

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.36/98

Thursday, this the 3rd day of June, 1999.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

A.P.Rajan,
S/o Ayyapputty,
Ex. Highly Skilled Serang,
Grade.II, Office of the
Bridge Inspector(Regirdering),
Koakhi, Cuttack,
South Eastern Railway.
(Kuttikkattil House,
Mannur.P.O., Via Kadalundi,
Kozhikode District,
Kerala State.

- Applicant

By Advocate Mr V.R.Ramachandran Nair

Vs

1. Union of India represented by the General Manager,
South Eastern Railway,
Garden Reach, Calcutta,
West Bengal.
2. The Chief Project Manager,
(Head Quarters),
South Eastern Railway,
Bhubaneswar. - Respondents

By Advocate Mr K.V.Sachidanandan

The application having been heard on 3.6.99, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicant who commenced his career as a Skilled Serang at Mahanadi was promoted as Highly Skilled Serang, Grade.II with effect from 6.2.79 and was continuing uninterruptedly till 15.3.85. He availed of Casual Leave from 16.3.85 to 28.3.85 and proceeded to his native place in Kerala. Unfortunately, he

suffered a mental derangement during this time and therefore he could not approach the authorities for leave. He was under treatment for insanity. Ultimately, when he became all right, he reported for duty on 10.10.87 before the District Engineer(Regirdering), South Eastern Railway, Cuttack producing a leave application and a certificate of medical fitness. The District Engineer recommended to the Chief Engineer(Construction), Bridge Project, South Eastern Railway, Garden Reach, Calcutta for according sanction to the reengagement of the applicant vide his letter dated 14.10.87(A-1). However, the Chief Engineer vide letter dated 19.10.87(A-2) directed the District Engineer to reengage the applicant only after obtaining a fitness certificate from Medical Superintendent, Khurda. According to the above direction, the applicant appeared before the Medical Superintendent, Khurda who issued a certificate of fitness dated 22.10.87(A-3). According to the applicant, though he submitted the medical certificate of fitness on 24.10.87 before the District Engineer, he was not immediately taken back to duty and was advised to await orders. Since the applicant did not receive any order of reengagement, he could not continue to stay there and therefore, returned to his native place. From his native place in Kerala, on 27.1.88 he made a representation to the General Manager, South Eastern Railway, Calcutta requesting that he may be immediately reengaged, but without any response. Finding that he was not being called back for duty, the applicant made a representation on 6.8.91(A-5). There was no response to this representation either. In the meanwhile, the applicant again became mentally unwell and was under treatment in the Mental Hospital, Kuthiravattom from 15.1.92 to 29.1.97 as is seen from A-7 certificate issued by the Consultant in Psychiatry, Calicut Medical College at Kuthiravattom Mental Hospital. In the A-7 certificate

it was certified that he was fit to join duty. Thereafter, the applicant made a representation A-8 to the Chief Engineer(Construction), Bridge Project, South Eastern Railway, Garden Reach, Calcutta on 19.2.97 seeking reengagement. As there was no response to this representation, the applicant approached this Tribunal in O.A.573/97 which was disposed of by order dated 25.4.97 with a direction to the Chief Engineer(Construction), Bridge Project, South Eastern Railway, Garden Reach, Calcutta to consider the representation submitted by the applicant on 19.2.97 and to give him a speaking order within a period of two months. In obedience to the above direction, the 2nd respondent has issued the impugned order dated 16.12.97 A-10 rejecting the applicant's claim for reengagement, holding that on account of the long absence the applicant was deemed to have been removed from Railway service for having failed to join duty within five years from 23.10.87 and that the order of the Assistant Engineer dated 7.11.85 terminating the casual engagement of the applicant was also perfectly in order. It is aggrieved by this that the applicant has filed this application to have A-10 and the letter of the Assistant Engineer dated 7.11.85 set aside and for a direction to the respondents to reinstate the applicant to service with all consequential benefits.

