

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

O.A.NO.629/1996

Hon'ble Shri S. Raju, Member (J)

patna this the 7th day of December, 2001

Nagendra Prasad Yadava
s/o Shri Shyam Bahadur Prasad
r/o Village Rahar Diara
P.O. & P.S. Sonpur, Distt. Saran
Ex-Boiler Maker Khalasi under
Loco Foreman, N.E. Railway
Sonpur
District Saran. .. Applicant

(By Shri S. Pandey, counsel for the applicant)

vs.

1. The Union of India through
The General Manager
N.E. Railway, Gorakhpur (UP).
2. The Divisional Railway Manager
N.E. Railway, Sonpur (Bihar).
3. Divisional Mechanical Engineer
N.E. Railway, Sonpur (Saran).
4. Loco Foreman
N.E. Railway, Sonpur (Saran). .. Respondents.

(By Shri Shekhar Singh, counsel for the respondents)

O R D E R

The claim of the applicant, who was engaged as substitute Khalasi with the respondents, by way of an amendment for reinstatement in Railway service or to reinstate him in the category in which he is found medically fit. The other reliefs alternatively is for payment of invalid pension with arrears of DCRG and other terminal benefits with interest.

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2. Briefly stated, the applicant was engaged as substitute Khallasi on 23.6.1966 in Loco Foreman, N. E. Railway, Sonpur by the then District Mechanical Engineer. He worked in Loco Shed. The name of the applicant has been struck off from the records as he absented himself from March, 1969 to February, 1974. The applicant made a representation to the authorities and by letter dated 1.11.1991 issued by DRM, Sonpur, there is no reasons available for striking of the name of the applicant from the records of the Railways. By another letter dated 20.12.1991 issued by GM (Works), N.E. Railway, it is observed that the applicant has become disable, he is not fit for any job in Railways. By another letter dated 23.1.1992 the applicant has been subjected to medical examination but the details have not been made available.

3. The learned counsel for the applicant has contended that as per the Railway Board's Circular dated 16/23-6-1970/16.3.1970 regarding engagement of substitutes, it is observed that the substitutes are not to be engaged for period exceeding three months under any circumstances. As the applicant had worked from 23.6.1966 and was under the treatment of Govt. hospital and was declared incapacitated, his name has been struck off from the records and as per the IREM (Vol.I), he has been accorded the temporary status after completion of three months service as substitute and was also screened. It is also stated that the respondents before terminating his services have not followed the provisions of Railway (Discipline and Appeal) Rules, 1968 and he has not been accorded a reasonable opportunity to show cause.

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It is also stated that no reasons have been recorded to remove/struck off his name from the records. It is also stated that despite decision of the General Manager, to subject the applicant to medical examination regarding re-appointment, the same has not been considered and as per the Para 10 of the Railway Manual workshop staff/employees shall be entitled to all the benefits of confirmation after three years of continuous service. As the applicant has worked from 1966 to 1974, he has been deemed to have been regularised and accorded^m the status of regular Railway servant and as such his services cannot be dismissed without following the due process of law. It is also stated that once the respondents have rejected his ^mclaim in 1995, the present OA is within the stipulated period of limitation as envisaged under Section 21 of the Administrative Tribunals Act, 1985.

4. I find that the respondents have not filed their reply despite several opportunities, they have been proceeded ex-parte, by an order dated 30.6.1999, but later on by an order passed on 28.2.2001 the review of the amendment of the present OA, the respondents are accorded an opportunity to file reply as such keeping in view the interest of justice and for proper adjudication of the controversy, the reply filed on 5.12.2001 is taken on record. In this reply, the respondents have contended that the petition is hopelessly barred by limitation as the cause of action had arisen to the applicant in the year 1992 and in the letter dated 24.11.1995 the earlier order has been referred to and it is a communication, would not extend the limitation and does not ~~considered as a fresh cause of action~~ ^m construed the applicant a fresh cause of action. As per the

