tribunal
and limitation prescribed
under section 21 of the
Administrative Tribunal Act.

VI. Facts of the case :-

1. The applicant is a citizen of India and was working under the respondent No.2. The respondent No.2 has vide his letter without date, informed the applicant that as the applicant has passed the medical C/2 category and therefore, his services are terminated from 27.8.90 and he will be given

the leave salary and no further salary will be paid to him. A copy of the order given by the respondent No.2 is annexed and marked as Annexure 'A' to this application. The said order is ex facie arbitrary, illegal and is void ab initio as it is in violation of the mandatory provisions of law as well as is without authority and therefore, is required to be quashed and set aside.

2. It is submitted that this is the second round of litigation by the applicant. That earlier also, the respondents have adopted arbitrary and illegal practice and terminated the services of the applicant. The applicant has approached to this Hon'ble Tribunal and this Hon'ble Tribunal was pleased to direct the respondents to reinstate the applicant with consequential benefits. A copy of the judgement of this Hon'ble Tribunal is annexed and marked as Annexure A/1 to this application. It is pertinent to note that after even the judgement of this Hon'ble Tribunal, the applicant was not paid back wages as per the direction and therefore, the applicant was constrained to file a contempt application before this Hon'ble Tribunal. That after filing of the contempt application, the respondents have complied with the direction of this Hon'ble Tribunal But the respondents are highly antagonised against the applicant and therefore, have started harassing the applicant. That the applicant was transferred under the respondent No.2. That the applicant was reinstated in services with effect from 9.5.87 at Rajkot. The applicant was transferred to Bhavnagar under the respondent No.1 and from Bhavnagar the applicant is transferred to respondent No.2 and by the impugned order at Annx. 'A' the applicant is terminated, without following the due procedure of law. That immediately the applicant has addressed a letter informing the respondent No.2 that the action to terminate the services of the applicant without giving an opportunity of being heard and without giving any notice

: 3 :

terminal benefits etc. amounts to termination of services and therefore, is void ab initio. A copy of the letter addressed by the applicant requesting the respondent No.2 to take the applicant in services is annexed and marked as Annexure A/2 to this application. It is submitted that after even the representation made by the applicant the applicant was not taken on duty nor he was paid his salary and therefore, the applicant has approached to Advocate and a notice was issued by the Advocate informing that the termination of services of the applicant is nullity and under the guise of medical C/2 passed he cannot be terminated by the respondents. A copy of the notice dated 18.1.91 is addressed by the Advocate is annexed and marked as Annexure A/3 to this application. In spite of repeated representation to the respondents, the applicant is not reinstated nor is paid salary by the respondents and therefore, the applicant has no alternative except to approach this Hon'ble Tribunal by way of this application.

3. It is pertinent to note that the Permanent Way Inspector is not the appointing authority of the applicant and therefore, he has no jurisdiction to terminate the services of the applicant. On this only ground, the application is required to be allowed with cost. It is submitted that the applicant is not sent for the medical examination by the respondents, after his reinstatement. It is not known to the applicant that how the respondents have come to the conclusion that the applicant is passed in C/2 category. Moreover, even after the applicant is declared passed in C/2 category he should be sent for further medical check up before the Board. It is pertinent to note that it is the duty of the respondents to send the applicant for medical check up after his reinstatement. That so far the casual labourers are concerned, as per the Railway Establishment Manual,

they are required to pass medical C/2 category and the applicant has put about 10 years of services. That even in the case of medical unfitness, the respondents are under obligation to absorb the applicant in the other categories of Watchman, Hamal, Seaman and such other post. That the applicant has pointed out^{to} the respondents that even in case, the applicant is considered as C/2 passed, though he was not sent for medical fitness, he is required to be absorbed in the other work. The post of Watchman at Rest House, Porbandar, 2 posts of Hamal under Traffic Inspector/SS-PBR, 2 posts of Seaman at Ranavav, 1 post of P.P. at Bhanvad, 2 posts of Hamal under Station Master, Sarkhej, 1 post of Messenger, 1 post of Peon, 1 post of Chainman etc. are available vacant with the respondents. It is the duty of the respondents to take step for absorption of the applicant continuing him in services but the applicant cannot be terminated by the respondents. Therefore, the said action on the part of the respondents is ex facie arbitrary, illegal and being unconstitutional is required to be quashed and set aside. It is pertinent to note that the applicant has pointed out in his representation at Annx. A/2 that he is not inclined to proceed on leave and therefore, the question of payment of leave salary does not arise. The respondent No.2 has no authority to terminate the services of the applicant and therefore, the applicant is required to be reinstated with full back wages and continuity of services.

4. It is submitted that the said order of termination of services of the applicant is without following the principle of natural justice. It is pertinent to note that after the reinstatement, the applicant is not sent for medical examination and in the termination letter at Annx. 'A' the reason mentioned by the respondent No.2 is about unfitness of the applicant for the category of B/1 etc. Thus, the order ~~passed~~ stigma on the applicant and therefore, before passing of the said order, the respondents

are under obligation to give an opportunity of being heard to the applicant. That no chance of hearing is given to the applicant. Straightway the respondent No.2, who has no jurisdiction to pass such order, has terminated the services of the applicant. That the applicant is not paid the salary also and therefore, the action on the part of the respondents terminating the services of the applicant is void-ab-initio as the same is issued without following the provisions of Railway Establishment Manual as well as the principle of natural justice. That the applicant has completed more than 10 years of services and the applicant is granted temporary status with effect from 1.1.1983. The applicant's services cannot be terminated without giving any notice as provided under Rule 25o5 of Railway Establishment Manual.

