

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Original Application No. 775/87

~~Transfer Application No.~~

Date of decision 4.8.1993

Smt. Veeramal Ratnaswamy Petitioner

Shri M.S.Ramamurthy Advocate for the Petitioner

Versus

Permanent Way Inspector (C), Panvel Respondent

Shri J.G.Sawant Advocate for the Respondent(s)

Coram :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri Ms. Usha Savara, Member (A)

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

J. Sawant
(MS.USHA SAVARA)
M (A)

M.S.Deshpande
(M.S.DESHPANDE)
V.C.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

(W)

OA. NO. 775/87

Smt. Veeramal Ratnaswamy ... Applicant

V/S.

Permanent Way Inspector (C)
Panvel & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Ms. Usha Savara

Appearance

Shri M.S.Ramamurthy
Advocate
for the Applicant

Shri J.G.Sawant
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 4.8.1993

(PER: M.S.Deshpande, Vice Chairman)

The applicant was employed as a Khalasi at Rajkot for three years upto 20.3.1981. Her services came to be terminated orally and afterwards she was employed with the Railway on 20.9.1982 as a Khalasi. She was subjected to a medical examination on 28.1.1986 and was not found fit for B-1 category and was asked not to come for work. The applicant sought examination regarding her fitness in B-2 category but that was not agreed.

2. According to the learned counsel for the applicant, there could not have been oral termination of the applicant because after six months she was entitled to a temporary status. Under Chapter XXIII Para 2302, it is provided :-

"Service of a temporary railway servant shall be liable to termination on 14 days' notice on either side provided that such a railway servant shall not be entitled to any notice of termination of his service —

(i) if the termination is due to the expiry of the sanction to the post which he holds or the expiry of the officiating vacancy or to his compulsory retirement due to mental or physical incapacity or to his removal or dismissal from service as a disciplinary measure after compliance with the provisions of clause (2) of Article 311 of the Constitution of India.

Since it is obvious that the applicant was not found fit for the B-1 category which was the requirement for her as a Khalasi, no notice was ~~necessary~~ ^{there} in the applicant's case and there could be oral termination.

3. The applicant's contention is that even otherwise the applicant should have been considered for an alternative appointment in the category to which her fitness in C-1 category would be relevant. Under Chapter XX, item 2007 Indian Railway Establishment Manual Vol.II, it is provided that :

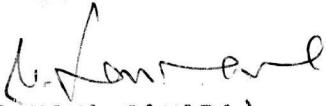
"(4) (a) Casual labour should be subjected to medical examination as early as possible and preferably before grant of temporary status. Continued retention in employment is subject to qualifying in the prescribed medical examination. When casual labour who have put in six years service, whether continuous or in broken periods, are included in a panel for appointment to Group D posts and are sent for medical examination for first appointment to regular service, the standard of medical examination should not be the one that is required for first appointment but should be the appropriate standard as prescribed for re-examination during service.

(b) Such of the Casual labour as are found, on medical examination, unfit for the particular category for which they are sent for medical examination despite the relaxed standard prescribed for re-examination, may be considered for alternative category requiring a lower medical classification subject to their suitability for the alternative category being adjudged by the screening Committee, to the extent it is found possible to arrange absorption against alternative posts requiring lower medical classification."

We find that in the present case action on the lines of clause (b) should have been taken.

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4. We, therefore, direct that the respondents should consider the suitability of the applicant to alternative category on the basis of her medical fitness as might be adjudged by the screening Committee to the extent it is possible to give her alternative job. This be done within two months from today. The applicant's counsel may inform the applicant of this direction and instruct the applicant to appear before the respondents (Inspector of Works, Panvel) within six weeks from today.


(MS.USHA SAVARA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.