
(2009) 05 AHC CK 0084
In the Allahabad High Court

Brahm Dev Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 3 AWC 2606 : (2009) 122 FLR 21

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard Sri Hemant Kumar, learned Counsel for the petitioner, learned standing counsel for the respondents and Sri Vivek Saran, learned Counsel appearing for U.P.S.R.T.C.

2. The petitioner claims himself to be permanent driver in U.P.S.R.T.C. who has put his unblemished service of 22 years. The petitioner vide his application dated 4.3.2000 informed the Assistant Regional Manager, U.P.S.R.T.C. that he is having some impaired vision in his eye and requested for medical examination. On the basis of the information of the doctors petitioners further requested that he may be given some suitable job other than driver of the vehicle which is permissible under the rules of the Corporation. The Assistant Regional Manager, U.P.S.R.T.C. issued a memo dated 15.3.2000 addressed to the fourth respondent, i.e., Regional Manager, U.P.S.R.T.C., Allahabad that medical examination of the petitioner for determining his suitability for continuing him with his driving duties or to assign some other suitable work.

3. Consequently, the Medical Board examined the petitioner and it was found that petitioner was suffering from impairment in his left eye and as such he was unfit for driving but was fit for other job. The report of the Medical Board was forwarded by the Regional Manager, U.P.S.R.T.C, Allahabad to the headquarters of the Corporation for approval and for providing the petitioner with an alternate

job but the papers of the petitioner were returned by the headquarters directing that Medical Board may be required to specify as to whether the disability was temporary and curable or it was permanent and incurable. The Medical Board rectified it's information inter alia that the disability suffered by the petitioner in his left eye is permanent and incurable. The copy of the report was also forwarded to the headquarters. In the meantime, the petitioner alongwith other such disabled persons was given training for conversion of their post to that of conductor which was permissible under the rules.

4. The grievance of the petitioner is that petitioner has not been given any alternate job even though he has undergone training which is permissible under the rules and a number of representation filed by him have remained unactioned. The petitioner has preferred indulgence for a direction to the respondent to convert the post of the petitioner to the conductor that of the conductors from any other alternate job as has been done by the respondents in the case of Vishnu Dixit Sharma whose case was also similar to that of the petitioner who had also undergone for the post of conductor.

5. The respondents have raised an objection that the petitioner "is a workman and as such has an equal, efficacious and alternative remedy by raising industrial dispute by appropriate forum for redressal of his grievance raised in the present writ petition.

6. Apart from denying that petitioner has an unblemished service record the respondents in their counter-affidavit have averred that the petitioner does not have any legal right to work on a specific post and it is for the respondents to take suitable work from him. These are the only two main objections raised by the respondents-corporation.

7. After hearing the counsel for the parties, I am of the opinion that as regards the question of alternative remedy is concerned, it is always in the discretion of the Court under Article 226 to entertain the writ petition or not. It would mainly depend upon the facts and circumstances of each case.

8. As regards the question of legality is concerned, suffice it to say that the 1976 Rules of Uttar Pradesh Road Transport Corporation Service Manual read with State Road Transport Corporation Employees Service Regulation, 1981 provide for adjustment of a disabled member which is as under:

Adjustment of a disabled member.?If an employee has been certified by the Chief Medical Officer of the district or a medical authority prescribed by the corporation to have been incapacitated or disabled from discharging of his normal duty due to any physical injury caused to him during the course of his employment, the appointing authority may give him some other suitable job for which he is eligible.

9. It is apparent from the record that petitioner had been given training for the post of conductor and though the petitioner may not have any legal right for demanding specific post but it is always open to the respondents to provide him

with an alternate job under the aforesaid Regulation of 1976 which is quoted above.

10. Considering the facts and circumstances of the case the Court is of the view that the respondents may either provide the work of conductor for which training has already been provided to the petitioner by the corporation hence he may be provided duties of conductor or some other suitable alternate job but the corporation cannot keep the petitioner idle for no fault of his. The corporation ought to have taken a decision within a reasonable period of time in this regard which has not been done.

11. For all the reasons stated above, the petition is allowed. Respondents are directed to take work of conductor or provide him any other suitable post to the petitioner on which he can perform duties in spite of his disablement and shall pass appropriate order in this regard within a period of two months from the date of production of certified copy of this order. No order as to costs.