5. It is submitted that the action on the part of the respondents to terminate the services of the applicant is also in flagrant violation of the provisions of Sec. 25(F) read with Sec. 25 B, G of the Act read with Rule 77 of Industrial Dispute Rules, 1947. That while terminating the services of the applicant, the respondents have not paid retrenchment compensation nor the notice pay. ~~in violation~~. The respondents are under obligation to regularise the services of the applicant as permanent employee of the respondent deptt as the applicant has completed more than 10 years of services. The applicant's case is covered by the judgement of this Hon'ble ^{Supreme Court} ~~WINDHAM~~ in Indrapal Yadav Vs Union of India. That the action on the part of the respondents is in violation of the mandatory provisions of law and therefore, is void-ab-initio and is required to be quashed and set aside and the applicant is required to be reinstated with full back wages and continuity of services. The respondents cannot be permitted to act in such arbitrary

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fashion. That inspite of repeated representation by the applicant, the respondents did not care to reply the same and the family of the applicant is facing starvation situation, ~~that~~ as the applicant is out of job since more than 6 months . That the balance of convenience is in favour of the applicant as there is no reason for the respondents to terminate the services of the applicant. The applicant is having a strong prima facie case in his favour and therefore, the interim relief prayed for in the application is required to be granted. Granting of interim relief will not any way adversely affect the right and contention of the respondents. That the employees junior to the applicant are continued in services by the respondents and looking to overall circumstances, the interim relief prayed for in this application is required to be granted.

VII. Relief sought for :-

In the abovementioned facts and circumstances of the case, the applicant pray that :

- (A) The Hon'ble Tribunal be pleased to declare the impugned order of respondent No.2 at Annx.'A' as illegal, invalid and inoperative in law and be pleased to quash and set aside the same and be pleased to direct the respondents to reinstate the applicant with full back wages and continuity of services and further direct to absorb the applicant as regular employee of the respondent deptt.
- (B) Be pleased to declare the impugned action on the part of the respondent No.2, terminating the services of the applicant, as violative of principle of natural justice and without jurisdiction and be pleased to set aside the same.
- (C) Be pleased to direct the respondents ~~No.2~~ to pay Rs 2,000/- as special cost of this application because the applicant is a casual labourer and this is the third ~~round of writ~~ application to be filed by the applicant against the arbi
- 9.

: 7 :

exercise of powers by the respondents and further direct the respondents to pay 18% interest on the back wages as are withheld by the respondents without any reason.

- (D) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice.

VIII. Interim Relief :

- (A) Pending admission and final disposal of the application be pleased to direct the respondents to pay the due salary to the applicant from Sept. '90 and further direct to pay salary to the applicant regularly.
- (B) Be pleased to direct the respondents to reinstate the applicant forthwith and pay his salary regularly.
- (C) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice.

IX. The applicant has not filed any other application in any other court including the Hon'ble Supreme Court of India with regard to the subject matter of this application. The applicant has no other alternative remedy available except to approach this Hon'ble Tribunal by way of this application.

X. Number of Postal Orders details :

Postal Order No. 847891


Dated : 19/3/91

Issued by : ~~High Court of Gujarat~~ High Court of Gujarat
amount of Rs 50/- at Ahmedabad.

XI. An index in duplicate containing the documents is produced h/w.

XII List of enclosures as per above index.

Date : 18/3/91
Ahmedabad


(P.H. Pathak)
Advocate for the applicant

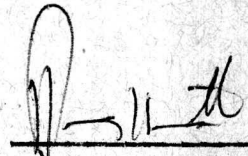
8

VERIFICATION

I, Shri Pradhan Pama, adult, residence of Porbandar, occupation Khalasi in Railway, has gone through the application and do hereby verify that the contents of para 1 to 12 are true to my personal knowledge and paras 1 to 12 believed to be true on legal advice and that I have not suppressed any material facts.

Date : 18/3/91

Ahmedabad


P. H. Pama

Filed by Mr. P. H. Pama
Learned Advocate for Petitioners
with second set & 2 spares
copies copy served/not served to
other side

For
Dt. 19/3/91 Dy Registrar C.A.T.(J)
Ahmed Bench

પ્રતિજ્ઞા,

પ્રધાન પમા (એમ.બી.)

આથી મમોને જાણ કરવામાં આવે છે કે તમોમે મેડીકલ સી/ર
પાસ કરેલ હોવાથી આવતી કાલ તા. ૨૭/૮/૯૦ ના રોજ થી તમને
કામ ઉપર થી છુટા કરવામાં આવે છે અને જ્યાં સુધી તમારું કાઉનલ ન
થાય ત્યાં સુધી તમારે જેટલી રજા હશે તેટલી રજા ગણીને પગાર XXXXXX
આપવામાં આવશે. પછી પગાર મળશે નહીં જેની નોંધ લેશો.

પરમેને-ટ વે ઇ-સ્પેક્ટર,
ડબલ્યુ આર ભીમનાથ.

TRUE COPY:

[Signature]
(Advocate)

English translation
of this page is
on next page.

