

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 515/94 with M.P. 854/96.

Date of Decision: 29.9.97

Rama Bhadu Sherole

Applicant.

Shri D.V.Gangal

Advocate for
Applicant.

Versus

Union of India & Anr.

Respondent(s)

Shri R.R.Shetty.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B.S.Hegde, Member(J),

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? x

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 515/1994
along with
MISCELLANEOUS PETITION NO. 854/1996.

Renounced, this the 29th day of Sept. 1997.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

Rama Bhadu Sherole,
At & Post Jalgaon Khurd,
Taluka : Jalgaon.

... Applicant.

(By Advocate Shri D.V.Gangal)

V/s.

1. Union of India, through
the General Manager,
Central Railway,
Bombay V.T.

2. The Divisional Railway Manager,
Central Railway,
Bhusawal.

... Respondents.

(By Advocate Shri R.R.Shetty)

O R D E R

¶Per Shri M.R.Kolhatkar, Member(A)¶

In this O.A. the applicant who was granted Monthly Rated Casual Labour status from 4.3.1985 was subsequently injured on duty (20.7.1988) and after a period of hospitalisation from 21.7.1988 to 29.9.1989 was deployed as Watchman from 19.1.1990 to 17.3.1993, has challenged the communication dt. 11.1.1994 (at Annexure A-1). As this communication is material, the same may be reproduced :

"Sub: Non giving appointment to Shri Rama Bhadu,
MRCL under PWI (R/ML) BSL.

....

As per your appeal dt. 13.8.1993 for taking back

on duty under light job, it is informed you that the instructions given in Railway Board's letter No.Engg/II/88/CL/68 dt. 17.9.1990 the Casual Labour with temporary status who are medically de-categorised due to injuries sustained by them in the course of duty could get their name registered in the special employment exchange for the physically handicapped. If their names are so registered as physically handicapped in the said exchange those candidate would be considered by the Railway Administration along with other eligible physically handicapped candidates nominated by the special employment exchange and vocational recruitment against quota for the physically handicapped take place.

As such it is advised you that please register your name to the special employment exchange for handicapped persons under advise to DRM(P) BSL."

The grievance of the applicant is that he was not given the prayer is alternative employment and that the respondents should be directed to grant him alternative employment and to pay him arrears of pay and allowances from 4.1.1993.

2. In the M.P. (M.P. NO.515/94) the applicant has enclosed a Judgment of this Tribunal in O.A. No.344/88 dt. 22.9.1993 and he has prayed that the respondents may be directed to regularise him in the light of the said decision.

3. The respondents have opposed the O.A. According to the respondents, the action taken by them is strictly in accordance with the Railway Board's instructions dt. 17.9.1990. The Casual Labour with temporary status ^{injuries} who are medically de-categorised, due to the sustained by them in duty cannot be provided alternative employment, but are required to register themselves in the Special Employment Exchange for Physically Handicapped Quota and

...3.

their names are considered along with other nominated candidates by the said Exchange and vocational rehabilitation centres as and when the need for recruitment against quota for physically handicapped arises. It is stated that the respondents had tried to give maximum accommodation to the applicant by continuing him for 3 years in the post of Chowkidar, but since there is no vacancy at present with the respondents he is required to register his name as per the Railway Board's instructions dt. 17.9.1990.

4. Regarding the Judgment of the Tribunal in O.A. No.344/88 dt. 22.9.1993 it is contended by the respondents in their reply to the M.P. that the Railway Board Circular had not been brought to the notice of the Tribunal when the Judgment was rendered.

5. The copy of the Railway Board's Circular (as annexed) is in Hindi. However, it is seen on a perusal of the Circular that the matter appears to have come up in the meeting of the PNM by way of an item raised by All India Railway Mens' Federation, who had pleaded that such staff i.e. Casual Labour granted temporary status who suffered injuries in course of duty and are medically de-categorised should be given alternative employment and it was in response to this demand that in the meeting dt. 13.6.1990 it was decided that such employees ^{should} register themselves in the Special Employment Exchange for the physically handicapped

and their cases should be considered as and when necessary according to availability of vacancies.

6. On a perusal of the Judgment it is seen that the Tribunal proceeded on the footing that services of employees with temporary status cannot be terminated without taking action under Discipline & Appeal Rules and since such action was not taken, relief was granted.

7. It is also a fact that the Tribunal had not noted the Circular of the Railway Board dt. 17.9.1990.

8. It appears to us that not only the Tribunal's attention had not been invited to the Railway Board's Circular, but the Tribunal also failed to notice the provision of Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968. Rule 6 deals with penalties. The explanation to the Rule under item (ix) provides that discharge of Railway servants - (a) for inefficiency due to failure to conform to the requisite standard of physical fitness shall not amount to penalty within the meaning of this Rule. It appears to us that the discharge of the applicant was in terms of this explanation and therefore the provisions of Railway Servants ((Discipline & Appeal) Rules, 1968 are not attracted.

9. On this point para 304 of the Railway Establishment Code, Vol.I (fifth edition - 1985) provides that the provision for alternative appointment applies only to permanent staff and if alternative appointment is

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found for temporary staff it should be regarded as a purely ex-gratia measure.

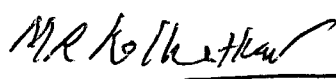
10. However, in the Indian Railway Establishment Manual, Vol-I (Revised Edition - 1989) para 1304 provides that extraordinary leave should be granted to the medically incapacitated permanent railway servant and action be taken to find permanent or temporary post for the absorption of the Railway servant. Para 1304(b) provides that temporary railway servant in group (ii) of para 1302 above 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 admissible to permanent Railway servant as at (a) above should be given.

11. It would thus be seen that statutorily i.e. in terms of the Railway Servants (Discipline & Appeal) Rules, 1968 the discharge is valid and also in terms of Railway Establishment Code a temporary railway employee is not entitled for the provision of alternative employment, except as an ex-gratia measure. Subsequent executive instructions may have extended additional facilities, but they do not have a statutory force.


12. It is also to be noted that the present applicant is not a temporary employee in the real sense, but he is only a Casual Labour who has acquired temporary status and it is for such staff that the Railway Board Circular dt. 17.9.1990 has been issued in consultation with Staff Unions. Therefore, it is difficult to find fault with the communication dt. 11.1.1994 or the

earlier communication dt. 2.1.1992. However, taking account of the executive instructions, we are inclined to dispose of this O.A. in terms of the following directions.

- 1) The applicant may register himself in the Special Employment Exchange as advised in the communication dt. 11.1.1994^{and} after such registration, the Railway Administration, may make efforts to provide an alternative employment to the applicant subject to availability of vacancy, as far as possible, within six months from the date of registration.
- 2) The O.A. 515/94 along with M.P.854/96 are therefore disposed of with no orders as to costs.



(M.R. KOLHATKAR)
MEMBER (A)


(B.S. HEGDE)
MEMBER (J).

B.