

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

+ **RSA No.358/2015**

% **4th August, 2016**

UNION OF INDIA & ANR. Appellants

Through: Mr. Rajan Sabharwal, Adv.

versus

RAJBIR SINGH Respondent

Through: Mr. L.C.Rajput, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the Union of India/employer against the concurrent Judgments of the courts below; of the Trial Court dated 23.4.2012 and the First Appellate Court dated 2.7.2015; whereby the courts below have directed the appellant/employer to provide the employee/respondent/plaintiff with an alternative job either in the Railway Protection Force or in the Railways and to pay full wages to the plaintiff from 1992 onwards as per the Railways rules alongwith all consequential reliefs on the same post which he was holding at the time of illness till the time he is given alternative job alongwith interest @ 12% per annum on outstanding dues.

2. The case as set up by the respondent/plaintiff was that he had taken medical leaves originally from 20.2.1992 to 5.3.1992 but on account of his medical condition he could not report for duty and ultimately reported for duty on 8.6.1992 when he was referred to the Senior Medical Superintendant at Delhi. The Senior Medical Superintendant vide his Certificate dated 12.8.1992 certified that respondent/plaintiff is permanently medically unfit for the duties of the original post, and therefore, respondent/plaintiff should be provided suitable alternative employment as per para 573 of the Indian Railway Medical Manual, 1981 inasmuch as the respondent/plaintiff is fit in category B-1. Respondent/plaintiff thereafter, as per the case in the plaint, regularly approached the authorities and sought alternative employment but was not successful and hence the present suit was filed. Paras 3 and 10 of the plaint would be relevant with respect to the argument of limitation which is now urged on behalf of the appellant no.1/Union of India for the first time in this Court, and therefore, these paras are reproduced as under:-

“3. That the plaintiff while working as such AT R.P.F.post Tugalkabad Railway Station, Delhi proceeded to avail 15 days sanctioned leave from 20.2.92 to 5.3.92 and could not resume duty on 6.3.92, because he fell sick and reported his sickness with Assistant Divisional Officer (Medical)Northern Railway from 6.3.92 to 9.3.92 and consequent upon, when his condition did not improve, he had to report sick from 10.3.92 to 7.6.92 at Rohtak and thereby on 8.6.92 the plaintiff reported that for duty to Inspector R.F.P. Post Tuglakabad, who as per Railway Rule directed him vide letter No. RPF/E/3/TKD/92 dated 8.6.92 for obtaining a fresh Medical Certificate from Divisional Medical Officer, Northern Railway, Tuglakabad and consequent thereupon, the plaintiff on 12.8.92 a letter from Senior Medical Superintendant, Delhi bearing No. 66/MED/MEM/92 dated 12.8.92 submitted

to Inspector R.B.P.Tuglakabad, a subordinate of defendant No.2 for further action in the matter. The same letter is in the following terms:-

“It is certified that the abovenamed is permanently medical unfit for the duties of his original post. I recommend that on Medical Ground arrangement should be made to provide him a suitable alternative employment permanently under limitation of 573 of Indian Medical Railway Manual, 1981. It is fit in B-1 class.”

It is submitted that medical category for appointment as a constable in the R.P.F is B-1 and in this case as aforementioned, the plaintiff was declared medically fit in B-1, but not as a constable and recommended for suitable alternative appointment. In view of this directions from the Medical Authorities of the Railways, the Inspector R.P.F. Tuglakabad sent a letter to his immediate superior i.e. Assistant Security Commissioner, Northern Railway, Ghaziabad, bearing No.RPF/E-4/TKD/dated 7.5.96 alongwith letter of the Medical Authority for further action in the matter and this letter was received at his end on 18.5.96 and he was under obligation to seek alternative appointment for the plaintiff, but nothing was done on this point till date by the subordinate of defendant No.2 and the plaintiff had been waiting since 12.8.92 for his alternative appointment and during all along this period, he had been continuously visiting his offices for the purpose and for payment of his wages, but unfortunately due to official apathy, nothing is being done and the plaintiff is being harassed, humiliated and which action of the authority is illegal, arbitrary and unhumane.