CAST 150/91

English
translation
of the page

Annexure - A/9

Bachchan Pama

is

unsub

To,

English

translation

Shri Pradhan Pama (M.B.)

You are hereby informed that as you have passed medical in C/2, you are terminated from services from tomorrow i.e. 27/8/90 & till the finalisation of your matter, you will be paid leave salary for leave due to you & there after will not be paid the wages.

Parmanent Way Inspector
W.R. Bhimnath.

True copy
DHBA

ANN: Ali

10

Pradhan Pama Shindhav,
Opp. Burma Shell Godown,
Kharvavd Pandal Falia,
PORBANDAR.

.. Petitioner.

Versus

1. Union of India ,
Notice to be served through
The General Manager (WR)
Churchagate, Bombay.
2. Chief Engineer (const.)
Railway Station,
Ahmedabad.
3. Executive Engineer (Construction)
Kothi Compound,
Rajkot.

.. Respondents.

J U D G E M E N T

O.A.NO. 61 OF 1986.

Date : 21.4.1987.

Per : Hon'ble Mr. P.M. Joshi, Judicial Member.

This is an application under section 19 of the Administrative Tribunals Act 1985 directed against the inaction on the part of the Respondents-Railway Administration whereby the petitioner Shri Pradhan Pama Shindhav of Porbandar has not been allowed to work under IOW, Porbandar. According to the petitioner he is employed as casual labourer since the year 1980 and was shifted to "Savai Madhopur", Kota division on 16.5.85 from Porbandar but he was shunted back to Porbandar vide letter dated 10.10.1985 (Annexure 'B') on the ground that he has not passed medical test in B/1 grade. It is further stated that when the petitioner approached P.W.I. Porbandar, he has directed to report for duty to I.O.W(C) Porbandar under letter dated 8.11.1985 (Annexure 'C') but he was not allowed to resume his duty by I.O.W. Porbandar by oral orders directing the petitioner to go back to P.W.I. office. Again when he reported to P.W.I. office, the petitioner was not taken on duty. Thus the petitioner is out of job since 10.10.1985 accordingly he

has prayed that the Respondents be directed to allow the petitioner to resume his duty with backwages from October, 1985.

2. The Respondents have resisted the application contending that though the petitioner was relieved by letter dated 10.9.1985 by P.W.I. "Savai Madhopur", he reported to Porbandar under P.W.I. (c) on 10.10.1985 manipulating the date in the letter. Hence it is submitted that for the said reason, non availability of vacancy and the senior to the petitioners having been shifted to other division, the petitioner could not be taken on duty.

3. We have heard the learned ccounsels Mr. P.H. Pathak & Mr. M.R. Bhatt for Mr. R.P. Bhatt for the petitioner and the Respondents respectively. We have gone through the pleadings of the parties and have perused the documents on record and given our earnest consideration to the arguments addressed at the Bar.

4. It would appear to be useful to mention at the very outset that the petitioner is in the employment of the Railway Administration and was working as a casual labourer under control of I.W.I. (c) Porbandar since the year 1980 and later on, in the year 1984 he was shifted at Savai Madhopur of Kota division (Rajasthan). The fact that the petitioner was relieved by P.W.I. Savai Madhopur and directed to report to Porbandar under P.W.I. Construction under letter Annexure 'B' is not in dispute. It is however asserted by the Respondents that the petitioner could not be taken on duty as the petitioner reported on 10.10.1985 manipulating the date in the letter Annexure 'B'. Apart from this assertion, the Respondents have neither produced the original letter nor any evidence in support thereof. It is therefore extremely difficult to hold that the petitioner is in any manner responsible for manipulating the date as alleged.

Even apart from it there is no justification whatsoever in not allowing the petitioner to resume his duty when the decision was taken in W.R.M.S. meeting at Porbandar held on 5.11.1985 to take the petitioner on duty under I.O.W. P.B.R. vide Annexure 'C'. Thus the impugned action on the part of the Respondent in not allowing the petitioner to resume the duty at Porbandar under one or other pretext is clearly unwarranted and therefore unsustainable.

5. The unshot of the aforesaid discussion is that the impugned action on the part of the Respondents in not allowing the petitioner to resume his duty at Porbandar is held to be illegal and bad in law. The Respondents are directed to reinstate the petitioner within two months from the date of this order with backwages due from October 1985. In the facts and circumstances of the case the parties are left to bear their own costs.

Sd/-


(P.M. JOSHI)
JUDICIAL MEMBER

Sd/-

(P.H. TRIVEDI)
VICE CHAIRMAN

Deputy Registrar
Central Admn. Tribunal
Ahmedabad Bench

TRUE COPY:


(Advocate)

13
ANNEXURE - A/2

Pradhan Pama
XRODP: Burma Bholi Cadown
Kherwavad,
PORBANDAR.

Date :- 30/8/90.

To,

The Permanent Way Inspector (WR)
Rly, Station,
Bhimnath.

Sub :- Illegal Termination

Dear Sir,

I the undersigned Shri Pradhan Pama, do hereby submit my application as under :

That I am working since 1980 & medically Examination 1985 and I am granted reinstatement by the Tribunal because of my earlier illegal termination. That you have informed me that I am terminated with effect from 27/8/90. That the said action on your part is arbitrary, illegal and contrary to the decision of the Judgment of the Hon'ble Supreme Court of India in Indrapal Yadav case. I cannot be terminated by you in such fashion.

