

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2072/2003

New Delhi, this the 20th day of December, 2004

Hon'ble Shri S.K. Naik, Member(A)

Chhatar Pal
Working as Khallasi
Office of SSE(W), Northern Railway
Sarai Rohilla, Delhi

.. Applicant

(Shri P.S.Mehandru, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Divisional Railway Manager
Northern Railway
State Entry Road, New Delhi

.. Respondents

(Shri D.S.Jagotra, Advocate)

ORDER

The applicant is before this Tribunal in a third round of litigation, his earlier applications i.e. OA 385/1990 and OA 1572/1999 already having been disposed of on 4.5.1992 and 7.4.1997 respectively, with the prayer that the applicant be granted regular pay scale w.e.f. 15.5.1984, i.e. the date of his acquiring temporary status and refixation of pay accordingly, with consequential benefits.

2. The admitted position is that the applicant after conferment of temporary status as Gangman in the year 1984 worked upto 1986 and thereafter he was disengaged from 7.5.1986 having been not found fit by the Medical Board constituted for the purpose. In compliance with the direction of this Tribunal he was appointed as CPC Khallasi (lower medical category) on 11.11.2000 in which capacity he was regularized after due screening on 15.1.2003. This appointment was as per medical recategorisation and not a reinstatement. The applicant is aggrieved that he has not been given the benefit of regular pay scale with effect from 1984 when he acquired temporary status and seeks a direction in this regard including a direction to regularize the period of absence of the applicant from 1986 to 2000 by treating the same as duty. Learned counsel for the applicant has contended that the entire blame for disengagement of the applicant lies squarely on the respondents as after conferment of temporary status his services have been terminated without any enquiry to which the applicant was entitled to. The counsel further contends that in

view of the order passed by the Tribunal in the successive OAs filed by him, it has to be held that his continuance in service was upheld by the Tribunal and therefore respondents could not have denied him the benefit for the entire past period.

3. Learned counsel for the respondents has drawn my attention to the decisions of this Tribunal in the OAs earlier filed by him and contended that there was no direction by this Tribunal for grant of any consequential benefits. He has further drawn my attention to the decision of Railway Administration as contained in Indian Railway Establishment Code Vol.I which reads as follows:

- (1) *Where a temporary employee has become medically unfit for the post held by him on account of circumstances arising out of and in the course of his employment, the employee should be granted leave due plus extraordinary leave so as to make a total period of 6 months within which alternative employment must be found;*
- (2) *Where a temporary employee has become medically unfit for the post held by him on account of circumstances which did not arise out of and in the course of his employment, the benefit under this rule will not be admissible. It has, however, been decided that while it is strictly not obligatory to find alternative employment for such an employee, every effort should nonetheless be made to find alternative employment. The employee concerned should be granted such leave as is due to him plus extraordinary leave not exceeding 3 months, the total not exceeding 6 months. If no alternative employment can be found in this period, the employee should be discharged from service.*
- (3) *The above rule is applicable only to permanent staff and if alternative appointment is found for temporary staff it should be regarded as a purely ex-gratia measure.*

The counsel, therefore, contends that the applicant not being a member of the permanent staff was not entitled to be considered as per the direction of the Tribunal but as a measure of ex-gratia, he has been given alternative appointment. He has further contended that the applicant has also been given the benefit of service rendered by him in the capacity of casual and temporary status employee. His claim for wages, seniority etc. for the period during which he was disengaged on being found unfit is untenable as he neither held any appointment nor performed any duty during the aforesaid period.

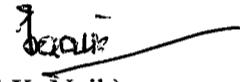
4. Counsel for the respondents further contends that the representation of the applicant dated 31.5.2003 is under consideration whereas he has rushed to this Tribunal by filing this OA on 14.8.2003 without waiting for the reply. That apart, in view of the above rule position, counsel further contends that the applicant is not eligible for any relief prayed for and the OA be dismissed.

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5. I have heard the learned counsel for the parties and considered the pleadings available on record. As already mentioned above, after the applicant was disengaged from service in the year 1986 on being declared unfit by the Medical Board, he was offered a lower category post and he joined the same on 11.11.2000. In other words, when he was not in service from the date of his disengagement until he was appointed to a lower category post on 11.11.2000, there was no question of any payment of wages etc. The above rule makes the position very clear to this effect. Even otherwise, there was no direction by this Tribunal in the aforesaid OAs for grant of any consequential benefits

6. That being the position, I find no merit in the present OA and the same is accordingly dismissed.


(S.K. Naik)
Member(A)

/gtv/