

O.A. Termination  
(No)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH**

O.A. No. 382 OF 1991

~~Ex. No.~~

DATE OF DECISION 27-2-1992.

Mohammad Salim Ahmed, Petitioner

Mr. Y.V. Shah, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

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

CORAM :

The Hon'ble Mr. M.Y. Priolkar, Administrative Member.

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

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

*[Signature]*

Mohmad Salim Ahmed  
Gangman,  
Asst. Engineer's Office,  
Western Railway,  
Gandhidham,  
Address: Ghanchi Falia,  
Juni Machhi Pith  
Bhuj 370 001. Dist:Kutch. .... Applicant.  
(Advocate:Mr.Y.V.Shah)

Versus.

1. Union of India through  
the General Manager,  
Western Railway,  
Churchgate, Bombay.
2. Divisional Railway Manager,  
Western Railway,  
Ajmer.
3. Asstt. Engineer,  
Western Railway,  
Gandhidham. .... Respondents.  
(Advocate:Mr.B.R.Kyada)

J U D G M E N T

O.A.No. 382 OF 1991

Date: 27.2.1992.

Per: Hon'ble Mr. M.Y.Priolkar, Member(A).

The applicant in this case was appointed as a temporary Gangman vide order dated 25.1.1990 of Assistant Engineer, Gandhidham, Western Railway. The applicant's grievance is that though the appointment order was served upon the applicant after he had passed medical examination for Category B/1 for which physical fitness certificate dated 18.12.89/15.1.90 was issued in his favour by Medical Superintendent, Western Railway, Gandhidham, he was again sent for medical

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examination on 21.8.1990 when he was found fit only for category C/2 and therefore he has been orally retrenched from service on 21.8.1990 by respondent No.3. The prayer of the applicant is for a direction to the respondents to reinstate the applicant in service with all consequential benefits.

2. Respondents in the written reply have denied the charge of retrenchment or oral termination of service. The respondents have stated that the applicant was sent for medical examination but he failed in the medical examination for cadre-III and therefore he was not found fit to work in the post for which the appointment order had been issued. According to the respondents, however, the applicant's services were not retrenched or terminated but since the petitioner was found fit in a lower medical category i.e. category C-2, he was reverted to the lower post of Mali after the recommendation to this effect by a selection committee.

3. The learned counsel for the respondents reiterated during the hearing today that the services of the applicant's are not retrenched or terminated nor he was discontinued in service and it was only because he was found unfit in a

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medical examination for the category appropriate to the post he was holding that he has been reverted by order dated 23.10.1991 to the lower post of Mali from the earlier post of Gangman to which he was initially appointed. A copy of the order dated 23.10.91 has been produced by the respondents. It is clear from this order that this order does not have any retrospective effect and the applicant should therefore be deemed to have been reverted to the lower post only on or after the date of issue of this order, i.e. on 23.10.1991. The learned counsel for the applicant however still persisted in his grievance that the applicant is without job since 21.8.90 and he has been orally terminated on the alleged ground of medical unfitness. In his rejoinder dated 27.1.1992 the applicant has reiterated that he has not been paid wages at all from 21.8.1990 and onwards, either of the higher post or of the lower post till the date of the filing of the rejoinder. The respondents are silent on the question whether during the period from the date of the alleged oral termination of service with effect from 21.8.90 to the date namely 23.10.91 when the applicant was reverted as Mali on the recommendation of the selection committee and thereafter, the applicant has been carrying out



his duties, and if so, whether of the higher post to which he was initially appointed or of the lower post to which he was subsequently reverted. From the certificate dated 21.8.1990 of Medical Superintendent, Gandhidham, filed by the applicant it is evident that his medical examination on that day was for the purpose of promotion as gate-keeper and not for the post of gangman.


4. *y* In the above circumstances and by on the basis of the statement made before us by the learned counsel for the respondents that the applicant has never been discontinued from service, we direct that the applicant should be treated to have been in continuous service in the post of gangman upto 23.10.91 when the order was issued reverting him to the post of Mali and to have been in continuous service thereafter as a Mali. Payment of his salary for this period will be regulated in accordance with law, but no wages should be denied to him on the ground that the applicant was found unfit on the basis of medical certificate to hold the post of gangman from the date of medical examination namely 21.8.90 to the date of reversion namely 23.10.91. The respondents will, however, be free to deduct

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the wages for this period for any other valid reason unconnected with his medical unfitness. The applicant if he is aggrieved by any such order denying him the salary of this period, he will be at liberty to approach this Tribunal again in accordance with law. With these directions this O.A. is finally disposed of, with no order as to costs.



(R.C. Bhatt)  
Member (J)



(M.Y. Priolkar)  
Member (A)