I further say that I am not ready to proceed on leave, I cannot be compelled to proceed on leave due to inaction of negligence of department. I, therefore request to allow me to work and pay me my wages. I retireate and request to withdraw the termination order and presenting my self for work. Please allow me to persons my duties, failing which you will be responsible, for.

Thanking you,

Yours faithfully,

Copy to :-

1. Divisional Rly. Manager (WR)
Bhavnagar Para,
Bhavnagar.

TRUE COPY.
(Advocate)

Date :- 18.01.91

BY REGISTERED A.D.

To,
The Divisional Rly Manager (WR)
Bhavnagar Para,
BHAVNAGAR.

Sub :- Case of Shri Pradhan Pama.

Under the instruction of my client Shri Pradhan Pama, who is directed to be reinstated by the CAT Ahmedabad and at present who is forced to remain the idle due to delay in his posting by your office I, the undersigned advocate inform you by this notice as under :

That my client is working since 1980 and on his termination he has approached to the CAT Ahmedabad. The Hon'ble Tribunal has directed the administration to reinstate him with back wages. That as per the order of the Tribunal, my client was working under PWI Bhimnath. That my client was sent for medical Examination and was declared pass for C/2 category. That my client has requested ~~xxxx~~ PWI, Bhimnath to send him in appeal before the Medical Board. But the request is not accepted by the PWI and as a result of which, my client is constrained to remain idle with effect from 27.8.90 saying that as he is declared fit for C/2 category, PWI, Bhimnath is awaiting posting order of my client in the respective category. That till date my client is not given any posting order.

That there are many post of C/2 category are available vacant within your jurisdiction. The details are :

1. Post of my Watchman at the Rest House, Porbandar
2. 2 posts of Hamal under Traffic Inspector/SS-PBR
3. 2 posts of Sealman at Ranavav
4. 1 posts of P.P. at Bhavnagar
5. 2 posts of Hamal under Station Master, Sharkhej
6. 1 posts of Messenger, 1 post of Peon, 1 post of Chairman are available vacant at the Office of Asstt Engineer, Porbandar.

It is pertinent to note that the one Shri Bahadursinh Bhanubha who is junior to my client, is posted at Porbandar Rest House Bearer and is regularised also. Thus there are large number of post available but due to inaction on your part, my client is awaiting the order of posting. You will be solely responsible for the salary and benefits available to my client for the period from 27/8/90 till he will be given the posting order.

That my client again reiterate the demand to send him in the appeal before the Medical Board for further examination against the decision of the Medical Officer declaring him pass in C/2 category.

If within 15 days of receipt of this notice, you will not take any immediate action for posting of my client and send him before the Medical Board, my client shall be constrained to approach the Hon'ble Tribunal for inaction on your part, at your cost and risk.

15

: 2 :

Pay Rs. 151/- as cost of this notice to my client as is to be issued to you due delay in giving posting order and not sending him in appeal before the Medical Board.

Date : 18.1.91.
Ahmedabad.

P.H. Pathak
(Advocate)

TRUE COPY:


(Advocate)

P. H. Pathak
18.2.92
W. N. K. S.

(16)

Before the Central Administrative Tribunal at Ahmedabad

O.A. No.287/91.

Pradhan Pama Applicant.

V/s

Union of India & Others - ... Respondents.

Respondent Rly. Administration files its
written Statement as under :-

(Resp-18/2)
Rm

1. That the application is misconceived, and not tenable in law, being otherwise defective.

2. Respondent Rly. Administration does not admit the truth or correctness of any statement, allegation, contention, or suggestion set out in the application unless the truth or correctness of any one of them is specifically and expressly admitted in this reply.

3. Without prejudice to the above, the respondent Rly. Administration files its written statement as under.

4. Contents of Para 1 to V of the application are formal hence no comments.

5. Reg. the contents of Para VI(i) is not correct, and hence not admitted. In this matter it is clarified that, the applicant was originally engaged by V.O.P.

(Construction) organisation with effect from 21.4.80, and at that time, of his first appointment, he was not medically examined. Thereafter, the work of V.O.P. project organisation completed, and these casual labours were directed to the divisions, where their seniority is maintained. Like wise the applicant was directed to Bhavnagar division. It is not correct that the services of applicant were terminated with effect from 27.8.90, without following I.D. Act. Applicant has given different colour to the matter and suppressed the material facts.

(ii) Contents of Para VI(2) is not correct and hence denied. The applicant on completion of project work of V.O.P. project, directed to PWI-BNH under Bhavnagar Division, and was working as Sub.Gangman. The applicant failed to inform Railway Administration that he has passed Medical Examination in the Medical Category of C/Two as per medical certificate issued by ADMO.....

Received copy
Pradhan Pama
18/2/92

Rm. V. N.

1-10

18/2/92

Contd...5 ..

