

(23)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1830/1999

New Delhi, this 12th day of April, 2001

Hon'ble Shri M.P. Singh, Member(A)

R.Kandaswamy
B-636, Shakarpur, Delhi-34 .. Applicant

(By Shri H.P.Chakravorti, Advocate)

versus

Union of India, through

1. Chairman, Railway Board
Principal Secretary to Govt. of India
Ministry of Railway, New Delhi
2. General Manager
Northern Railway, Baroda House, New Delhi
3. Divisional Railway Manager
Northern Railway, New Delhi
4. Dr. Sushum Sharma, SRDMO
5. Dr. Atul Gupta, DMO
c/o Chief Medical Supdt., Northern
Railway, Railway Hospital, Delhi Main .. Respondents

(By Shri R.L.Dhawan, Advocate)

ORDER(oral)

Applicant has filed this OA under section 19 of the Administrative Tribunals Act, 1985 seeking directions to quash the impugned order dated 14.6.99 (Annexure A-1) and also for directions to the respondents to constitute Medical Board for re-examination of the applicant in the light of certificate granted by All India Institute of Medical Science (AIIMS, for short) and consider the case of the applicant for re-engagement as Safaiwala or in any other Group D post.

2. The facts of the case are that the applicant was initially engaged as casual labour Carriage & wagon Safaiwala on 5.5.85. He was sent for medical examination but was declared unfit in the category B-I. Thereafter, the applicant approached the AIIMS and got himself examined by a panel of experts and he was



granted certificate of fitness (A-3). After denial of appointment vide order dated 3.7.96, he filed OA No.1225/97. The Tribunal vide its order dated 18.11.97 issued directions to the respondents to get the applicant re-examined by their own medical officers and if he is found medically fit to perform duties of casual labour safaiwala, respondents should consider placing his name in the Live Casual Labour Register (LCLR, for short) without any claim for seniority and thereafter consider him for re-engagement as a casual labour strictly in his turn. Applicant was sent for re-examination where he has been declared in medical category B-I vide order dated 9.3.98. According to the applicant he is not unfit for the post of Safaiwala in Railway either in physique or in vision. It is stated by him that he has not been given a copy of the finding of the medical authority as demanded by him. Thereafter, he filed another OA No.2003/98 which was disposed of vide judgement dated 15.10.98 with a direction to the respondents to consider and dispose of the applicant's appeal dated 1.4.98 and 12.5.98 by a reasoned and speaking order with intimation to the applicant within a period of one month from the date of receipt of a copy of that order. According to the applicant, respondents did nothing except sending the applicant before the same officers who declared him unfit earlier. Aggrieved by this, he has filed this OA.

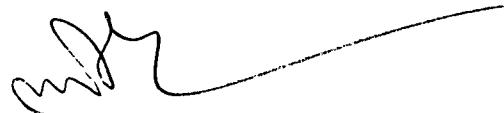
3. Respondents have contested the case and have stated that the applicant was initially engaged as casual labour on 5.5.85. He was sent for medical examination in the prescribed classification B-1 but was declared unfit due to heart ailments. He was accordingly





discharged from service on 3.7.86. He filed OA No.1225/97 seeking re-engagement as Safaiwala. His application was disposed of by the Tribunal vide its order dated 18.11.97. In compliance of the directions of the Tribunal, the applicant was sent again for medical examination, but he was found unfit for B-1 category by the Chief Medical Superintendent, Northern Railway Hospital, Delhi vide unfit memo dated 4.3.98. Applicant filed MA 2003/98 which was disposed by the Tribunal vide order dated 15.10.98 with the direction to consider and dispose of applicant's representation dated 1.4.98 and 12.5.98 by a reasoned and speaking order. By the aforesaid representation applicant has requested for re-medical examination. He was accordingly again sent for re-examination in B-1 classification or below being SC candidate. The applicant has been re-examined by a Medical Examiner and also by a Physician keeping in view his heart ailment and SC status but again the applicant was declared unfit for B-1 classification or below. The Chief Medical Superintendent has informed vide letter dated 3.1.2000 that there is advanced heart disease and there is no possibility of cure from it, hence he is medically unfit in all the categories. In the above circumstances, the applicant is not eligible for re-engagement as casual labour. In view of the submissions made, the OA be dismissed in the interest of justice.

4. After hearing the rival contentions of both contesting parties and perusing the records. I find that the applicant has not been appointed as safaiwala on the ground that he was found medically unfit. He has filed OAs earlier seeking same relief. In compliance of



the directions given by the Tribunal, the respondents have referred the applicant to the medical authorities in the Railway. The competent medical authority has declared him unfit for appointment as safaiwala.

5. During the course of the arguments, learned counsel for the applicant drew my attention to the instructions contained in paras 522 and 553(3)(iv) of the Indian Railway Medical Manual. He submitted that his prayer is restricted only to the extent that his case be placed before the Chief Medical Director for his consideration to constitute a Medical Board as he is the competent authority in this case. On the other hand, the learned counsel for the respondents stated that the case of the applicant is not covered under these instructions. He drew my attention to para 553 of IRMM regarding classification of Medical Boards for gazetted and non-gazetted railway employees. He submitted that on a perusal of these instructions, it is clear that the case of the applicant is not covered as these instructions are applicable only to regular railway servants.

6. On a perusal of these instructions, I am of the considered view that these instructions are not applicable to the applicant as he is not a serving railway employee. The OA does not merit consideration and is accordingly dismissed. No costs.


(M.P. Singh)
Member(A)

/gtv/