
(1989) 03 CAL CK 0028
In the Calcutta High Court
Case No : Matter No. 4720 of 1987

Ayodhya Tewari

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-03-1989

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (1989) 2 CALLT 209

Hon'ble Judges : Monoranjan Mallick, J

Bench : Single Bench

Judgement

Monoranjan Mallick, J.

1, The Court: This Writ petition has been filed by Ayodhya Tewari who is a Senior Rakshak which post has now been redesignated as Nayek. It is stated by the petitioner as follows:

The petitioner had been discharging his duties as Rakshak and senior Rakshak, Eastern Railway at various places including Asansol and Qndal and he continued to his post till 26th April, 1985 when he felt some eye trouble. In view of such eye trouble he got himself treated by the Divisional Medical Officer, Asansol. In course of such treatment the petitioner had to be operated upon. Consequent upon successful operation of the petitioner's eye the petitioner was declared fit by the concerned Divisional Medical Officer, Eastern Railway, Ondal under his Order No. H/Ex/UDL, dated 4.12.1985 on the basis of a special medical examination. By the said order, dated 4.12.1985 the petitioner was declared medically unfit in category EI and EII but the petitioner was found fit in category CI. By the said order, dated 4.12.1985 the petitioner was further asked to prefer an appeal to the Chief Medical Officer, Eastern Railway, Calcutta for reconsideration of such finding, if the petitioner so desired. A copy of the order is annexed as Annexure "A". From the said Medical Certificate it will appear further that the petitioner was declared medically fit in category CI and as such there was no/or could not be any impediment in allowing the petitioner to work as

Senior Rakshak. After he was so declared medically fit by the Divisional Medical Officer, Eastern Railway, Ondal, the petitioner made a representation to the Company Commandant, C-II Railway Protection Force, Ondal on 19.12.1985 praying for permission to join. However, the petitioner in the representation requested the concerned Company Commandant to regularise the matter in respect of the petitioner's duties with effect from 16.12.1985 and also to arrange for payment of his salaries. A Medical Certificate issued by the Divisional Officer was also annexed with the said representation but the petitioner was not allowed to join. He, thereafter made several representations before the Company Commandant and to other superior officers to know the fact. As all these representations did not found any favour with the present respondents and the petitioner has not been allowed to join his duties and the petitioner has been obliged to move this Court for necessary reliefs as the respondents concerned have illegally refused to permit him to join his duties and is also withholding the payment of the salary. It is also contended that not only the respondent authorities have violated the provisions of the Indian Railway Manual but also violated his fundamental right guaranteed under Article 21 of the Constitution as by taking away his livelihood which is the only means of his subsistence the respondents have contravened the provisions of Article 21 of the Constitution.

2. An affidavit-in-opposition has been filed on behalf of the respondents Nos. 1, 2 and 5 by B. Mohan, the respondent No. 5.

3. It is contended by the Respondent that as the petitioner has been declared fit in category-CI the respondents could not permit him to join his duty as Senior Rakshak, that under the relevant Railway Establishment Manual the petitioner was entitled to suitable alternative post for which series of correspondence were made by the respondents upto 1988 but no alternative appointment could be given to the present Writ petitioner for no fault of the present respondents.

4. On considering the provisions of Chapter XVI of the Indian Railway Establishment Manual, I am of the view that when the vision test of the petitioner was declared as CI category then admittedly the Writ petitioner has to be declared medically unfit for the post of Senior Rakshak but he being a permanent Railway servant the provisions of Rule 2604 of the Manual is attracted. The relevant portion of the Manual is reproduced below :

"(a) Permanent Railway servants : A permanent railway servant in group (ii) of para 2602 must also cease to perform the duties of the post, he was holding from the date he is declared medically unfit. Here again, no officer has the authority to permit him to perform his duties in that post beyond that date. He should be granted leave as admissible to him, under the leave Rules by which he is governed, from the date he is incapacitated subject to the proviso that where the railway servant has not got six months leave to his credit his leave shall be made upto six months by the grant of extraordinary leave. If an alternative employment cannot be found for such a person within the period of leave so granted his service should be extended by grant of extraordinary leave, subject

to the condition that the total amount of extraordinary leave to be granted to the railway servant does not exceed six months. It should be possible within the period of leave thus extended to find either a permanent or a temporary post for his absorption. If the railway servant is absorbed against a temporary post in a permanent cadre of supernumerary may also be created and his lien counted against that post. It should, however, be noted that-

(i) the actual creation of a supernumerary post will follow the acceptance of offer of alternative posts, and

(ii) the supernumerary post should be abolished as soon as a permanent post is found for the railway servant concerned.