ADMO-Bhavnagar vide certificate No.173887(878) of 11.3.85, The said facts came to the notice of Respondent Rly. Administration, on the basis of service sheet, therefore he has been advised to remain on his own leave, as per the provision of Indian Railway Establishment Manual Rule No.2604 & 1306 Vol.I as under:-

b. "If a temporary railway servant has become medically unfit for the post held by him, on account of circumstances which did not arise out of and in the course of employment, the benefit of rule No.152 R.I. ~~without~~ will not be admissible while, therefore, it is strictly obligatory to find alternative employment for such an employee, every effort should nevertheless, be made to find alternative employment. The employee concerned should be granted such ^{leave} ~~leave~~ as due to him plus extra ordinary leave not exceeding three months, the total not exceeding Six months. If no, alternative employment can be found in this period, the employee should be discharged from Service".

Thus, the applicant who is failed in B/One Medical category of Gangman, and the category of Gangman is Safety Category, he cannot be continued on the post of Gangman and as per above provision, matter was under consideration for his alternative employment. Thus the claim of the applicant, for regular Salary is not admissible as he is not due for any kind of leave at his account. In addition to this Rule 304, & 305 of Indian Railway Estt. Code Vol.I, is produced as under:-

Rule 304: Termination of Service on account of in-efficiencies due to failure to confirm to the requisite standard of Physical fitness:

A Railway servant who fails in vision test or otherwise becomes physically incapable of performing the duties of the post which he occupies, should not be discharged forthwith but should be granted leave in accordance with rule 522. During that period of leave so granted, such Railway servant must be offered some alternative employment on reasonable emoluments having regard to his former emolument. Further, the extra...

Contd..

extra..ordinary leave protion of the leave in accordance with rule 522 should not be cut short purely on account of his refusing the first offer which is made to him, but he must discharged if he does not accept one or more offers made during the period of his leave".

Rule 522: Code I Rule No.3.

- (3) A Railway Servant who fails in vision test or otherwise becomes physically in capable of performing the duties of the post which he occupies but not in capable of performing other duties, shall be granted leave in accordance with these, rules, subject to the proviso that where the Railway Servant has not got six months leave to his credit, his leave shall be made upto Six months by grant of extra ordinary leave".

Thus, the action of the Railway Administration is just, and as per the provision of the rules as stated, and claim of the applicant is baseless, and fabricated.

(iii) Contents of Para VI(3) of the application is misleading the matter and hence not accepted. In this matter it is clarified that Gang man is a Safety Category and is B/One Category in Medical Examination. Here applicant failed in B/One category and as such, under the provision of Indian Railway Estt. Code, as stated therefore he has advised to remain on leave till the time of his absorption in alternative post. This does not mean that his services were terminated. Since the applicant is fit in medical exam. in Category of C/2, Railway Administration has issued the order No.EE/105/91 of 26/27-12-91 for his absorption and posted as Sub. Safaiwala under Chief Inspector of Works Bhavnagar Para, on the vacant post (Annexed here to and marked 'R') regarding his claims for the post of Hamal, Watchman, Sealman etc. it is clarified that these categories are earmarked classified as C/One and as such, it is

'R'

Contd..

it is not tenable thus the Railway Administration has taken all legal action as per the provision of I.R.E.M.

✓ (iv) Referring to the contents of Para VI(4) of the application it is clarified that, Medical authority has declared him passed in C/Two category and thus it is not necessary to send him for his re-medical Examination Rly. Administration has taken required steps to absorb him in attentive category of sub. Safaiwala and orders were issued as shown as annexure 'R' above, and applicant is at liberty to resume his duty as per the orders.

(v) Contents of Para VI(5) is not admitted as Railway Administration has not terminated his services, But he himself failed in the Medical Exam. for prescribed medical category, and orders for his absorption on alternative post, as per prescribed medical category C/Two has already been issued but applicant him self failed to resume his duty thus his claims for payment of compensation is ~~xxxxx~~ fabricated, baseless and not reasoned and hence denied.

6. Referring to the contents of Para VII of the application it is prayed that,

Respondent Railway Administration has not terminated the service of the applicant, but he himself failed in the prescribed medical exam. and as such, he has advised to remain on leave, as per the provision of Indian Rly. Estt. Manual till the time, he can be absorbed on alternative post, prescribed in the Medical category of C/Two, which the applicant has passed and accordingly Rly. Administration has taken all Steps and issued orders, as stated herebefore and as such no any relief or interim relief to be granted to applicant but his application to be dismissed.

7. Respondent Railway Administration craves leave to add, alter, amend, modify or correct the contents of this reply as and when required in future.

*R. M. V.
Havrook
for Rly.*

Bhavnagar Para.
Date: 6-2-92.

On and behalf of Union of India,

By

[Signature]

Addnl. Divisional Rly. Manager,
W.Rly. Bhavnagar Para.

VERIFICATION

I, Praveen Kumar, Addl. Divisional Railway Manager, Western Railway, Bhavnagar do hereby solemnly affirms that what is stated above is gathered from the Official record, and same to be true to the best of my knowledge and belief.

Bhavnagar Para.

Addl. Divisional Rly. Manager,
W.Rly., Bhavnagar Para.

...

Reply/Recognition of submissions
filed by M. R. M. V. M.
learned ...
Response ...
Copy ...

DI. 612192

AT (J)
A. B. Bench

WESTERN RAILWAY.

-. OFFICE ORDER NO. EE/105/91. DRM's Office,
BVP.Dt. 26/12/91.

27

Sub:- Absorption of Medocally decategorised staff/
Casual Labour/Substitutes in alternative
post/job Engg.Deptt.

Ref:- This office letter No. EP/369/5/2 dtd. 22/3/91.