XXXXX

XXXXX

10. That cause of action arose in the year 1992 and cause of action still subsists.” (underlining added)

3. Both the courts below have decreed the suit by observing that once the Senior Medical Superintendant by his Certificate dated 12.8.1992 recommended that respondent/plaintiff was unfit for the original job, but since he was fit for alternative employment in B-1 category, he should be given alternative employment, and hence the appellants have seriously erred in not granting the respondent/plaintiff alternative employment. As regards the documents being the Letter dated 13.5.1996 (Ex.PW1/8 and also Ex.DW1/2),

Letter dated 17.5.1996 (Ex.DW1/3 and Ex.PW1/7), and Letter dated 17.6.1993 (Ex.DW1/1), the courts below have held that in none of these letters it is found that the respondent/plaintiff was at all asked by the appellants to appear for the alternative job, and therefore, appellants/employer cannot contend that respondent/plaintiff failed to take any alternative employment in spite of being asked to do so. The relevant paras of the Judgment of the Trial Court dated 23.4.2012 and the First Appellate Court dated 2.7.2015 are paras 9 and 7 respectively, and which read as under:-

Para 9 of the Judgment of the Trial Court dated 23.4.2012

9. **Issue No.2. Whether the plaintiff is entitled to the relief of injunction as prayed for ? OPP:-** Certain facts are not disputed. It is not disputed that he was given leave but plaintiff did not resume duty on 06.3.1992. Again he was reported sick till 07.6.1992 and on 08.6.1992 he was referred to Senior Medical Superintendent Delhi wherein he was recommended to have alternative requirement as per rules. Same is to the following effect:- ***"It is certified that the above named is permanently medical unfit for the duties of his original post. I recommend that on medical ground arrangement should be made to provide him a suitable alternative employment permanently under limitation of 573 of Indian Medical Railway Manual, 1981. It is fit in B-1 class"***. Thereafter, no order was passed by department directing him where to appear and what to do. The defendant has taken the stand that he has been asked vide there letters dated 17.6.93 Ex.DW-1/1, letter dated 13.5.96 Ex.DW-1/2 and 17.5.96 Ex.DW-1/3 to appear before Divisional Officer for screening and providing him alternative appointment. The letter Ex.DW-1/1 have not been proved by the defendant to be issued and received by plaintiff and no letter has been shown which shows that he was ever asked to join any alternative duty and was ever referred for any screening as pleaded. This letter Ex.DW-1/1 does not show that he was required to appear before Divisional Office for this purpose. Thereafter, Ex.DW-1/2 also does not show that he was required to appear as pleaded. Rather after this letter was received, the defendant had appeared before the authorities and it is very much clear vide letter Ex.DW-1/3, thus stand of defendant is belied by their own document and it is made clear that he was never given any alternative duties as per recommendations of the doctor and as per manual and rules. Thereafter also he has never been asked to join any alternative employment

and was left in lurch even despite after issuance of notice U/s 80 CPC, thus whatever was required was done at the end of plaintiff and the case is duly made out. He cannot be penalised for no fault of him and authorities cannot shield their own wrong in this manner. Rather, he had to approach the court for providing alternative job which was otherwise the duty of the defendant. Defendant has stated that plaintiff is not serious and keen in alternative job though he is pursuing his case even after joining his duties vide Ex.DW-1/3. No action has been taken so far in the last 17 years by authorities concerned. DW-1 has stated that it is wrong to suggest that department did not take any action for providing alternative job to plaintiff but action taken has not been brought on record. He has stated that plaintiff was entitled to alternative job but only after appearance before screening committee but till date no address and constitution of screening committee was given to him. The plaintiff was even not cross-examined on material points. Thus, case is duly proved. Accordingly, this issue is decided in favour of plaintiff and against the defendants.”

Para 7 of the Judgment of the First Appellate Court dated 2.7.2015

“7. The contention of the counsel for the appellant that plaintiff/respondent absented himself from duty w.e.f. 10.03.1992 to 07.06.1992 does not hold any water as the respondent/plaintiff was never charge sheeted by appellant for such absence from duty. Therefore, this contention is hereby rejected. So far as the other contention that plaintiff/respondent failed to respond to the notices served upon him to appear before the DDO or before screening committee is concerned, it may be noted that all the notices namely Ex.DW1/1, Ex.DW1/2 and Ex.DW1/3 did not whisper about direction for appearance of the plaintiff/respondent before DDO or screening Committee. I have scanned all the documents/notices sent by appellant/defendant but no such directions are detailed in these documents whereby the plaintiff is directed or instructed appear before DDO or screening committee. The Ld. Trial court has also recorded in categoric terms in this regard. In additionl to it, it may be noted that plaintiff/respondent appeared in response to Ex.DW1/3 and DW-1 also admitted in his deposition that plaintiff/respondent is entitled for alternative job. Therefore, Ld. Trial Court has taken a legal view of the evidence on record and I found no ostensible reason to take a different view from the view already taken by the ld. Trial court. This appeal being devoid of merits deserves to be dismissed and is hereby dismissed and disposed of accordingly. No order as to cost. Trial court record be sent back along with the copy of judgment.