2. The respondents have filed a detailed reply statement raising inter-alia the following contentions. The applicant was a casual labourer but he had not been granted temporary status. The applicant's services is deemed to have been terminated as he absented himself from duty in terms of the provisions contained in Paragraph 2004 of the Indian Railway Establishment Manual. As the applicant unauthorizedly absented himself from 29.3.85 to 7.11.85 the order of the Assistant Engineer(Regirdering), South

Eastern Railway, Cuttack was legal and sustainable. The letter dated 7.11.85 was returned unserved with the endorsement of the Postal authorities that the addressee could not be found though visits have made on several occasions and therefore it is to be deemed to be sufficient service. The respondents have got reliable information that for a brief period between 1985 and 1992 the applicant was under a foreign employer in Saudi Arabia/Kuwait, that he had violated Rule 509 of the IREM, Vol.I and that therefore the medical certificate submitted by the applicant is doubted. The fact that the applicant did not take immediate steps when he was not engaged in October, 1987 shows that the applicant was not in station and could not pursue the remedies therefor. As the applicant has not produced any reliable proof of having submitted the fitness certificate dated 22/23.10.87 on 24.10.87 it has to be presumed that he did not produce such a certificate. Even if the applicant had produced the fitness certificate as contended by him, the District Engineer, considering that the applicant was only a casual labourer without temporary status, would have on the basis of the termination order issued by the Assistant Engineer dated 7.11.85, denied posting order. As the applicant has not approached the Tribunal between 1987 and 1992, the application is barred by limitation. As the claim of the applicant is highly belated and his services have been terminated or deemed to have been terminated as per rules, the applicant is not entitled to any relief. The respondents therefore pleaded that the application may be dismissed.

3. The applicant in his rejoinder has reiterated the contentions raised by him in the application and has also categorically denied the contention that he had worked under a foreign employer.

4. I have gone through the pleadings and have heard the learned counsel on either side. The applicant is a person who has suffered considerable hardship and agony not only at the formidable hands of destiny but also at the hands of the respondents. The evidence available in this case very clearly establish that immediately after the applicant went on casual leave, he has suffered a mental derangement and suffered it for more than two years which rendered him incapable of even thinking of his employment during the period. When he became normal, with a certificate of fitness and a leave application, the applicant approached the District Engineer on 10.10.87. This fact is beyond dispute. The District Engineer though recommended sanction of his reengagement wanted instructions from the Chief Engineer and therefore he directed the applicant to approach the Chief Engineer who in turn, directed that the applicant should be examined for fitness by a Medical Superintendent. The Railway Medical Officer issued the certificate No.217850 dated 22/23.10.87 and the applicant reported before the District Engineer on 24.10.87 according to him, but disputed by the respondents. However, the applicant was not reengaged. The applicant returned to his native place and thereafter again he was suffering from mental ailment and was not in a position to take proper legal steps until the year 1997. To his suffering mostly the applicant has to grudge his own fate rather than blaming the administration. However, I have to note that the Railway administration has also contributed largely to his suffering. The 2nd respondent was by order of this Tribunal in O.A.573/97 A-9, directed to consider the case of the applicant put forth in his representation. A scrutiny of the impugned order would clearly establish that the 2nd respondent has approached the issue with a closed mind without regard to the background

of the case. The reply statement filed by the respondents would go to show that they did not have any regard for truth and wanted only to somehow deny the relief sought by the applicant. To point out one instance, while in the impugned order itself the 2nd respondent has conceded that the applicant was a casual labourer with a temporary status, in the reply statement they have raised a frivolous contention that the applicant was a casual labourer who had not been granted temporary status. The respondents in their reply statement contend that the applicant might not have produced the fitness certificate No.217850 on 24.10.87 for the reason that the applicant has not produced reliable proof of having produced such a fitness certificate on 24.10.87. The very fact that the applicant has undertaken the journey from Calicut to Cuttack with medical certificate and leave application for consideration by the Chief Engineer and on further direction he appeared before the Medical Officer would only support the case of the applicant that he produced the medical certificate and reported for duty on 24.10.87. As a casual labourer he could not have insisted on an acknowledgement being given by the District Engineer before whom he produced the fitness certificate. To say that as there was no reliable proof of production of the fitness certificate before the District Engineer, it has to be presumed that the applicant did not produce the fitness certificate on 24.10.87, to my mind appears absolutely untrue, especially when the respondents themselves have in para 8 of the reply statement have admitted that certain records have been lost and are not traceable. As per rules, if the service of a casual labourer who has attained temporary status is to be dispensed with for any reason, a notice has to be given to him. There is no case for the respondents that they have issued any notice. Reliance is placed in the impugned order as also in the reply statement that an order said to have been issued by the Assistant Engineer on