With refrence to the above, following Substitutes G.Man
of VOP, who are medically decategorised for the post of G.Man and
considered for alternative post/job are posted as under :-

Shri Pradhan Pama, Casual labour/substitute G.Man
Scale Rs. 750-940/-(RP)-775-1025/-(RP) working under PWI-BNH was
medically examined by ADMO-BVP Vide Medical cert. No. 17387 (878)
dtd. 11-3-85 was declared unfit in B/One and fit in C/Two.

Shri Pradhan Pama, Sub/Casual labour of PWI-BNH was
called for screening for absorption in alternative employment
and considered for absorption by screening committee vide this
office letter quoted above and to be absorbed as Substitute
Safaiwala against the existing vacancy as under :-

In view of the above Shri Pradhan Pama, Sub.G.Man of
PWI-BNH working in Scale Rs. 750-940/775-1025/-(RP) is posted as
Substitute Safaiwala under CIOW-BVP against the existing vacancy.
in Scale Rs. 750-940/-(RP).

This has the effect from the date he reports for duty
on the above post. He should note that he has to vacate the Pht.
Qrt if any occupying at BNH with immediate effect.

Date of relief/resumption should be advise to this office
immediately.

No TA/DA Tfr. Pass. Pack. allow, is admissible under the
extent rules.

AEN-BTD will fix up his pay accordingly on the basis of
S.Sheet. for further action. S.Sheet should be submitted to this
office duly completed in all fespct immediately.

This has the approval of Sr.DEN.

No. E/E/369/7/1/1 Vol.II.

For Sr.DEN (E) BVP.

Copy to:- DAO-BVP in dupl.

AEN-BTD, PWI-BNH, CIOW-BVP, AEN-BVP for n.a.
PWI-BNH will arrange to submit all records like wise
S.Sheet, Leave Acct. to concerning units. immediately.
OS/SB in triplicate.
O.O.File, Memo file.
OS/ED, GS/EP, Laeve Ck. Pas s Ck.
OS/EP in ref. to letter quoted above.
Divisional Secy. WREU/WRMS-BVP.

HINDI VERSION WILL FOLLOW.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

O.A. NO. 287/91

Pradhan Pama

..applicant

vs

Union of India & ors.

..respondents

REJOINDER

1. I, Shri Pradhan Pama, applicant has gone through the reply filed by the respondents and am conversant with the facts of the case and I say that contentions and submissions of the reply are far from truth and are denied by me. I deny all the contentions and submissions of the reply except those which are specifically admitted by me in the rejoinder.

2. I say that the reply is filed by Mr. Praveen Kumar without full name etc. who has designated himself as Addl. Divisional Railway Manager, Western Railway, Bhavnagar but has not annexed any authority letter allowing him to file the present reply on behalf of the respondents. I say that the reply is not filed by the competent authority and and required to be ignored.

3. With reference to para 1 to 4 of the reply, the contention is misconceived and not maintainable. I reiterate and rely what I have stated in my application.

4. With reference to para 5 of the reply, I reiterate my contention in para VI (i) of the application and say that it is not true that at the initial stage of entering into service, the applicant was not medically examined. I say that even in construction of a project also the employees are medically

..2/-

1007 served
in B.P. Kataria
P.

1584/93

270

P.H. Pama

1529

examined, ~~by the Railway Medical Officer~~ by the Railway Medical Officer and thereafter only are continued in service. I reiterate that the service of the applicant was terminated with effect from 27.8.90 as I have stated in my application. I say that the said action is also in contravention of the provisions of I.D. Act.

5. With reference to para 5(ii) of the reply, I reiterate my contention in para VI(2) of the application.

The contentions of respondents that the applicant has failed to inform the Railway Administration that he has passed Medical Examination of C/2 etc. are misconceived because the service record of the applicant is available with the respondents. That when the authority concerned transfer the employee for the absorption, service sheets of the employees are also sent to the respondent authority and therefore this contention of the respondents is far from truth. That the Permanent Way Inspector, Porbandar has given his letter dt. 8.11.85 at the time of transferring the applicant, clearly mentioned in item No.5 that the applicant is declared medically fit in C/2 category. Copy of the letter dt. 8.11.85 is annexed and marked as Annexure A/4 to this rejoinder. The contentions of respondents to advise the applicant to remain on leave etc. are also misconceived. That the provisions of Railway Establishment Manual rule 2604 and 1306 as stated by the respondents are not applicable as interpreted by the respondents particularly when the provision of the act i.e. I.D. Act is applicable in the case of the applicant. That the provisions of the rule will not prevail over the statutory provision of the act. That before applying the rule 2604 and 1306, it is the duty of the respondents to examine whether the ^{vision} ~~reason~~ of the applicant has become weaker due to the nature of work which he has to perform or not.

: 3 :

I further say that I have pointed out in the application itself that there are many posts available vacant of C/2 category but the respondent authority has not considered immediately the case of the applicant. Therefore, even though the contention of respondents is believed that the provisions of rule 2604 and 1306 are applicable then also it cast an obligation to find out alternative employment for such employee and it further provide that every effort should be made to find out the alternative employment. Here, on the contrary, the applicant has also pointed out to the respondents. Not only this but in the petition also and the respondents were aware that in Forbandar where the applicant belong to, the posts of C/2 category were available but the same is not considered by the respondents. I called upon the respondents to produce the details of the attempts what they have done to find out the alternative employment for the applicant from the date when he was found fir for C/2 category i.e. in the year 1985 onwards. That in the whole division, there are large no. of posts available where the applicant can be accommodated as Hamal, Peon, Waterman etc. That I have given the name of the station and post etc. in my application and earlier representation also.

