

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.R. NO. 1706/94

New Delhi, this the 21st October, 1994

(A)

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

Shri Raj Mani Ram,
s/o Shri Bandhu Ram,
R/o RX-238/F, Raj Nagar-II,
Palam Colony,
New Delhi.

... Applicant

By Advocate: Shri V.P. Sharma

Vs.

1. Union of India
through the
General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The General Manager (Personnel),
Northern Railway, Baroda House,
New Delhi.

3. The Chief Medical Superintendent,
Northern Railway Hospital, Charbagh,
Lucknow.

4. Dr. Narendra Kumar Bhatnagar,
D.M.O., Northern Railway Hospital,
Charbagh, Lucknow.

.... Respondents

By Advocate: None

O R D E R

Hon'ble Shri J.P. Sharma, Member (J)

The applicant was discharged from the Army service on 31.7.79. He applied in pursuance to an advertisement of Railway Service Commission, Allahabad for the post of Ticket Collector.

The applicant was also called for medical examination. He appeared in the medical examination but he was found unfit in B-2 category. After

unsuccessful representation, the applicant filed S.A. 826/90 before the Central Administrative Tribunal, Allahabad Bench. The Tribunal vide its order dated 25.10.90 directed the respondents to permit the applicant to appear before the Divisional Medical Officer, Northern Railway, Lucknow once again. The applicant was however again declared unfit. The applicant has filed the present application. The applicant has prayed for the grant of the following reliefs:

(i) A direction to the respondents to get the applicant medically examined by any independent Medical Agency for ascertaining the medical fitness of the applicant for appointment as Ticket Collector.

The relief claimed by the applicant therefore is squarely covered by the decision earlier given in S.A. 826/90. The present application therefore is barred by principles of res judicata. Further a similar case came before Hon'ble Supreme Court of an employee of State Bank of India reported in (1994) 26 ATC 736 - State Bank of India Vs. G.K. Dashak. In that case the Respondent was suffering from serious eye trouble and he was subjected to more than one medical test and he was found medically unfit. He filed a writ petition before the Hon'ble High Court and the Hon'ble High Court took upon itself to decide the question of medical fitness of the Respondent and reached the conclusion in favour of the Respondent and preferred the same as against medical opinion of the Specialist Doctor. The

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Hon'ble Supreme Court interferred on an appeal filed by the State Bank of India did not approve of the approach adopted by the Hon'ble High Court in allowing the writ petition. Thus the Tribunal cannot sit an Appellate Authority over the medical opinion rejecting the applicant as unfit for the post of Ticket Collector. The contention of the learned counsel that the applicant was examined by the same Doctor does not in any way make the medical opinion faulty. The direction given in the earlier O.A. 826/90 was only that the applicant should appear before the Divisional Medical Officer, Northern Railway, Lucknow once again and get him medically examined. The contention of the applicant that he should be examined by Independent Medical body has no force. The certificate he has obtained from All India Institute of Medical Sciences cannot be considered by the Tribunal that the applicant is medically fit to join the duty as Ticket Collector. Further O.A. 2206/94 for condonation of delay has been filed by the applicant. But in our opinion the applicant has still a cause surviving and the application cannot be said to be barred by time, in any case we have condoned the delay because of the reasons mentioned in the Misc. application which is also supported by an affidavit.

2. The application does not lie and the applicant shall be free to file an appeal under the Indian Railway Medical Manual for examination by higher authorities, if so advised and there is nothing on record to show that he has availed of

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that opportunity then this right does not survive to the applicant. The application therefore is dismissed in limine as barred by principles of res judicata with the observation that the applicant shall be free to appeal to the competent authority against the medical opinion of the Divisional Medical Officer, Northern Railway, if not already exhausted that remedy and if so advised under Indian Railway Medical Manual.

(S.K. SINGH)
(S.K. SINGH)
Member (A)

(J.P. SHARMA)
(J.P. SHARMA)
Member (3)

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