5. In the Affidavit-in-opposition it is contended by the respondents that the Writ petitioner was granted 6 months leave in terms of Rule 2604 of the Manual and as the alternative post could be available to the Writ petitioner, no alternative post could be given to him nor could any salary be paid to him.

6. However, Rule 2604 enjoins upon the concerned authority, when a Railway servant is declared medically unfit for the post he was holding, to grant him leave as admissible to him under the leave Rules by which he is governed from the date he was incapacitated but that leave period cannot exceed more than 6 months at the first instance. If no alternative posting can be found during this period then such leave may be extended by granting an extraordinary leave upto the maximum period of 6 months more. The relevant Rule 2604 clearly enjoins upon the concerned Railway authority to find either a permanent or temporary post for his absorption even by creating supernumerary post but none of the respondents has taken any adequate steps under the provisions of Section 2604 to give suitable alternative post for his absorption. Under Chapter 16 of the Manual such officer still is deemed to be continuing in service but even though about three and half years have passed since the date when he was declared medically unfit for the post he was holding and he was entitled to get an alternative post within the period of one year in the maximum from the date on which he was not incapacitated the respondents without providing for any such permanent or temporary post for his absorption within a maximum period of one year from the date of the Medical Report, dated 5.12.1985 have made flagrant violation of the Manual itself. Moreover, without giving any salary to its employee for so long years the respondents have also violated the provisions of Article 21 of the Constitution and the Supreme Court has pointed out in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, that the life means something more than mere animal existence, that it does not mean merely that life cannot be extinguished or taken away as for example by imposition and execution of death scrutinise except according to the procedure established by law, that this is but one aspect of the right to life but an equally important fact of that right is the right of livelihood because no man can live without the means of living and that if the right to livelihood is not treated as a part of the constitutional right to life the easiest way of depriving a person of his right to life

would be to deprive him of his means of life to the point of abrogation and that such deprivation would not only take the life of his effective continent and meaningfulness but it would make life impossible to live for his own. The Supreme Court in that case comments that there is thus a close nexus between life and means of livelihood and as such that, which alone makes it possible to live, leave aside what makes life livable must be deemed to be an integral component of right to live.

7. I am of the view that when a Government employee is denied livelihood for more than 3 years then Article 21 is contravened by the respondents.

8. In the circumstances, I allow the Writ petition. I direct that the Writ petitioner shall be given an alternative post suitable to him within a period of two months from the date of communication of this order. The writ petitioner shall also be granted the salary at the rate which was last drawn by him with effect from the expiry of the one year from the date in which he was incapacitated by the Medical Officer that is, from 5th December, 1986 and the absence for the period of 5.12.1985 and 4.12.1986 shall be regularised by passing a suitable order of leave as provided in the relevant Railway Manual already referred to in the above. The arrear salary from 4,12.1986 till the date on which he is given the alternative post shall be paid to the writ petitioner within two months from the date of communication Of this order. After giving the alternative posting the necessary order shall be made as quickly as possible to regularise his service and to fix the scale of pay as provided in Chapter 16 of the Indian Railway Establishment Manual.

9. The Writ petition is thus disposal of.

10. No order for costs is passed.

11. Mr. Dhandhanja submits that some payments have been made to the Writ petitioner by the interim order passed by this Court. It is therefore ordered while making the payment of the arrear salary the amount that has been paid shall be duly adjusted.

12. All parties shall act on a signed copy of the operative portion of the judgment.