7.11.85 to the residential address of the applicant which was returned unserved intimating that his services have been terminated for non-attendance. First of all the address of the applicant has not been correctly written in the cover which is said to have been sent because the respondents themselves have reproduced the address in which the house name of the applicant was missing. The address being insufficient, there is no possibility of the Postman tracing the applicant with the incorrect address. Further, as the applicant was a temporary status casual labourer even according to the respondents, the competent authority to terminate his services would have been the District Engineer and not the Assistant Engineer and before terminating the services the notice as required should have been issued. Therefore the reliance placed on the letter dated 7.11.85 to show that the applicant's service have been terminated is misplaced.

5. In the impugned order, the 2nd respondent has contended that as the applicant failed to resume duty within five years from 23.10.87, it should be deemed that his services have been terminated. This is absolutely untenable. The applicant, as is seen from the facts and circumstances, has reported on 24.10.87 along with a certificate of fitness but was not taken back to duty. Having denied the reengagement to the applicant despite production of the fitness certificate, the respondents are not justified in contending that the applicant has failed to report for duty within five years from 23.10.87. Further, no notice proposing to terminate the service of the applicant for unauthorised absence also has been issued by the respondents. Under these circumstances, I am of the considered view that the impugned order A-10 is liable to be set aside.

6. Having found that the stand of the respondents in putting the blame entirely on the applicant for denying him the relief of reengagement is untenable, I have to consider what relief can be granted to the applicant in this case. On account of his illness and on account of other circumstances, the applicant also has not taken prompt steps for getting reengagement. Under these circumstances, it may not be in the interest of justice to direct the respondents to give the applicant any back wages or other consequential benefits. In any case, I am of the considered view that the respondents have to be directed to reengage the applicant as highly skilled Serang Grade.II after getting him examined by a competent medical officer and on obtaining a certificate of fitness.

6. In the result in view of what is stated above, the application is disposed of directing the respondents that the applicant shall be directed by them to appear for examination by the competent medical authority for ascertaining his fitness and if he is found fit to join duty, the applicant shall be forthwith taken by the respondents for duty as Highly Skilled Serang Grade.II. The applicant shall be thereafter continued in engagement as per rules and shall also be considered for regularisation etc. in his turn. However, the applicant shall not be entitled to any back wages for the period he was kept out of service. The period during which the applicant was out of service shall be treated as Extra Ordinary Leave and should not create a break inservice. The above direction shall be complied with forthwith, at any rate, within a period of three months from the date of receipt of a copy of this order. No costs.

Dated, the 3rd of June, 1999.



(A.V. HARIDASAN)
VICE CHAIRMAN

trs/7699

List of Annexures referred to in the Order:

1. A-1: True copy of the letter No.E/60/1805 dated 14.10.87 issued by the District Engineer(Regirdering), South Eastern Railway, Cuttack.
2. A-2: True copy of the letter No.BP/CL/Pt.V/1140 dated 19.10.87 issued by the Chief Engineer(Construction), Bridge Project, South Eastern Railway, Garden Reach, Calcutta.
3. A-3: True copy of the medical certificate No.217850 dated 22.10.87 of the applicant issued by the Medical Superintendent, Khurda, South Eastern Railway.
4. A-5: True copy of the representation dated 6.8.91 submitted by the applicant to the Chief Engineer(Construction), Bridge Project, South Eastern Railway, Calcutta.
5. A-7: True copy of the medical certificate dated 29.1.97 of the applicant issued by Dr.KS Mohan, Consultant Psychiatry, Kuthiravattom Mental Hospital.
6. A-9: True copy of the judgement in O.A.573/97 dated 25.4.97 of the Hon'ble C.A.T., Ernakulam Bench.
7. A-10: True copy of the order No.O.A.573/97/CAT/ERS/APR/Spl. dated 16.12.97 issued by the 2nd respondent.