

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXX. NO. . 263 OF 1998

DATE OF DECISION ..24.7.2001.....

Shri Bendang Ao APPLICANT(S)

Mr H. Rahman and Mr N. Baruah ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

The Union of India and others RESPONDENT(S)

Mr B.K. Sharma, Railway Counsel,
Mr S. Sarma. ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K.K. SHARMA, ADMINISTRATIVE MEMBERER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?
- 5.

Judgment delivered by Hon'ble Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.263 of 1998

Date of decision: This the 24th day of July 2001

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Bendang Ao,
Peon,
Pay and Cash Office,
N.F. Railway, Lumding,
District- Nagaon, Assam

.....Applicant

By Advocates Mr H. Rahman and Mr N. Baruah.

- versus -

1. The Union of India, represented by the Secretary, Ministry of Railway, New Delhi.
2. The Secretary, Railway Board, New Delhi.
3. The Under Secretary (ABE), The Railway Board, New Delhi.
4. The Chief Security Commissioner, Railway Protection Special Force, Ministry of Railway, New Delhi.
5. The Commandant, 8th Battalion, Railway Protection Special Force, Chittaranjan.
6. The General Manager, N.F. Railway, Maligaon.
7. The Chief Personnel Officer, N.F. Railway, Maligaon.
8. The Chief Cashier, N.F. Railway, Maligaon.

.....Respondents

By Advocates Mr B.K. Sharma, Railway Counsel
and Mr S. Sarma.

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O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

By this application under Section 19 of the Administrative Tribunals Act, 1985 the applicant has sought for a direction from the Tribunal for providing him all the benefits of past service rendered by him including

pay etc. on being absorbed in an alternative post on decategorisation in the following circumstances:

The applicant was working for gain as a Constable in the 8th Battalion in the Railway Protection Special Force and posted in Chittaranjan at the relevant time. On 21.4.1982 while he was on duty, he received injuries. As a result of that injury he lost his right hand thumb. The Medical Board found him unfit in Category B-1 and found him fit for category C-1. The applicant was accordingly decategorised to category C-1 on 24.4.1982 on the advice of the Medical Board. The applicant was finally offered an alternative appointment in October 1995. By order dated 19.10.1995 he was appointed as Peon in the scale of pay of Rs.750-940 and posted at Lumding under the DC/Lumding. The applicant pleaded and contended that instead of absorbing him forthwith the respondent authority slept over the matter and finally engaged him as Peon in October 1995. The post of Peon is a category C-1 post. The applicant contended that he ought to have been given the benefit at least from the date the Medical Board found him fit for category C-1 post. The applicant has also stated that he was entitled for the benefit of increment from 15.5.1982 to 10.10.1995 and he was entitled for all the benefits under the law. It was also contended that as per rules the applicant ought to have been offered with the alternative appointment within a period of six months. Instead the respondents took thirteen years unnecessarily.

2. The respondents submitted their written statement and disputed the claim of the applicant. According to the respondents the applicant was offered with the alternative appointment at the earliest opportunity, but the applicant refused to accept the same. The applicant was again offered alternative appointment in 1990, which he again refused.....

refused to accept. The respondents were not at fault for the delay as was contended in the written statement.

3. Heard Mr H. Rahman, learned counsel for the applicant and Mr S. Sarma, learned Railway counsel. Mr Rahman stated and contended that as per the rules a Railway servant absorbed in an alternative post was to be provided the benefit of his past services for all purposes and to treat the service as continuous in the alternative post. Mr Rahman also referred to Rule 2612 of the Railway Establishment Manual. The relevant provision of the said rule is quoted below:

"A railway servant absorbed in an alternative post will, for all purposes, have his past service is treated as continuous with that in the alternative post and will, if a pre-31 railway servant who has elected to remain on the pre-31 scales of pay, continue to remain eligible for such scales. He will also continue to be governed by the conditions of service applicable to him before he was declared medically unfit."

According to the learned counsel for the applicant the applicant was entitled to all the benefits including seniority.

4. Mr S. Sarma, on the other hand, submitted that the applicant was offered with an alternative job on 19.1.1990. The applicant refused to join in that post, and therefore, the applicant cannot gain any advantage because of his own wrong. Mr Sarma referred to the communication bearing No.8BN/B/PF/Ex.Con-Bn/90-157 dated 19.1.1990, by which the applicant was offered the post of Cook in the 7Bn. The applicant responded to the same and stated that the job of Cook was of heavy nature and not proper for a medically decategorised person and accordingly he wrote back to the authority. The authority finally absorbed him by the order dated 19.10.1995. Mr Rahman submitted that the job of a Cook was not the proper job, which could be


offered.....


offered to a medically decategorised person. Be that as it may, the authority finally gave him a job, which he accepted. The applicant, therefore, cannot be penalised for holding over the matter by the respondents and not absorbing him in time.

5. We have given our anxious consideration. The applicant was decategorised on April 1982. The alternative offer of appointment was made on 19.1.1990, that too in the post of Cook. In 1995, at the instance of the applicant, the department offered the applicant a lighter job than that of a Cook. The applicant thus could not be disentitled from the benefit of the law mentioned in the Indian Railway Establishment Manual, more particularly Rules 2612 and 2613. In our considered opinion the entire period of service is to be treated as continuous service and the applicant is to be provided with all the service benefits including his seniority as well as the pay and allowances as admissible under the law.

6. The application is accordingly allowed. The respondents are directed to provide the applicant the benefits of the past service and treat his service as continuous in the alternative post and provide him all the benefits admissible under the law.

No order as to costs.


(K. K. SHARMA)
ADMINISTRATIVE MEMBER


(D. N. CHOWDHURY)
VICE-CHAIRMAN