

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
BOMBAY

O.A.NO. 949/89

Date of decision: 11.8.92

SH. BHIKA LAXMAN PANDIT ..... APPLICANT

VERSUS

UNION OF INDIA & ANR. .... RESPONDENTS -

CORAM: THE HON'BLE MR. T.S. OBEROI, MEMBER(J)  
THE HON'BLE MS. USHA SAVARA, MEMBER(A)

For the Applicant ..... Sh. D.V. Gangal,  
Counsel

For the respondents ..... Sh. P.R. Pai,  
Counsel

1. Whether the reporters of local papers  
may be allowed to see the Judgement? 726
2. Whether to be referred to the Reporter  
or not? No

JUDGEMENT

(Delivered by Hon'ble Mr. T.S. Oberoi, Member)

In this O.A. filed under Section 19 of the  
Administrative Tribunals Act, 1985, the applicant  
seeks the following reliefs:-

"(a) hold and declare that the Applicant is  
entitled to receive his salary for the  
period from his fitness, i.e. from 15.6.1988  
to 6.10.1989 and that he should be granted  
bonus, house rent allowance etc. for  
the said period.

(b) grant exemplary cost with interest at  
24%."

2. His case briefly is that he was appointed  
as Gangman in the year 1957 and from the very nature  
of his work, he had to perform his duties in utter  
heat, cold and rain, and due to hazardous nature of  
his duties, he fell sick and incurred T.B., sometimes  
in July 1985. However, because of the treatment in

the Railway Hospital at Igatpuri etc., he was declared fit with effect from 15.6.1988, but was recommended to be given a lighter job. Eventually, he could be provided the job of a Khalasi with effect from 6.10.1989 and, therefore, prayed that he should be paid salary, bonus and house rent allowance etc., for the period from 15.6.1988 to 6.10.1989, during which he was declared fit to work on a lighter job, but could actually be provided the said job on 6.10.1989. His plea, precisely, is that his ailment was because of the tough nature <sup>the</sup> of /job performed by him, and after his having been declared fit, he was willing to do duty, but suitable job could not be provided to him for the period from 15.6.1988 to 6.10.1989, and so, he is entitled to be paid salary and other allowances, as mentioned above, for the said period. He also claims cost and interest as mentioned in para 1(b), above.

3. In the counter, filed on behalf of the respondents, the applicant's claim was opposed, firstly, being belated, and, secondly, on various grounds such as, that all possible efforts were made to accommodate the applicant, on a job he was capable of performing duty and it was only because of the sympathy and interest shown in his case that he could eventually be provided the job of a Khalasi. The applicant's contention that because of his job being hazardous, he had incurred the disease, was denied, stating that there are innumerable persons working on the same type of job, but instances of those incurring disease, are only a few and far between, and, therefore, the applicant's falling a prey to the disease is attributable to reasons other than the hazardous nature of the job, as alleged by him. It was also averred that though

*Bar*

the applicant was offered the job of a Khalasi on 22.8.1989, he could join the same only on 6.10.1989, thereby showing that the delay was partly attributable to applicant himself; besides, it also shows his own attitude and readiness to <sup>accept</sup> /the job offered to him, involving lesser physical strain and exertion. It was also stated in the counter that the sympathetic attitude of the respondents is also evident from the fact that the applicant was paid maintenance grant, as per rules, for the period of his sickness. Lastly, it was submitted that all types of leave admissible to the applicant, was granted to him, and as he had no leave of any kind, to his credit, he had to wait for the job, till he could be accommodated on the post of Khalasi, in keeping with the state of his health, and in this process, some time was likely to be consumed, in searching for the job, suitable to him, such as an office boy, orderly or Khalasi, etc.

4. In the rejoinder filed on behalf of the applicant, his contentions put forth in the O.A., were reiterated.

5. We have heard the learned counsel for the parties.

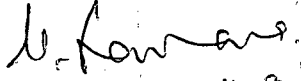
6. The learned counsel for the applicant pleaded that though the respondents were directed to produce the register of vacancies, required to be maintained in accordance with the provisions contained in Rule 2606 of Indian Railways Estt. Manual, so as to, see whether there were any vacancies in the post of Khalasi, at the relevant time and whether adequate steps were taken by the respondents to fix up the applicant on


some suitable job. But no such record could be produced by them, giving rise to a presumption that either no such record was maintained by the respondents, or had it been maintained and produced, it would have gone against their interests. Thus the learned counsel for the applicant prayed for the relief being granted to the applicant, as urged in the OA.

7. The learned counsel for the respondents contested the plea put forth by the learned counsel for the applicant, stating that the requisite record was to be procured from the respondents concerned, located at an out-station, and with the short notice given in this respect, the same could not be made available, in spite of efforts, and so, in these circumstances, it would not give rise to the presumption, as put forth by the learned counsel for the applicant. The learned counsel for the respondents further pleaded that some delay is inherent in the process, specially when a job involving lesser physical strain is to be looked for and provided, as in the present case, and the very fact that the applicant has actually been provided with a job, in keeping with the state of his health, goes to show that he has been treated well, keeping humanitarian aspect of the case, in mind.

8. We have given our careful consideration to the facts and circumstances of the case, together with the rival contentions, as put forth by both the sides. The applicant has been granted the leave as per his entitlement, during the period, he suffered from the disease. After his having been declared fit, but, for a job involving lesser physical strain, he has eventually been provided one, suitable to him. Howsoever, desirable it may be to cut short all possible

delays, some time is unavoidably taken in the process of finding a suitable job, in a case like this, where the applicant was to be provided a job, involving lesser physical strain, in view of the state of health. Though the requisite record has not been produced by the respondents, the learned counsel for the respondents has attributed his inability to produce the same, due to short notice, particularly when it was to be procured from an out-station. Considering the overall facts and circumstances of the case, we are of the view that, as the respondents have eventually provided a job to the applicant, this sufficiently meets the ends of justice, as required in the case. In result, the O.A. is declined, with no order as to costs.

  
(USHA SAVARA) 11.8.92  
MEMBER(A)

  
(T.S. OBEROI)  
MEMBER(J)