

Reserved

(On 28.05.2019 on interim relief)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 29th day of May 2019

Original Application No. 330/00581 of 2019

Hon'ble Ms. Ajanta Dayalan, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Syed Rafat Hussan, S/o Late S.M. Ali Asharafi, R/o House No. 135M
Bharpurwa (Nizampur) Post-Geeta Press, District Gorakhpur.

...Applicant

By Adv: Shri A.D. Singh

V E R S U S

1. Union of India, through its General Manager, North Eastern Railway, Gorakhpur.
2. Chief Administrative Officer (Construction), North Eastern Railway, Gorakhpur.
3. Senior Personnel Officer (Construction), North Eastern Railway, Gorakhpur.

... Respondents

By Adv: Shri Pramod Kumar Rai

ORDER

By Hon'ble Ms. Ajanta Dayalan, Member – A

Heard Shri A.D. Singh, learned counsel for the applicant and Shri Pramod Kumar Rai, learned counsel for the respondents.

2. The learned counsel for the applicant states that the services of the applicant, who was a re-engaged employee, have been terminated w.e.f. 30.05.2019 vide order dated 15.05.2019 (Annexure A-1). He states that this is despite the fact that the scheme for re-engagement of the retired employees was revised vide Railway Board's instructions dated 16.10.2017 (Annexure A-3) and as per these instructions, the scheme was valid upto 14.09.2018 and the maximum age limit for re-engagement was 62 years. Further, vide Railway Board's instructions dated 12.12.2017 (Annexure A-4) the validity of the scheme was extended upto 01.12.2019

and the maximum age limit for re-engagement was also enhanced to 65 years.

3. Learned counsel for the applicant pleads that the applicant has not yet attained the age of 62 years, which he will be completing in June 2019. He also states that services of only four re-engaged employees have been terminated. He further pleads that the applicant was recommended for continuation vide report of SPO dated 01.03.2019 (Annexure A-5), wherein work related performance was assessed as 'अति उत्तम'. In view of all above, learned counsel for the applicant states that the impugned order is illegal, arbitrary and discriminatory and needs to be quashed.

4. The learned counsel for the applicant also pleads for interim relief by staying the effect and operation of the impugned order dated 15.05.2019 in respect of the applicant only.

5. We have gone through the pleadings in the OA and note that the impugned order is for termination of services of four re-employed retired employees of the department. The applicant is only one of them. We also note that though the scheme for re-engagement of retired employees has been continued upto 01.12.2019 and the maximum age limit has also been enhanced to 65 years, the power to re-engage employees lies with the Divisional Railway Manager. This is as per Railway Board's instructions dated 16.10.2017 (Annexure A-3) relied upon by the applicant's side itself. These power would then automatically include the power to terminate the services also. The age limit prescribed in the instructions of the Railway Board is only maximum age limit and does not give any right to any retired employee to get re-engaged only on this basis. The re-engagement is obviously on need basis and cannot be

independent of actual requirement. In addition, engagement after retirement is more in the nature of contract and does not bestow any right on the employee so engaged to get his services continued. It does not form a part of his government service. Further, no malafide can be attributed as the applicant is only one of the four employees whose services have been terminated. Also, no individual by name has been made a party in the OA. The applicant is also reaching age of 62 years in June 2019. The plea taken by the applicant that the order has been passed on 15.05.2019 itself even though the services of the re-engaged retired employees have been terminated w.e.f. 30.05.2019 does not hold ground as it is appropriate for the department to plan in advance. In any case, the order could not have been given retrospective effect. It is also beneficial for the affected re-engaged persons to know about the status of their services in advance so that they may make their plan accordingly. In fact, it is better than had the order been issued on the last date or near that date.

6. In view of all the above, we do not find any justification for grant of interim relief and the prayer for interim relief is rejected.

7. Let respondents file their CA within 6 weeks. RA, if any, may be filed within 2 weeks thereafter.

8. List this case on 17.07.2019 .

(Rakesh Sagar Jain)
Member – J

(Ajanta Dayalan)
Member – A

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