

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) 11134/2004

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Date of decision: 19th May, 2010

**THE GENERAL MANAGER
NORTHERN RAILWAYS** Petitioner
Through: Kumar Rajesh Singh, Advocate

Versus

DHARAM PAL Respondents
Through: Mr. Ravi Prakash Gupta, Advocate
with Mr. Suman Gupta, Mr. Mehul
Miland Gupta & Mr. S.K. Chauhan,
Advocates

CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? NO
2. To be referred to the reporter or not? NO
3. Whether the judgment should be reported in the Digest? NO

RAJIV SAHAI ENDLAW, J.

1. The petitioner Railways by this writ petition impugns the award dated 19th April, 2004 of the Labour court holding the order of termination of services of the respondent workman by the petitioner Railways to be illegal and bad and directing reinstatement of the respondent workman with the petitioner Railways along with 25% back wages from the date of discharge till the date of reinstatement. This Court vide order dated 16th July, 2004, while issuing notice of the petition stayed the operation of the

award. The said order remains in force till date. No application under Section 17B of the I.D. Act has been filed by the respondent workman.

2. The respondent workman was employed with the petitioner Railways as a substitute *Safaiwala*, according to the petitioner Railways from 15th March, 1978 and according to the respondent workman since 16th May, 1977. The respondent workman claims that he in the course of performance of his duties was exposed to the sun during the Solar Eclipse in the year 1980 and owing whereto he started losing his eye sight; he claims that inspite of treatment in the Railway Dispensary, Railway Hospital and other hospitals, his eye sight continued to deteriorate. The respondent workman was examined by the Medical Board of the petitioner Railways on 13th May, 1983 when he was found medically unfit for all categories of employment with the petitioner Railways. The respondent workman was discharged from service on 13th May, 1983. The respondent workman on or about 21st March, 1990 challenged the order dated 13th May, 1983 of his discharge from service before the Central Administrative Tribunal. The Tribunal however vide its order dated 24th December, 1991 though finding that the respondent was working on a regular scale of pay and that his total effective service with the petitioner Railways was for the period from March, 1978 to January/February, 1980 when he lost his eye sight and though of the view that since the respondent was medically de-categorized, he should have been regularized in service after due screening,

dismissed the petition of the respondent workman for the reason of the respondent workman having failed to agitate his case at the appropriate time; the Tribunal did not find any satisfactory ground to condone the delay for the reason of the respondent workman having not explained the same properly. The application of the respondent workman was thus dismissed.

3. The respondent thereafter approached the authorities under the Industrial Disputes Act and a reference dated 18th October, 1994 was made to the Labour Court leading to the award impugned in this petition.

4. The counsel for the petitioner has contended that the respondent workman having elected to the jurisdiction of the Central Administrative Tribunal and having not elected to the jurisdiction of the Labour Court, cannot be permitted now to invoke afresh the jurisdiction of the Labour Court after having been unsuccessful before the Central Administrative Tribunal; it is contended that if the respondent workman is so allowed, it would encourage forum shopping. It is further contended that the respondent workman could not have invoked the jurisdiction of both the Central Administrative Tribunal and the Labour Court for the same cause of action. It is further the plea of the petitioner Railways that the respondent workman did not challenge the finding of the Medical Board and which had attained finality and thus had no right to challenge the consequent order of his termination. It is further contended that the

provisions of Section 25F of the I.D. Act were not available to the respondent workman once he had submitted himself to the jurisdiction of the Central Administrative Tribunal.

5. The Labour Court has decided in favour of the respondent workman only for the reason of the provisions of Section 25F having not been followed and has further held that even if the respondent workman was medically unfit for the post on which he was working, he could have been continued / posted on any other alternative post to perform a work which he could do inspite of his deteriorated eyesight.

6. The petitioner Railways has relied on "Master Circular on Absorption of Medically de-categorized Non-gazetted Staff in Alternative Jobs" issued by the Ministry of Railways. However, the said Circular is also not found to provide for dismissal from service. A perusal of the letter dated 13th May, 1983 of discharge of service issued by the respondent workman also shows that he was entitled to be considered for absorption in alternative posts in terms of the said Circular. There is however no explanation whatsoever as to why the respondent workman was not absorbed in any other post.

7. The writ petition was listed for hearing on 10th March, 2010. It was put to the counsel for the petitioner Railways as to why the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights

and Full Participation) Act, 1995 will not be applicable to the respondent workman. The counsel for the petitioner Railways contended that the disability in the present case was incurred way back in 1980 and the respondent workman was discharged from service on the said ground on 13th May, 1983 i.e. much prior to the coming into force of the said Act on 7th February, 1996 and thus the present case would not be covered by the provisions of the said Act. The attention of the counsel for the petitioner Railways was however invited to the dicta of the Division Bench of this Court in **DTC Vs. Harpal Singh** 156 (2009) DLT 481 holding that provisions of Section 47 of the said Act cannot be given retrospective operation but in pending proceedings the benefit thereof can certainly be extended. The counsel for the petitioner Railways had sought time to study the said judgment.