Appeal file be consigned to record room.” (underlining added)

4. In view of the aforesaid findings, the suit filed by the respondent/plaintiff has been decreed by giving reliefs as under:-

“Relief:- In view of the above findings on all issues, the suit of the plaintiff is decreed. Decree of mandatory injunction is passed in favour of plaintiff and against the defendants and defendants are directed to prove the plaintiff alternative job either in the RPF or in the railways within two months and to pay full wages to the plaintiff from 1992 to onwards as per railway rules alongwith all consequential relief on the same post which he was holding at the time of illness till the time he is given alternative job alongwith interest @ 12% p.a on outstanding dues. Decree sheet be prepared. File be consigned to record room.”

5. At the outset, I may note that counsel for the respondent/plaintiff very fairly agrees that respondent/plaintiff does not seek full wages on account of employment from 1992 inasmuch as admittedly respondent/plaintiff has not worked at all since that date and respondent/plaintiff will be satisfied on his getting wages from the date of filing of the suit on 26.3.1998. It is also agreed that in view of the fact that the respondent/plaintiff has not worked till date, no interest be awarded provided the entire arrears as per the judgment of the trial court and today's judgment be cleared by the appellants/employer positively within a period of five months from today. It is clarified that if entire arrears of the complete pay of the respondent/plaintiff since the date of filing of the suit on 26.3.1998 are not paid within a period of five months from today, the decree as passed by the trial court will automatically revive.

6. Learned counsel for the appellants has only argued one point before this Court and which is that the courts below should have dismissed the

suit as barred by limitation as it was filed three years after entitlement of the respondent/plaintiff to get alternative employment as per the Certificate of the Senior Medical Superintendant dated 12.8.1992. Reliance is placed upon Article 113 of the Limitation Act, 1963 which provides for limitation of three years for filing of the suit from the date of arising of a cause of action read with Section 3 of the Limitation Act which provides that even if limitation is not taken up as defence yet, once the suit is admittedly found to be barred by time, suit should be dismissed. It is argued that the appellants/defendants took up a plea of limitation as per preliminary objections para 5 of the written statement but no issue was framed by the courts below and hence not decided with respect to suit being barred by limitation.

7(i) No doubt, issue of limitation, which is a pure issue of law, can be urged even for the first time in this second appeal but having permitted the appellants to do so, it is still to be seen whether the suit is at all barred by limitation. In my opinion, the suit is not barred by limitation merely because the entitlement of the respondent/plaintiff arose for the first time vide Certificate of the Senior Medical Superintendant dated 12.8.1992.

(ii) In para 6 of the plaint, respondent/plaintiff has categorically stated that he repeatedly approached the authorities for getting alternative employment, but in spite of the same he was made to run from pillar to post, but

still he was not given alternative employment. In such situation, in para 10 of the plaint, it is stated that cause of action accrued for the first time in 1992, but which cannot mean that limitation commenced from 1992 inasmuch as once respondent/plaintiff made repeated endeavours as per para 6 of the plaint to get the alternative employment, and, there is no letter of the appellants disputing or denying the rights of the respondent/plaintiff to alternative employment. Limitation in the facts of this case can only arise on refusal by the appellants because it is on refusal by the appellants to grant alternative employment that cause of action of three years would arise under Article 113 of the Limitation Act and admittedly there has never been refusal by the appellants to grant alternative employment to the respondent.

(iii) In law there is difference between arising of cause of action and arising of cause of action for the purpose of limitation. Cause of action is the bundle of facts which on being pleaded and proved entitles a plaintiff to relief. The expression cause of action arising for limitation is the coming into existence of a fact/facts because of which a plaintiff must necessarily approach the court as such fact/facts cause commencement of limitation as the respective languages found in different articles of the Limitation Act.

(iv) In fact, in the Letter of the appellants dated 17.5.1996 (Ex.DW1/3 and Ex.PW1/7) it is stated on behalf of the appellants/defendants that the

respondent/plaintiff is being sent to the appropriate authorities for further action in accordance with the Certificate of Senior Medical Superintendent dated 12.8.1992 i.e grant of alternative employment. Therefore, even till 17.5.1996 there was no denial of alternative employment or refusal of alternative employment to the respondent/plaintiff by the appellants/defendants/employer. The said suit therefore filed on 26.3.1998 cannot be said to be barred by limitation, more so in view of the Letter dated 17.5.1996 of the appellant no.2 itself.

8. In view of the above, I do not find any substantial question of law arises, even permitting the appellants to contend for the first time on the issue of limitation before this court.

9. The second appeal is dismissed, however, respondent/plaintiff will be bound to receive the lesser amount than as decreed by the Judgment and Decree of the Trial Court dated 23.4.2012 and as stated in para 5 above, provided of course the appellants/defendants clears all dues as per the judgment and decree of the trial court as amended by today's judgment within a period of five months from today. Parties are left to bear their own costs.

AUGUST 04, 2016
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VALMIKI J. MEHTA, J