

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 483/2003

Dated this 9th the 9th day of January, 2003.

Ukha Madhu Chavan
(Applicant by Shri S.P.Saxena, Advocate)

Applicant

Versus

U.O.I. & Ors. Respondents
(Respondents by Shri S.C.Dhawan, Advocate)

CORAM:

HON'BLE SHRI JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN (J)
HON'BLE SMT SHANTA SHAstry, MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library.

{ Yes
(D.N.Chowdhury)
Vice Chairman

sj*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.483/99

Dated this the 9th day of January, 2003.

CORAM: HON'BLE SHRI JUSTICE D.N.CHOUDHURY, VICE CHAIRMAN
HON'BLE SHRI SMT. SHANTA SHAstry, MEMBER (A)

Ukha Madhu Chavan
Khalasi, I.O.W. MainLine (C. R1y)
Bhusawal (Dist. Jalgaon)
(Residing at: c/o Deepak Nannaware,
Bungalow No.15, R.No.MAP 543,
Bhusawal - Varangaon Road,
Taluka -Bhusawal, Distt. Jalgaon. Applicant

(Applicant by Shri S.P.Saxena, Advocate)

vs.

1. Union of India, through
the Chairman,
Railway Board, Rail Bhavan,
New Delhi 110 011.
2. The General Manager
Central Railways,
Bhusawal.
3. The Divisional Railway Manager (P)
Central Railway,
Bhusawal.
4. Assistant Engineer (Line)
Central Railways,
Bhusawal. Respondents

(Respondents by Shri S.P.Saxena, Advocate)

O R D E R

[Per: Justice D.N. Chowdhury, VC]:

Following are the reliefs claimed by the applicant in this

O.A.:

(a) to direct the Respondents to give only light duty job/work to the applicant as per the recommendations of the Medical Board, and not to engage him on regular jobs which require active use of left hand.

(b) to direct the Respondents to treat the period from the date of the accident to the applicant on 14.02.1990 till he was taken back, on 02.02.1996, as period spent on duty and without any break.

(c) to direct the Respondents to pay the balance arrears of salary and allowance to the applicant for the entire period from 14.02.1990 to 02.02.1996.

(d) to award 12% interest on the arrears of salary and allowances.

(e) to pass any other order or direction which may be considered necessary in the facts and circumstances of the case.

(f) to award cost of application.

2. The applicant was engaged as Gangman at P.W.I, Pachora in 1989. While he was working as such at Maiji Station in Pachora Section he met with a serious accident in the course of employment resulting in multiple fracture of the left hand on 14.12.1990. He was admitted at Railway Hospital Bhusawal for about 5 days and he had to undergo a few orthopaedic operations at Railway Hospital Byculla and finally he was released from the hospital on 16.5.1991. By letter dated 16.5.1991, Chief Hospital Supdt. Byculla Hospital wrote to the concerned authority at Bhusawal recommending therein for providing light jobs for a period of 3 months to the applicant. The communication also indicated that the Compound R.U. (L) was reviewed in the Dr. Babasaheb Ambedkar Memorial Hospital, Central Railway, Byculla. By another letter dated 11.06.1991, the C.M.S. Bhusawal wrote to the P.W. I. Pachora about non receipt of the payment by the person concerned for six months and accordingly requested him to make early payment as far as possible. The applicant was also examined by the Medical Board. The Medical Board gave its finding on 16.12.1991 as under:

"The Medical Board carefully examined Shri Ukha Mahadoo and come to the conclusion that he has sustained Permanent Partial Disability to the

...3/-

extent of 15.36% as a result of Non Scheduled injury sustained by him on duty on 14.12.1990. Non Scheduled Injury is : Companied - Communitied # Both Bone Left forearm lower one third. Operation performed - Open Reduction and application of External fixator with Bone grafting bone at Byculla BB.

The Medical Board considered that he is declared Fit for his original job. Unfit Bee one as MRCL Gangman and fit bee one and under for a job not requiring active use of Left hand."

3. After the Medical Board made the above declaration the applicant was medically decategorised but not absorbed. The competent authority passed the order dated 3.6.1993 advised the AEN (T), Bhusawal for absorption of the applicant as Watchman on available vacancy in terms of Board's letter dated 17.9.1990. Since the said direction was not acted upon the authority by communication dated 3.7.1995 expressed its dissatisfaction and addressed the communication dated 3.7.1995 full text of which are reproduced below:

" The abovenamed was working as MRCL under PWI-PC, while performing the duty he was injured and sent for treatment. Further CMS/BSL has declared him "Unfit B-one as MRCL, G/man fit B-one and under for a job not requiring active use of left hand." (Vide CMS/BSL . 1r No. 9m/Med/Exam of 16-12-91). Accordingly his case was put up to the competent authority i.e.D.R. M. who has passed the remarks that, "he was directed to AEN (T) BSL for absorption as watchman of availability of vacancy". (Copy enclosed for ready reference dt 3.6.1993).

It is surprising to see that, neither the a/n was absorbed as w/man nor any intimation to this office.

Now a/n is desire to see DRM in this connection. Kindly intimate the reasons why the a/n was not absorbed as w/man or otherwise.

You are requested to give reply per bearer so that he will be given an interview of DRM."