Therefore, the contention of respondents that the applicant was directed to proceed on leave as they have to find out the alternative employment for the applicant is misconceived. That since 1985 the respondents were aware about the medical category of the applicant. Not only this but in the notice by the Advocate also, vacant posts etc. were mentioned.

The contention of respondents about consideration of the case of applicant is misconceived and for the negligence and intentional delay to harass the applicant by the respondents, the applicant should not be deprived of the salary for the forced idle period.

6. That so far the applicability of rule 304 & 305 of Indian Railway Estt. Manual are concerned, I say that everywhere the duty is cast on administration to give alternative employment to the medically decategorised employee and even if the respondents contentions are believed to be true then also the respondents have to offer the alternative employment to those posts which are pointed out by the applicant. There is no reason pointed out by the respondents why the case of the applicant has remained pending for such a long period. That earlier also the applicant was working under the Permanent Way Inspector, Porbandar, which falls within the jurisdiction of DRM, Bhavnagar. I called upon the respondents to point out to the Hon'ble Tribunal the reason to delay giving alternative employment to the applicant. It is not true that the claim of the applicant is baseless and fabricated.

7. With reference to para 5(iii) of the reply, I reiterate and rely what I have stated in my application para VI(3) and say that the question of respondents advising the applicant to remain on leave etc. is misconceived because such situation only comes when no suitable posts for the medically decategorised employees are available at all. I reiterate that non engagement to the applicant in service though the availability of post with the respondents, amounts to termination of service. I say that the order passed by the respondents dt. 26/27.12.91 is also with a view to victimise the applicant as the applicant has approached to this Hon'ble Tribunal and therefore, instead of giving him the posting as Waterman, Hamal, Rest House Bearer, Sealman, Platform Porter, Messenger, Peon, Chainman etc. he was given order as Sub Safaiwala, which is specially reserved post for Schedule Caste candidate. That even

with objection the applicant has reported for duty pursuance to the order, he is not allowed to resume his duty. Thus it is a clear case to victimise the applicant by the respondents. That the said facts are also pointed out to the Hon'ble Tribunal. That at first instance, the order was not given to the applicant and the same was only produced before the Hon'ble Tribunal with the reply. Thus the delay in filing the case of the applicant is more than 1 year and 4 months which prima facie shows no justification available to the respondents to deprive the applicant of the salary for the forced idle period. It is not the case that the post of C/2 category was not available with the respondents. It is also not true that the post of Waterman, Hamal, Sealman are of C/1 category. I say that in those posts there is no question of any eye sight category. That the posts are divided into different categories on the basis of vision test only. While the duty of Hamal is to carry the goods and as a Sealman, he has to stamp the parcel etc. Therefore, it is not the category for C/1 only as stated by the respondents. Not only this but juniors to the applicant who were declared unfit, are accommodated as Post Box Boy and Running Bearer in Loco Deptt by the respondents. I say that they were continued in service till accommodated in C/2 category. As an example, Badhia Hirka. He is absorbed as post box boy in July '92. One Shri Meraman Kana accommodated as Running Bearer in Loco Deptt in August '92. That my advocate will point out the order of this employee at the time of hearing of the matter. It is pertinent to note that those employees were also declared medically fit for C/2 category in the year 1985 and therefore it is a clear case of arbitrary and malafide exercise of power to victimise the applicant by the respondent No. 1 & 2.

8. With reference to para 5(iv) and (V) of the reply, it is not true that when the medical officer declare an employee unfit for certain category, he need not be sent for re-medical examination.

It is also not true that the railway administration has taken required steps to absorb the applicant in alternative category as Sub Safaiwala. That the post of Sub Safaiwala is a post of Schedule Caste candidate and it is a clear case to victimise the applicant. I say that I was not allowed to resume duty by the respondents. It is not true that the railway administration has not terminated the service of the applicant. It is also not true that the applicant has failed to resume his duty. It is not true that the claim of the applicant is baseless, fabricated etc. I reiterate that so far the alternative employment to the applicant is concerned, it should be on the post which I have mentioned in the application and to place the applicant to do the work of a Schedule Caste candidate is nothing but to see that the applicant is harassed and victimised. I called upon the respondents to point out the justification for non considering the case of the applicant for 1½ year and when it is considered, why it is not considered for other posts which I have mentioned in the application. That the respondents cannot be permitted to exercise the power in such arbitrary and malafide manner to victimise the applicant because he has approached to the Hon'ble Tribunal.

9. With reference to para 6 & 7 of the reply, I reiterate my contention in para VII of the application and reiterate that non allowing the applicant to resume the duty amounts to termination. The contention of respondents of alternative employment etc. are misconceived and it is not true that administration has taken all steps to issue order in favour of the applicant and therefore the application is required to be dismissed.