8. The counsel for the petitioner Railways has today at the outset urged that the judgment in **Harpal Singh** (supra) would not apply because the respondent workman in the present case had first approached the wrong fora i.e. Central Administrative Tribunal and that too after nearly seven years of the order of his discharge. It is contended that 27 years have elapsed since the dismissal of the respondent workman from service and in all probability the respondent workman would have superannuated by now. It is urged that for this reason alone the respondent workman is not entitled to any relief. On a query as to why the respondent workman was not

absorbed in any other category as per the Master Circular (supra), it is contended that the respondent workman was not a regular employee and the said Circular was not applicable to him.

9. Per contra, the counsel for the respondent workman informs that the respondent workman is now about 54 years of age. He further urges that the Central Administrative Tribunal has not decided the matter on merits and thus the respondent workman was entitled to invoke the jurisdiction of the Labour Court.

10. The letter dated 13th May, 1983 declaring the respondent workman medically unfit does not show that the respondent workman was not a regular employee of the petitioner Railways. Rather it states that till the case of the respondent workman for absorption in an alternative post is decided, he will be treated as on leave. No other decision of the petitioner Railways to the effect that the respondent workman was not so entitled to be absorbed in alternative posts has been placed on record. A perusal of the order dated 24th December, 1991 of the Central Administrative Tribunal also does not show that any such plea was taken then by the petitioner Railways. No such plea is found in the reply filed by the petitioner Railways to the claim before the Labour Court also. Thus the reason now given of the respondent workman having not been absorbed in an alternative job as per the Circular aforesaid, for the reason of not being a

regular employee of the petitioner Railways is clearly an afterthought. Though the petitioner Railways has also filed an additional affidavit before this Court on 17th April, 2009 but no document in support of the same has been given therewith also.

11. As far as the plea of the petitioner Railways of the award being erroneous for the reason of the respondent workman having earlier approached the Central Administrative Tribunal is concerned, I may notice that Section 28 of the Administrative Tribunals Act makes the jurisdiction of the Central Administrative Tribunal concurrent to the foras under the I.D. Act. The Central Administrative Tribunal has not adjudicated the claim of the respondent workman on merits. The said claim was rejected only for the reason of having been made after the period of limitation provided for preferring the claim. No limitation is prescribed for reference of a dispute under the I.D. Act. Nothing wrong can thus be found in the respondent workman, after the rejection of his case by the Central Administrative Tribunal for the reason of being barred by time, preferring the same under the I.D. Act. The said claim of the respondent workman was pending on the date of coming into force of the Disabilities Act and as per the dicta aforesaid of the Division Bench of this Court, the benefit of Section 47 of the said Act has to be necessarily extended to the respondent workman. I may notice that the Disabilities Act was enacted in compliance of the international commitment made by India much prior to the coming

into force of the Act. Even without the Disabilities Act, the Courts had taken a view that an employee who suffers disability during the course of his employment cannot be turned out for the reason of the disability and has to be absorbed in another job. I have recently in ***DTC Vs. Suraj Bhan*** MANU/DE/0419/2010 discussed the said aspect in detail and need is not felt to reiterate the same in this judgment also. Thus viewed from any angle, the action of the petitioner Railways of removing the respondent workman from service for the reason of the disability of blindness (which is covered by the Disabilities Act) having been suffered by him is bad in law and no error can be found in the award of the Labour Court and the same calls for no interference.

12. It is considered whether this Court owing to such long lapse of time should modify the award to that of payment of lumpsum amount to the respondent workman. Upon the same being put to the counsel for the respondent workman, he invites attention to the recent dicta in ***Harjinder Singh Vs. Punjab State Warehousing Corporation*** AIR 2010 SC 1116 which has reiterated the importance of reinstatement. Having even otherwise considered the matter, this Court feels that grant of a lumpsum compensation may not provide relief to the respondent workman. The lumpsum amount is likely to be frittered away. The respondent workman who is now informed to be totally blind requires monthly subsistence. The counsel for the respondent workman informs that the respondent workman

has been reduced to a state of begging. In the circumstances, it is felt that monthly payments by way of wages would provide appropriate relief to the respondent workman.

13. The petition is therefore dismissed. The petitioner having enjoyed the stay of operation of the award for the last six years is now directed to comply with the award within six weeks of today failing which the petitioner shall also be liable for payment of simple interest at the rate of 7% per annum on the arrears due to the respondent workman. The cost of litigation having already been directed to be paid, no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

19th May, 2010

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