...3/-

The applicant was finally taken on duty and was made permanent in the post of Khalasi by order dated 5.12.1997 in terms of Sr. DEN (w) Bhusawal letter dated 15.9.1997. The applicant being aggrieved and submitted a representation to the authority that he be given duties of light nature as advised by the Medical Board. The applicant again submitted his representation on 29.8.1998 praying for remedial measure. In the said representation the applicant also mentioned the fact that the applicant was absorbed only on 3.2.1996 though after lapse of 4 years, though the applicant was declared fit for light duty vide communication dated 16.12.1991 by the CMS/Bhusawal. He mentioned the case of some of the employees who were similarly situated and injured on duty in the same month who was taken on duty in the year 1992. Failing to get appropriate remedy the applicant moved this O.A. praying for reliefs mentioned above.

4. The respondents contested the claim and submitted their Written Statement. In the Written Statement, the respondents stated that the applicant was injured on 14.12.1990 and was declared unfit for job of (Temporary) Gangman which he was performing before injury and was entitled for being considered for alternative job, if such jobs were available within a period of six months. If no such job was found there could not have been the question of providing him a job. As a matter of fact, the services of the applicant ought to have terminated as per Ministry of Railway Board's circular dated 24.4.1991. However, the respondents on humanitarian grounds ^{have} engaged and taken on duty the applicant as Temporary Khalasi and offered the work of Watchman on 30.2.1996 when such job was available. The respondents also stated that the applicant was offered the post

of permanent Khalasi which he refused to accept as according to him the same was not recommended by the Medical Board. The applicant therefore on his own refused to work and therefore, he could not have any grievance against the department.

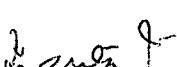
5. The respondents stated and contended that the authority acted as per letter and there is no question of any illegality.

6. We have heard the learned counsel of the parties at length. From the material and survey of facts it emerges that the applicant met with an accident in the course of his employment on 14.12.1990. The competent authority viz. the Medical Board as per letter dated 16.12.1991 declaring him unfit as (Temporary) Gangman and also declared him fit for job not requiring active use of left hand. The competent authority directed the concerned authority for absorption of the person against available vacancy and that took 4 years for the authority to absorb him on 3.2.1996 and he was posted as Permanent Khalasi by the authority under its order dated 5.12.1997. The respondents in their Written Statement referred to the communication issued by Railway Board vide Circular dated 24.4.1991 which also incorporate the provision of medical decategorisation. The said Circular specified the categories for medical decategorisation. The applicant is decategorised arising out of accident in the course of employment as referred to clause (iii) to para 3. The said policy also indicates at para 5.2 that persons who are incapacitated for further service in the post they are holding but declared fit in lower medical category and eligible for retention in service in posts corresponding to the lower medical category are not to be discharged forthwith but every endeavor should be made to find alternative employment for

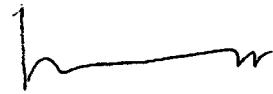
them as expeditiously as possible. Delays in finding out alternative employment should be avoided. Such employment must be of suitable nature and on reasonable emoluments having regard to the emoluments previously drawn by the Railway Servant. If suitable alternative job is not available with same emoluments, a job with lower emoluments may be offered. At para 5.5 of the Circular, it was also indicated that the benefits mentioned would not be admissible to temporary employees falling in group (i) and (ii) mentioned in para 3 and it was decided that though it was not obligatory, every effort may, none the less be made to find alternative employment for them. The applicant does not fall in the category of group (i) and (ii) of paragraph 3. The said policy also specifies at para 8.3 that the responsibility primarily lies on the officers for finding out alternate employment. It also entrusted upon the authorities to maintain a register to be called "Register A-2" as specified in paragraph 8.7 and 8.8. The policy referred to above is just and fair. It is only for the Respondents to give effect to it. On overall consideration of the matter, we do not think it was proper on the part of the respondents not to absorb the applicant after medical decategorisation prior to 3.2.1996. The respondents have not produced before us the relevant registers required to maintain as per the Railway Boards Circular. No justifiable and discernible cause has been stated by the respondents for not absorbing the applicant prior to 1996 though an obligation is cast on the authority by the guidelines issued by the Railway Board. The primary aim of the policy is to render justice. It is a basic principle of Indian polity that law should afford equal treatment for all or rather to show equal concern of respect for all. It

is another principle of legal policy that law should be just and the Court's decision should further the ends of justice and that at least its concern is to avoid failure of justice. On considering all the aspects of the matter, we are of the opinion that it is a fit case in which the respondents are to be directed to treat the period from the date of accident of the applicant i.e. from 3.12.1996 as period spent on duty without any break. This benefits should be given notionally and applicant shall not be entitled for the backwages for the above period. However, the said period shall be treated as on duty, for the purpose of seniority and pension etc. without any backwages. As prayed by the applicant that he was not given light duty we only express our opinion that authority will undoubtedly act lawfully if the present duty discharged by the applicant is arduous in nature, the authority will consider the same taking into account his physical condition as per medical report and assign him some lighter job keeping in mind the administrative convenience.

7. With the above observation, the application is allowed. There will be no order as to costs.


(Smt. Shanta Shastry)
Member (A)

sj*


(D.N. Chowdhury)
Vice Chairman