

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1340/94

Date of Decision:

S.M.Choudhari

.. Applicant

Shri D.V.Gangal

.. Advocate for
Applicant

versus-

Union of India & Ors.

.. Respondent(s)

Shri V.S.Masurkar

.. Advocate for
Respondent(s)

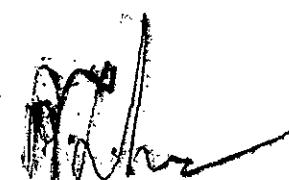
CORAM:

The Hon'ble Shri P.P.Srivastava, Member (A)

The Hon'ble

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?


(P.P.SRIVASTAVA)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 1340/94

this the 17th day of April 1997

CORAM: Hon'ble Shri P.P.Srivastava, Member (A)

Shivaji Madhavrao Choudhari
Permanent Gangman
working under Assistant Engineer
(West), Akola, C.Rly.
Residence : Chalisgaon,
C/o. Bhikan Santosh Nikam,
Jai Bhole Hair Cutting Saloon,
Near Rly. Station, Chalisgaon.

... Applicant

By Advocate Shri D.V.Gangal

V/S.

The Union of India, New Delhi
served through -

1. The General Manager,
Central Railway, Bombay V.T.

2. The Divisional Rly. Manager,
Central Railway, Bhusaval.

... Respondents

By Advocate Shri V.S.Masurkar
C.G.S.C.

O R D E R

(Per: Shri P.P.Srivastava, Member (A))

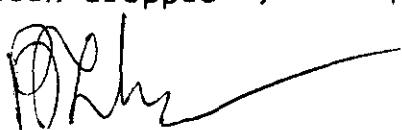
At the out-set, Mr. Masurkar, learned counsel for the respondents raised the objection that the present matter refers to subject matter which is required to be considered by a Division Bench. He further submitted that he is raising this issue at this stage so that later on learned counsel for the applicant should not raise technical and legal plea for challenging the decision. The learned counsel for the applicant Mr. Gangal submitted that he himself has requested for the matter to be placed before a Single Bench [redacted]

[redacted] in terms of the latest decision of the Hon'ble

Chairman that all matters concerning casual labourers can be heard by a Bench of one Member. Learned counsel for the applicant Mr. Gangal further submitted across the Bar that he would not raise this technical aspect for the purpose of challenging the decision.

2. After hearing both the parties, I have decided to hear the matter on merit, (since the matter has been placed before me ^{as} the only objection which has been raised by the learned counsel for the respondents has been met with ^{by} learned counsel for applicant.

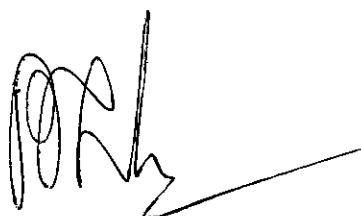
3. The applicant was monthly rated casual labourer with the administration under PWI (North) Chalisgaon. He was injured on duty while doing the departmental Thermit Welding on 9.1.92, when one tank wagon burst and he was very badly injured and both of his legs and one hand had completely burnt. The applicant remained in the Sick list upto 5.9.1992 when he was declared fit for duty in terms of Medical Certificate which mentions "Unfit for A.III as MRCL and fit for A.III and under where the active use of lower limbs are not required." The applicant has approached the administration to give him the job even after in terms of medical certificate but (D) prolonged correspondence which has been brought out by the applicant in OA., the applicant was not given any duty. (Therefore he has approached the Tribunal and sought the relief that the applicant be given suitable alternative appointment as recommended by the medical authority with continuity of service and payment of full back wages from 1991. The other relief concerning payment of compensation has been dropped by the applicant in view of the



fact that the applicant has been given compensation of Rs.5767/- as brought out by the respondents in their reply.

4. Learned counsel for the applicant Mr. Gangal submits that the applicant is a monthly rated casual labourer and has been granted temporary status and since as temporary status employees are treated as equal to temporary employee in terms of the various provisions of the Indian Railway Manual, the applicant will be entitled to be treated as temporary employee for the purpose of granting alternative appointment when he has been medically decategorised. The learned counsel, however, could not point out exact provision from the Indian Railway Manual where the temporary casual labourers have been granted this concession. Therefore, I am of the view that the applicant is not entitled to be treated as temporary employee for the purpose of grant of alternative appointment on medical decategorisation which is available to the regular employees of the Railways.

5. The next point raised by the learned counsel for the applicant is that the applicant was allowed to work after his decategorisation in terms of the DRM's letter as MRCL in terms of Ex. 'A-2'. Learned counsel for the applicant has also brought out in rejoinder that in some similar circumstances many MRCLs who were injured on duty have been taken on duty, without being asked to approach the Employment Exchange again.



6. The learned counsel for the applicant has also brought out that prior to applicant getting injured, he was posted as a Gangman under the Assistant Engineer (West) Akola and was relieved on transfer to work under the Asstt.Engineer (West) Akola from 18.1.1993. However, the applicant was never permitted to join duty in view of the medical certificate.

7. The learned counsel for the applicant has also argued that the applicant was sent from one place to another and was never informed that he was required to approach the special Employment Exchange for being considered for the post. In this connection, learned counsel for the applicant has also brought to my notice the decision of this Tribunal in a similar matter in OA.NO. 344/88 decided on 22.9.1993 wherein the question of the applicant approaching the Employment Exchange was considered and it was held that it is not necessary for the employee to approach the Employment Exchange afresh.

8. Learned counsel for the respondents, on the other hand, has brought out that the applicant cannot be treated as temporary employee but is squarely governed by the administration's orders on the subject which are placed at Annexure-'R-I' which is the copy of the letter No.E(NG)II/88/CL/68 dated 17.9.1990. The learned counsel for the respondents has argued that the case of the applicant is squarely covered by the instructions in this letter and according to this letter he is required to register his name in the Special Employment Exchange for physically handicapped persons.



9. After hearing both the counsels on this issue, I am of the opinion that the case of the applicant would be governed by the respondent administration's letter dated 17.9.1990. However, in view of the facts that the applicant was selected as Gangman which fact has not been denied by the respondents, I am of the view that the applicant is not required to approach the Special Employment Exchange. Since he has already been selected to be posted as Permanent Gangman and since the administration has already decided in their letter dated 17.9.1990 that the persons like the applicant would be entitled to be considered for the job which is commensurated with their medical classification, I am of the opinion that the applicant would be entitled to being posted in any one of the job to which he would be entitled to in view of the medical certificate granted to him.

10. The learned counsel for the applicant has brought out that a large number of posts are available and the applicant can be accommodated in one of the post. The learned counsel for the applicant has also brought out that the applicant is ready to go anywhere. In view of this statement, I am of the view that the applicant will be given a job in terms of the medical certificate granted to him within a period of one month from the date of receipt of this order. In view of the fact that the applicant was injured on duty while doing his duty which has been accepted by the respondents' counsel,

I am directing that Respondent No. 2, D.R.M. Central Railway, Bhusawal would ensure that the above orders would be complied with within a period of one month as has already been stated above.

11. The period of injury to the date of appointment would not be treated as break in service. The applicant would be entitled to the benefit of service which he has rendered before the date of injury. However, the applicant will not be entitled to back wages from 19.1.1993 as claimed by the applicant.

12. The OA is disposed of with the above directions. There will be no order as to costs.



(P.P. SRIVASTAVA)
MEMBER (A)

mrj.