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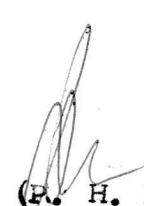
: 7 :

I say that from the record it is clear that it is a clear case of malafide exercise of power by the respondents to victimise the applicant and no justification is given by the respondents for non considering ~~his~~ case immediately like other employees as well as why his case is not considered for the other posts than Sub.Safaiwala. That the Hon'ble Tribunal has ^{passed} ~~vide~~ the interim order directed the respondents to allow the applicant to resume his duty but when the applicant has reported to the Permanent Way Inspector, Bhimnath on 9.3.93, he was not allowed to resume duty and informed to produce the medical certificate which is admittedly in the custody of the respondents. Not only this but if an employee is required to be sent for further medical examination, it is the duty of the administration to give him the medical memo and pass. That my advocate has immediately addressed a notice for contempt of court on 10.3.92 to the respondents, a copy of which is annexed and marked as Annexure A/5 to this rejoinder.

Thus, it is a clear case of arbitrary exercise of power by the respondents and therefore the application is required to be allowed and the respondents are required to be directed to pay all the salary to the applicant with 18% interest and special cost of the application.

Date : 15/3/93

Ahmedabad


(P. H. Pathak)
Advocate for the applicant

✓
Reply/Rejoinder/written submissions
Filed by Mr. P. H. Pathak
learned advocate for applicant/
Respondent : Amc
Copy served Amc

...8/-

DI. 15/3/93 By Registrar C.A. : J
A'bad Bench
A'ad Bench

:- VERIFICATION -:

I, Shri Pradham. Parna ³¹⁰ Parnabhai
Lalbhai age 32 years working as Reilly of
dist: PBR do hereby verify that the contents
from 1 to 4 are true to my personal knowledge
and belief and that I have not suppressed any
material facts.

Date :-

Ahmedabad.

Yashu nri

A/4 26

Dated : - 8-11-85

No. 12/7/E/Shifting/1

From : - PWI ~~KL~~ PBR

To,

C/- EXN/D/~~P~~st.

Sub : - Directing of casual labourers.

Ref : - PWI/CTR-SCM's letter No. 11 dt 10-10-1985.

With reference to the above Shri Pradhan Pama MB was return back to this office due to unfit in B/1 Medical test. He was earlier shifted to PWI/SUM vide this office letter No. 12/7/E/18/dt. 3/4-3-85.

Now the decision was taken with WRMS- Meeting at PBR held on 5-11-85 that Shri Pradhan Pama should be taken on duty under IOW BPR. Hence he is directed at yours to work under your control to day B/M his necessary service particular are as ~~under~~ under.

1. Name : - Shri Pradhan Pama MB
2. Date of Appointment : - 21-4-80
3. Date of Birth : - 25-7-60
4. I/S granted from 1-1-85.
5. Fit in Medical test by DMO BVP - C-2.
6. Fit certificate No. 1738 dt. 11.3.85.
7. He has availed his privilege pass in 1985.
8. Pay. 196 - DA+ DP + IR.
9. Scale 196-232-(R)

He was directed work from PWI/CTR SUM his full details regarding LAP and CI and PTO Avoided in 1985 in not mentioned It will be advised after receiving from CWM.

This is for your information V n/a pl.

Sd/-
PWI / PBR.

C/- PWI/CTR/SUM : For information he has to send the details regarding LAP, CL, PTO Brivilege pass ave/st by Shri Pradhan Pama MB in the clender year 1985 send his service card.

Thy
K

A/5

27

Date : - 10-3-1992

Regd. A.D.

Permanent Way Inspector
Western Railway
Nr. Railway Station
Bhimnath.

Sub : - Contempt of Court.

Under the instruction of my client, Shri Pradhan Pama, who is the applicant before the Central Administrative Tribunal in O.A. No. 287/91, I the undersigned advocate inform you by this notice as under :-

That my client has filed the application before the Central Ad. Tribunal, challenging your action of non allowing my client to resume his duty under the guise that he is medically decategorised. That the Hon'ble Tribunal has found that prima facie case in favour of my client and has admitted the matter and by way of interim direction, directed you to reinstate my client forthwith. That the Divisional Railway Manager, Bhavnagar has filed the reply and annexed the order saying that my client has to join the duty under you. That pursuant to that my client has reported to resume his duty yesterday on 9.3.92. That you have not allowed him to resume his duty and said that my client should furnish the medical certificate.

It is pertinent to note that you cannot refuse to allow my client to resume his duty under any reason whatsoever is. That for ~~sending~~ sending an employee for medical examination, it is your duty to issue the memo to enable him to get medical check up. That you have not complied with the direction issued by the Hon'ble Tribunal. The Hon'ble Tribunal has specifically directed you to such condition that after medical examination only, my client may be allowed to resume the duty. Thus, you have wilfully flouted the order of the Hon'ble Tribunal.

My client belongs to Porbandar and reported to you for resuming the duty. That due to your such illegal action, my client has to face unnecessary expenditure and therefore, now it will be your duty to inform my client when and where he should report for duty. If the immediate response is not available from your end, my client shall be constrained to move the contempt of court proceeding against you, at your cost and risk.

Pay Rs. 151/- as cost of this notice as is to be issued due to your illegal and arbitrary exercise of power to flout the order of the Hon'ble Tribunal.

Date : - 10.3.92
Ahmedabad.

(P.H.Pathak)
Advocate

CC to : - Divisional Rly Manager
Bhavnagarpara,
Bhavnagar.

- For information & necessary
action.

Teeem
K