

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORIGINAL APPLICATION NO. 200/00038/2012

Jabalpur, this Wednesday, the 31st day of January, 2018

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

Ashok Soni S/o late Satya Narayan Soni, Aged about 49 years,
R/o Ward No.8, Talab-tola, Tehsil-Nainpur, District Mandla,
M.P. Pin Code-481776 **- APPLICANT**

(By Advocate –Shri M.N.Banerjee)

Versus

1. Union of India through its General Manager, South East
Central Railway, Bilaspur (C.G.) Pin Code-495001

2. Divisional Railway Manager, South East Central
Railway, Near Railway Station, Nagpur (Mahashtra)
Pin Code-440001

3. Divisional Personnel Officer, South East Central
Railway, Near Railway Station, Nagpur (Mahashtra)
Pin Code-440001 **- RESPONDENTS**

(By Advocate – Shri A.S.Raizada)

(Date of reserving the order:29.01.2018)

ORDER

By Navin Tandon, AM-

The applicant, who was working as casual labourer under the respondent-railways, is aggrieved by termination of his services.

2. The case of the applicant is that he was engaged as a casual labourer in the year 1991 under the Chief Parcel Office. Initially he was

engaged as a casual labourer, then as hot weatherman and was finally appointed as substitute Safaiwala in the year 2003 w.e.f. 20.01.2003. He was granted temporary status on 03.10.2007 w.e.f. 06.03.2006. In the year 2009 he was medically examined and was declared medically unfit w.e.f. 17.12.2009 for all categories. However, he was allowed light duties and he was performing his duties regularly. On 17.6.2010 the applicant submitted an application for voluntary retirement on medical grounds, but no decision had been taken on his application. Finally, the applicant was served with an order dated 20.12.2011 terminating his services after expiry of one month's period.

3. The applicant has prayed for the following reliefs in this Original Application –

“8(i) Call for entire material records pertaining to the instant controversy may also kindly be called from the respondents.

(ii) Quash and set aside the impugned order dated 20.12.2011 Annexure A/1.

(iii) Direct the respondent to allow applicant to work with all consequential monetary benefits

(iv) Any other order/orders, relief/reliefs, which this Hon'ble Court deems fit and proper, may kindly be passed.

(v) Award cost of the original application to the applicant”.

4. The learned counsel for the applicant contended that the applicant was not actually medically unfit and he was given light duties. He was

regularly performing his duties even after two years after his declaration of medical unfitness which goes to prove that he was actually not medically unfit to perform duties in all categories and, therefore, the department should have sent him for re-medical examination before taking drastic step of termination of his services.

5. The learned counsel for the applicant placed reliance on the decision of Hon'ble Delhi High Court in the matters of **D.T.C. Vs. Inder Singh**, 2012 (2) SLJ 205, wherein it has been held that Disabilities Act prohibits retrenching a person who get disabled in service but should be kept in any post he is fit for.

6. On the other hand the respondents have submitted that the applicant's services were never regularised nor was he ever given the status of a regular employee. Therefore, the question of consideration of his request for voluntary retirement on medical grounds does not arise. Unless the applicant attains the status of permanent employee he can not be given the relief as sought for by him.

7. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

8. On a perusal of impugned order dated 20.12.2011 (Annexure A-1) we find that the applicant was declared medically unfit for all categories vide CMS/NGP's letter No.Med/NGP/Med.Bd/09/2112 dated 23.12.2009 with effect from 17.12.2009 i.e. the date of acceptance of the recommendation of the Medical Board by CMD/SECR/BSP. The said recommendation has not yet been challenged by him. Therefore, at this stage he can not be permitted to say that since he had performed duties for another two years on casual basis up to 19.01.2012 he should be deemed to be fit for service and be sent for re-medical examination. We further find that instead of challenging the recommendation of the Medical Board, the applicant himself had preferred an application for granting voluntary retirement with effect from 28.06.2010, which had not been considered by the authorities. Since the applicant had been declared medically unfit for all categories, before his screening for regularisation to permanent regular service in Railway, as is mentioned in the impugned order, we do not find any illegality or irregularity in passing the order 20.12.2011 (Annexure A-1).

9. The reliance placed by the learned counsel for the applicant on the decision of Hon'ble Delhi High Court in the matter of **Inder Singh** (supra) is not applicable in the instant case because that case relates to a regular employee who had been found medically unfit for a particular

post. In the instant case, the applicant was not a regular employee and, therefore, he can not be benefit of an alternative job since he was found to be medically unfit for all categories.

10. In view of the above, we do not find any merit in the instant Original Application and the same is accordingly is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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