

Ram Lal

Vs

Union of India

SLP (C) No. 15896 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

21.08.1996

ORDER

1. This special leave petition is filed against the order dated 4-8-1983 of the Central Administrative Tribunal, Calcutta Bench made in OA No. 747 of 1987. The admitted position is that the petitioner was appointed on ad hoc basis as a casual worker (khalasi) on 1-8-1962. He was terminated by an oral order on 18-9-1964. He challenged his termination by filing Title Suits Nos. 34/68/117 of 1967 in the Court of learned Munsif, Asansol which was decreed; the order of termination was declared as illegal, void and inoperative and it came to be confirmed in appeal. Thereafter the petitioner was reinstated and the consequential benefits were given. He was, admittedly, reinstated on 14-7-1971. He is claiming the status of regular employee w.e.f. the initial date of his appointment on a par with other candidates. It is not in dispute that as per Rule 3511(b) of Indian Railway Establishment Manual, unless the candidate is sent before Medical Board and selected by the Regular Selected Committee, he has no right to the post. Obviously since the report of the medical examination was not found on record, he was asked to appear for medical examination in 1987 which medical test he had undergone. Subsequently, he came to be appointed on regular basis. But regular status was given to him w.e.f. 14-9-1971.

2. He filed the OA contending that he must be deemed to have been regularly appointed from the initial date of his appointment and that, therefore, he is entitled to all the consequential benefits. In the impugned order, the Tribunal was right in observing that unless the petitioner had undergone the medical test and was properly selected in order to be appointed on regular basis, he has no right to claim service benefits of a regular employee. The appointing authority has put him back to the regular status w.e.f. the date of his reinstatement in September 1971. It is sought to be contended that once he was appointed on regular basis, in view of the decision of the civil court it must be deemed that he should have been continued in service from the beginning. We find no force in the contention. In support thereof, he placed reliance on the judgment of this Court in Devendra Pratap Narain Rai Sharma v. State of U.P. [AIR 1962 SC 1334 : (1962) 1 LLJ 266] (AIR at p. 1337, para 10). The said ratio has no application to the facts in this case. In that case the incumbent was a regular employee and the dismissal from service was declared invalid. He was deemed to have been continued in service and, therefore, he was entitled to the consequential benefits from his initial appointment.

3. At the time of termination, the petitioner was an ad hoc employee with temporary status and he was put back into the status on his reinstatement. When he was medically examined he was appointed from the date of his reinstatement. In fact, they have done justice to him. Had it been a case of regular appointment, he could not be put back into the status from the date of his initial appointment according to the rules. He is entitled to the permanent status after reinstatement. That

status was given to him. Accordingly, we do not find any illegality in the order passed by the Tribunal. However, by operation of Rule 2511(c) of IREM, the petitioner is entitled to the pensionary benefits treating the temporary service as a qualifying service for pensionary benefits.

4. With these observations, the petition is dismissed.