

THE HIGH COURT OF MADHYA PRADESH**MISCELLANEOUS PETITION NO. 5317/2019**

Ashok Soni. V. Union of India and others

Jabalpur, Dated :20.11.2019

Shri Pravesh Naveriya, learned counsel for the petitioner.

With consent of learned counsel for the petitioner, the matter is heard finally.

This petition under Article 227 of the Constitution of India takes exception of order dated 31.1.2018 passed by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur in Original Application No. 200/00038/2012.

Relevant facts briefly are that, petitioner initially engaged as Temporary Hot Weatherman by order dated 4.6.1991 up-till 30.6.1991 was later made a substitute Safaiwala in terms of Office Memorandum No. P/NGP/Gr.D/Sub/11 dated 20.1.2003. Thereafter vide office Order No. P/NGP/Rectt/Gr.D/Temp.status/76 dated 3.10.2007, he was conferred temporary status with effect from 6.3.2009 on a condition that said conferment of temporary status will not entitle the petitioner to automatic absorption/appointment to Railway service unless selected in the approved manner for appointment/absorption against a regular post.

That, before appearing in the Screening Committee for regularization to permanent regular service in Railway, the petitioner was medically examined in the year 2009 and was declared medically unfit in all categories vide CMS/NGP's letter No. Med/NGP/Med.Bd/09/2112 dated 23.12.2009 with effect from 17.12.2009. On being medically declared invalidated for all categories the petitioner preferred an application for voluntary retirement under Railway Service (Pension) Rules, 1967 with effect from 28.6.2010. As the petitioner was already declared medically unfit for all categories, his application for voluntary retirement was not considered. Thereafter vide order dated 20.12.2011 the

petitioner's services were dispensed with in terms of stipulations contained under Rule 301 (1) of Indian Railway Establishment Code Vol.-I on the following terms:

“1) In terms of Railway Services (Pension) Rules, 1993, Rule 3 (26), “substitutes” means a person engaged against a regular, permanent or temporary post by reason of absence on leave or otherwise of a permanent or temporary railway servant and such substitute shall not be deemed to be a railway servant unless he is absorbed in the regular railway service. In your case, though you were engaged as a substitute safaiwala but as your services were never regularized you shall not be deemed to be a permanent railway servant.

2) In terms of sub note to para.1515 of Indian Railway Establishment Manual Vol.-I, the conferment of temporary status on the substitutes on completion of four months continuous service will not entitle them to automatic absorption/appointment to railway service unless they are in turn for such appointment on the basis of their position in the select lists and/or they are selected in the approved manner for appointment to regular railway posts. In your case, though you were granted temporary status as detailed, this was not followed by regular absorption due to the reason you remained under continuous PMC/RMC/ unauthorized absence.”

The petitioner was given one month's notice and his services were terminated on completion of one month from the date of issue of notice, that is to say, 19.1.2012.

Aggrieved, petitioner preferred an Original Application before the Tribunal.

The Tribunal vide impugned order declined to cause indulgence on the finding:

“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 cannot 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).”

When the findings arrived at by the Tribunal are tested on the anvil of the given facts of the case that the petitioner was not having permanent lien in the Railway but was substitute temporary employee and was declared medically unfit for all category and the petitioner having allowed the order of declaring him medically unfit for all category to attain finality, we perceive no illegality in the impugned order as would warrant an indulgence.

Consequently, the petition fails and is dismissed.

(SANJAY YADAV)

JUDGE

(ATUL SREEDHARAN)

JUDGE

vivek

Digitally signed by VIVEK KUMAR TRIPATHI
Date: 2019.11.23 17:45:27 +05'30'