

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 331/95
XXXXX

199

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DATE OF DECISION 8.9.95

<u>P. R. Barua</u>	Petitioner
<u>Shri B.B.Raval</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Ors.</u>	Respondent
<u>Shri M.K. Gupta</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S.R. ADIGE, MEMBER(A)

The Hon'ble Mr. DR. A. VEDAVALLI, MEMBER(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? —
2. To be referred to the Reporter or not? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement? —
4. Whether it needs to be circulated to other Benches of the Tribunal? —


(DR. A. VEDAVALLI)
MEMBER(J)
8.9.95

Central Administrative Tribunal
Principal Bench, New Delhi
OA No. 331/95
Dated this the 8th Day of September, 1995.

Hon'ble Shri S.R. Adige, Member (A)
Hon'ble Dr A. Vedavalli, Member (J)

Shri P.R. Barua,
R/o E-803, Chittaranjan Park,
New Delhi- 110 019. Applicant

(By Advocate : Shri B.B. Raval with
Ms K. Iyer)

Versus

UNION OF INDIA, THROUGH

1. The Secretary,
Ministry of Communications,
Sanchar Bhawan,
Parliament Street,
New Delhi-110 001.
2. The Post Master General,
Meghdoot Bhavan,
Jhandewallan,
New Delhi-110 055.
3. The Senior Post Master,
Parliament Street H.O.
Parliament Street,
New Delhi-110 001. Respondents

(By Advocate : Shri M.K. Gupta)

ORDER

(By Hon'ble Dr A. Vedavalli, Member (J))

The applicant has filed the present O.A. stating that there is no specific order under challenge, but he is aggrieved by the unilateral action of the respondents in issuing the letter dated 13.1.94 (Annexure A-1) inter alia threatening to initiate legal action, in case he fails to report for duty at once. According to him the said action and the order is arbitrary, malafide and bad in law. He is seeking redressal of his grievance against the said action and the impugned order.



2. The facts of the case briefly stated are as under: The applicant Shri R.P. Barua was appointed as a cleaner in the Post & Telegraphs department on 23.3.1957. He was then promoted as a Despatch Rider and, thereafter, as a Driver, Mobile Mail Service. On 23.7.80 the applicant was involved in an accident and remained on medical leave/leave due several times till 1984. In that year he requested for his appointment for a post carrying less arduous nature of duty on medical grounds. His request was accepted in consultation with the Department of Personnel & Administrative Reforms and he was appointed on 21.12.84 in the cadre of postman, (stamp vender) at a lower pay scale. This was in relaxation of normal rules of recruitment on compassionate grounds. The applicant had accepted the said post and has been working since then. After his appointment to the said post the applicant has submitted representations to the authority seeking (i) Protection of his last pay drawn as driver (ii) Appointment to a post carrying a pay scale equivalent to that of a driver. (iii) Payment of lumpsum capitalised value of compensation in lieu of disability pension and; (iv) Medical expenses for Angiography.

3. The grounds raised by the applicant, briefly, in his O.A. are;

(i) The violation of fundamental rights guranteed by the constitution and in particular articles 14,16 and 21.

(9)

(3) :

- (ii) He got injured during the course of his employment and his left hand was declared partially functionless by the medical authorities who advised for light duty.
- (iii) Though he was put on light duty he was also placed on a reduced pay scale;
- (iv) Several representations to fix his pay at the earlier scale at the time of his accident fell on deaf years.
- (v) No action has been taken till date on the payment of lumpsum compensation in lieu of disability pension despite the submission of necessary forms by the applicant, way back in 1988.
- (vi) The respondents have failed to appreciate the physical and financial inability of the applicant to incur the cost of the angiography expenses and direct the applicant to appear before a Medical Board for a medical check-up and deliberately suppressing the contents of the medical report in the impugned order dated 13.1.1994 to shrug off their responsibility to pay the legitimate and legally due medical expenses to the applicant.

(vii) Callous treatment of a person who worked nearly for 20 years is against the rule of law in a civilised society.

4. The applicant has sought the following reliefs in this O.A.

(a) To quash the the impugned order at Annexure 'A' as violative of the applicant's Fundamental Rights guaranteed under Article 14,16 and 21 of the Constitution of India and against all principles of justice, equity and fairplay.

(b) Consequent to relief at (a), direct the respondent to fix/restore the applicant's pay scale to Rs.260-400/- instead of the one of which he had been placed when he was assigned the job of a stamp vendor and all the consequential benefits.

(c) To process the lump sum compensation paper submitted to the respondent by the applicant as way back in October, 1988, and to release the amount at the earliest.

(11)

(5)

(d) To pay the medical expense of Rs 75,000/- approximately for the angiography treatment of the applicant as requested and represented for time and again.

5. The respondents have filed their reply to the O.A. Certain preliminary objections regarding limitation to multiplicity of reliefs sought on several cause of actions and laches in claiming relief regarding compensation for injury incurred on 23.7.80 have been raised by the respondents in their reply.

6. The applicant has filed his rejoinder. He submitted that the preliminary objections raised by the respondents are wrong and unsustainable. It was contended that the applicant had sent several representations and notice which had been acknowledged and also replied even during early January, 1994 which are under challenge in this application. It was further contended by him that the reliefs sought are inter-connected and are consequential to each other emerging out of the accident during the course of employment of the applicant.

