

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 627/92

Transfar Application No:

DATE OF DECISION: 14.2.1995

Shri Adimulan Mari
----- Petitioner

Shri Y.R.Singh
----- Advocate for the Petitioners

Versus

Union of India & Ors.
----- Respondent

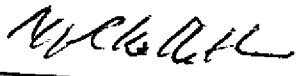
None
----- Advocate for the Respondent(s)

CORAM :


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

The Hon'ble Shri M.R.Kolhatkar, Member (A)

1. To be referred to the Reporter or not ? _____
2. Whether it needs to be circulated to other Benches of the Tribunal ? no



(M.R.KOLHATKAR)
MEMBER (A)



(M.S.DESHPANDE)
VICE CHAIRMAN

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 627/92

Shri Adimulan Mari

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri M.R.Kolhatkar

Appearance

Shri Y.R.Singh
Advocate
for the Applicant

None for the Respondents

ORAL JUDGEMENT

Dated: 14.2.1995

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

The applicant was appointed as a Mate on 23.3.1981 and had attained temporary status on 23.9.1982. He was appointed as Blacksmith in the scale of Rs.950-1500 on 21.4.1984 and while working as such he met with an accident on 28.11.1988 and in that one piece of iron hit the applicant's eye and as a result of which he had to be admitted in the Railway Hospital and since there was no likelihood of the applicant's regaining vision, the left eye had to be removed. The applicant was declared to be fit for BEE One class on 31.1.1989, but his services came to be terminated. An alternative employment was granted to him on 9.3.1990 as Khalasi in the scale of Rs.750-940. The applicant was not granted continuity of service but the new appointment was regarded as fresh appointment and the intervening period from 28.11.1988 to 9.3.1990 was regarded as break in service. The applicant prays for regularising the period of sickness from 28.11.1988 to 9.3.1990 as continuous and for pay and emoluments for

that period, for treating the past service as continuous allowing seniority in the grade of absorption and the direction to the respondents to provide the applicant with a light job such as waterman or Chawkidar.

2. Though the respondents were served, there was no appearance for the respondents and no reply was filed. We have heard the learned counsel for the applicant Shri Y.R.Singh. There is no reason for not accepting the factual position as has been indicated by the learned counsel.

3. With regard to the rule position, our attention was drawn to Chapter XXVI of Indian Railway Establishment Manual. Rule 2601 provides that :-

"A railway servant who fails in a vision test or otherwise becomes physically incapable of performing the duties of the post which he occupies should not be discharged forthwith but every endeavour should be made to find alternative employment for him as expeditiously as possible. Such employment must be of suitable nature and on reasonable emoluments having regard to the emoluments previously drawn by the railway servant."

Rule 2602 deals with the classification of railway servants declared medically unfit and Group (ii) deals with :-

"Those incapacitated for further service in the post they are holding but declared fit in a lower medical category and eligible for retention in service in posts corresponding to this lower medical category."

Rule 2612 says that a railway servant absorbed in an alternative post will, for all purposes, have his past service treated as continuous with that in the alternative post and Rule 2613 deals with fixation of pay. Under

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Rule 2614 :-

"The medically decategorised staff absorbed in alternative posts, whether in the same or other cadres, should be allowed seniority in the grade of absorption with reference to the length of service rendered in the equivalent or corresponding grade irrespective of rate of pay fixed in the grade of absorption. In the case of staff who are in the grade higher than the grade of absorption at the time of medical decategorisation, total service in the equivalent and higher grade is to be taken into account. This is subject to the proviso that if a medically decategorised employee happens to be absorbed in the cadre from which he was originally promoted, he will not be placed above his erstwhile seniors in the grade of absorption."

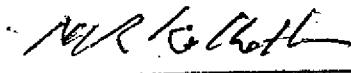
Rule 2604 (b) which relates to Temporary Railway Servants provides that :-

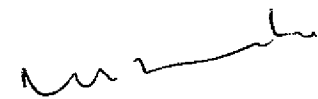
"A temporary Railway servant in group (ii) of para 2602, who becomes medically unfit for the post held by him on account of circumstances arising out of and in the course of his employment, the benefit of Rule 152 R.I. should be given i.e., the employee should be granted leave due plus leave without pay, so as to make a total period of six months within which alternative employment must be found."

4. In the present case we find that ^{an}unreasonably long period was spent by the respondents in finding out an alternative post for the applicant after the accident on 28.11.1988 and the alternative appointment was offered only on 9.3.1990, that is more than 15 months after the accident. Since the requirement was that six months extra-ordinary leave should be granted, we direct that the respondents shall regard the applicant's service as continuous service from 23.3.1981 upto the date of alternative appointment on 9.3.1990 and the period from 28.11.1988 to 9.3.1990 shall not be regarded as break. The applicant shall be entitled to wages for this period in accordance with the rules and the respondents shall determine the entitlement of the applicant in this respect within three

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months from the date of communication of this order and pay the amount within that period. We also direct that the applicant may also be considered for ^{given} ~~being~~ light work as prayed by him as far as possible within three months as stated above consistent with the physical handicapped that he has suffered. The applicant will also be entitled for seniority in the cadre of Khalasi from 23.3.1981 when he came to be appointed as Mate. With these directions the OA. is disposed of.


(M.R.KOLHATKAR)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.