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Railway Servants (Pension) Rules, 1993, it is contended that a Railway servant, inter-alia, does not include a substitute and it is only a substitute who has been absorbed is to be treated as a regular Railway servant. The learned counsel for the ^{respondent} applicant has further contended that the applicant had worked as substitute from 1.2.1967 to 1.1.1968 and was sick from February, 1968 to February, 1969 and thereafter from March, 1969 to March, 1974 he absented his services and as such there is no occasion for issuing any order of termination. Further placing reliance on a decision of the Apex Court in Ram Kumar Vs. Union of India, (1988) 2 SCR 138, it is contended that for casual labour who is yet to be accorded the regular status and holder of a temporary post after screening and completion of further one year service, cannot be accorded the pensionary benefits. It is stated that the applicant had absented himself without proper intimation and had remained absent for more than five years which automatically as an affect of ceasure of the applicant as a Railway servant. As the applicant was not absorbed against regular temporary post, he cannot be treated as a Railway servant for accord of invalid pension.

5. I have carefully considered the rival contentions of the parties and also perused the material available on record. No doubt the Railway Board's letter dated 16.3.1970 ^{ibid} precludes the competent authorities from engaging substitute for more than three months. As per the Railway Pension Rules, ^{ibid}, a substitute cannot be treated as regular incumbent for the purpose of pension including invalid pension unless the substitute is absorbed in regular service. As per Rule 32, service rendered as substitute

shall be counted for pensionary benefits from the date of completion of four months as a substitute followed by absorption in Group 'D' post without any break. The claim of the applicant for reinstatement from 1974, to my considered view, is beyond the purview of this Court as envisaged under Section 21 (2)(a)(b) of the CAT Act, 1985, matters not beyond three years from the inception of the Tribunal, i.e., 22.11.1985 can be taken up cognizance of. The ^{name of the} applicant having struck off from the rolls/records in the year 1974, the applicant has not approached the Court and by way of an order passed in 1992 rejecting his request for re-appointment cannot be allowed to raise the grievance of the year, 1974. Even assuming for the sake ^{of} not admitting that the order was passed on 3.6.1992, rejecting his request for re-appointment, nothing prevented him from approaching this Court. The resort of the applicant on the letter issued by the respondents on 24.11.1995 would not act to his limitation and would not confer him a fresh case of action. What has been stated in the letter *ibid* is that the earlier order and decision has been maintained. As such the applicant having failed to file application within one year from 3.6.1992 and has come beyond the period of limitation, as envisaged under Section 21 *ibid*. Apart from it, in 1974 when the applicant was declared unfit, he could have requested the authorities for medical and re-appointment as he has failed to challenge the grievance and termination, this Court cannot take cognizance of his prayer for reinstatement from 1974 and this is beyond the jurisdiction of the Court as envisaged under Section 21 (2)(a)(b) *ibid*. As regards the

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contention that a substitute after completion of three months service is deemed to have been regularised and to be treated as regular Railway servant cannot be countenanced as the substitute on completion of four months service is to be absorbed and in absence of any material to show that any order has been passed for this absorption and thereafter he continued for one year, he cannot be treated as deemed regularised Railway servant. The respondents clearly stated that the applicant had worked ⁱⁿ less than one year and thereafter remained absent in order to be absorbed it has to be shown that he was in continuous service which is lacking in the present case as such his claim for treating him regular incumbent is rejected.

6. As regards the invalid pension, the pension Rules, 1993 would have no application in cases of a substitute who has yet to be absorbed in regular Railway servant. As such in absence of any pleading to this effect that the applicant was regularised or absorbed and no evidence has been produced, the applicant cannot be amenable to the Pension Rules, ibid and as such cannot be accorded invalid pension. As regards the letters written by the Railway Minister the applicant who has been examined has been asked to/subjected to medical examination has been found to be completely incapacitated for any job in Railways. The aforesaid letter would be of no avail/help to the applicant as even after being medically examined, if he has no right as regular servant, he cannot be allowed ⁱⁿ ~~now~~ invalid pension. The decision of the Ram Kumar supra clearly lays down that unless regularised and worked against temporary post for at least one year a Casual Labour ⁱⁿ of substitute has no right to be accorded pension.

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7. In this view of the matter, though the cause of action of the applicant is belated but on merits too, he has failed to establish a prima-facie case. In the result and having regard to the reasons recorded above, the OA is found bereft of merit and it is accordingly dismissed. No costs.

S. Raju
(S. RAJU)
M(J)

/rao/