7. On a consideration of the matter in the light of the facts and circumstances of the case, we are of the view that the aforesaid preliminary objections raised by the respondents are not well-founded and are, therefore, unsustainable under the law. Hence we proceed to consider the application on its merits.

8. Re the relief sought by the applicant for the quashing of the impugned order (Annexure A-1), the respondents have submitted that the said order relates to the direction to the applicant for reporting for duty since he was declared fit to resume duty by the medical authority on 8.12.93 and no threat or coercion is involved.

9. Re the claim of the applicant for fixation/restoration of his pay scale, the respondents have submitted that the applicant was appointed as a stamp vendor carrying a lower pay scale on his own request on compassionate grounds and his pay was regulated under FR-22 (a)(iii) since his transfer was covered by FR-15, and that he was informed on 5.12.1991 that his pay was fixed correctly.

10. Re the claim relating to lumpsum compensation in lieu of disability pension, the respondents in their reply have said that the claim was submitted for the first time on 14.10.1988. It was considered but was not approved as it was not permissible since no award shall be made in respect of an injury sustained for more than 5 years before the date of application and in the present case the application is more than 8 years old. However, the learned counsel for the respondents during the course of arguments has stated at the Bar that the respondents would be prepared to consider the claim for disability pension at rates admissible under the Rules treating the appointment as Stamp Vendor as fresh appointment and terminal benefits calculated from date of fresh appointment. *A/*

(B)

11. Re the claim of the applicant for medical expenses with reference to the angiography treatment, the respondents have denied that the applicant suffered heart-attack on account of any official circumstances. They have submitted that the applicant is not entitled for any relief or interim relief.

12. The respondents have prayed for the dismissal of the application with costs.

13. The applicant has filed his rejoinder to the counter. He has denied the contents of the counter and has generally reiterated the grounds raised in his application.

14. We have heard the learned counsel for the parties and have perused the pleadings and the papers placed on record and also the original file relating to the processing of the claims of the applicant regarding lumpsum payment which has been made available for our perusal.

15. We have carefully considered the matter. The impugned order dated 13.1.94 (Annexure A-1) reads as under :

"You are directed for IInd medical opinion vide this Office letter No even dated 12.11.93, and A letter No.13/9-93 RMLH(M11) 26079 dated 28.12.93 received in this Office from Dr R.M.L. Hospital, New Delhi-110001. You were examined by Dr Deepak Natarajan, Sr Cardiologist, HO declared fit to join your duty.

In view of the foregoing you are hereby directed to report for duty at once failing which suitable action will be initiated against you.

(8)

It is also to inform you that no. Medical Certificate from Private Doctor (RMP) will be accepted from 28.12.92 onwards;"

16. The applicant has in fact admitted that he appeared before the Medical Board on 1.12.1993. He has not given any valid reason for not reporting for duty on receipt of the said order. If, in fact, he is unable to drive the vehicle, he could have given representation to the authorities duly supported by medical certificate etc at the time of reporting.

17. Mere non-furnishing of the medical report along with the aforesaid order does not exempt him from reporting for duty. He could have proved his bonafide by at least reporting for duty and demonstrate his disability instead of making an allegation that the medical report was not disclosed in its totality. He has not proved his allegation. Neither has he denied the disclosed operation of the report that "he is fit to join duty". In the circumstances, we find that the applicant has not been able to establish any arbitrariness, malafide, illegality or unconstitutionality in the aforesaid order and hence his plea for quashing the said order, in our view, is not justified. Moreover, it appears on a perusal of the original record that his date of birth is mentioned as 05.7.37. If that be so, he would have already retired by this time and the impugned order, any how, cannot be operative against him.

18. Re the claim relating to fixation/restoration of the applicant's pay scale, he has already been informed by the respondents about the position. He has not been

illegality, infirmity or invalidity in the said pay fixation has been spelt out by the applicant clearly. In this view of the matter, we do not think it fit and proper to interfere with the action of the respondents in this regard.

19. Re the applicant's claim relating to lump sum compensation in lieu of disability pension the respondents are directed to consider the matter as stated by their counsel at the Bar and intimate their decision to the applicant within a period of one month from the date of receipt of a copy of this order.

20. Re the claim of the applicant with reference to medical expenses in connection with the Angiography treatment, such a claim is to be preferred before the concerned authority as per the prescribed procedure under the relevant rules and we do not find any valid grounds to give directions in this regard, at this stage as it would be premature.

21. However, we would like to mention here that in a very recent decision given by the Hon'ble Supreme Court in Consumer Education & Research Centre & Others Vs Union of India & Others (1995) 3 SCC 42, it was held inter alia as under:

"25. Therefore, we hold that right to health, medical aid to protect the health and vigour to a worker while in service or post-retirement is a fundamental right under Article 21, read with Articles 31(e), 41, 43, 48-A and all related articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person."

(16)

(10)

22. The respondents may consider the claim regarding medical expenses which may be preferred by the applicant, if any, as per the relevant rules and instructions keeping in view the above observations and decision of the Hon'ble Supreme Court at the appropriate time.

23. The OA is disposed of accordingly.

A. Vedavalli

8/9/95

(Dr A. Vedavalli)
Member (J)

S. R. Adige

(S. R. Adige)
Member (A)

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