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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

CIRCUIT BENCH,

LUCKNOW

O.A. No. 13/1991.

Jai Kishore Sharma

Applicant

versus

Union of India & others

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. A.B. Gorthi, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, VC)

The applicant was selected for the post of Substitute Fitter Khalasi and was appointed on 20.1.86. The applicant was medically examined and was found fit for B.II category and was found unfit in B-I category. The applicant worked for a period of 427 days. He is a Matriculate. The applicant was asked not to work with effect from 1.4.88 and no written order terminating his services were given to him. The applicant's complaint is that although he was Matriculate, he could have been appointed as Call Man, Office Peon or other office duty or work since colour difficulty is not needed on the office duty, a defect which was found in him at the time of medical examination. The applicant having worked for more than 240 days, had acquired temporary status; the other persons who were appointed, continued in service though he was removed by oral order. The applicant submitted representation but no reply to the same was given and after making efforts and giving legal notice he has approached this Tribunal against such termination.

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2. In the reply, it has been stated by the Railway Administration that there is no binding of the Railway Administration to appoint or retain the candidates who fail in medical examination on first appointment. The applicant's case was put up before the competent authority who did not agree with the proposal, as the staff was also surplus in the category for which the applicant was recommended. The plea which has been taken by the Railway Administration is incorrect as it was not the first or second appointment, as there was break between the first and second appointment. It was the case of re-appointment. It was mentioned by the applicant that three posts of Saloon Attendant are lying vacant and same can be given to the persons of medical B II category persons and the applicant can be appointed against one of the posts. Recommendation was also made by Carriage and Wagon Superintendent but the appointment was not given. Thus, the respondents have safely avoided the reference to the Railway Board's directions in this behalf regarding taking in service all those who failed in B I category and it is clearly provided that they can be considered for B I category. The applicant was not considered even if the post was vacant. The wrong plea as against the record that it was the case of first appointment and another plea that the post was not vacant is incorrect. The posts were vacant and the applicant could have been appointed against those posts.

3. It is strange that the services have been terminated

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orally of a temporary employee which is not legally possible; the oral termination order obviously is bad and cannot sustain and accordingly the respondents are directed to provide a suitable job to the applicant in case any other person who was appointed subsequent to the applicant. The applicant shall be appointed against any post without delay but if ~~an~~ no such appointment has been made and persons are waiting then the applicant may be given appointment after their appointment. In case the applicant is appointed he will be deemed in continuous service though without salary. No order as to costs.

Hamid Ali

Adm. Member.

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Vice Chairman.

Shakeel/

Allahabd
Lucknow Dt.

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