

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

OA/050/00456/2020

Date of Order :07.12.2020

C O R A M

HON'BLE MR. M.C.VERMA, JUDICIAL MEMBER
HON'BLE MR. SUNIL KUMAR SINHA, ADMINISTRATIVE MEMBER



Vickey Kumar, son of Late Raja Ram Ray, Track Maintainer Grade-IV, under Senior Section Engineer (P.Way), East Central Railway, Shahpur Patori, Resident of Village/Post-Dudhaila, P.S.-Maner, District- Patna-801108 (Bihar).

..... Applicant.

- By Advocate : Shri M.P.Dixit

-Versus-

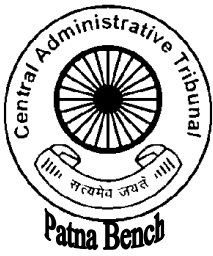
1. The Union of India through the General Manager, East Central Railway, Hajipur, P.O.-Digghi Kala, P.S._Hajipur (Town), District-Vaishali at Hajipur, Pin Code-841001 (Bihar).
2. The Divisional Railway Manager (Engineering), East Central Railway, Sonpur, Post-Sonpur, District-Saran-841101 (Bihar).
3. The Senior Divisional Personnel Officer, East Central Railway, Sonpur, Post-Sonpur, District-Saran-841101 (Bihar).
4. The Chief Medical Superintendent, East Central Railway, Sonpur, Post-Sonpur, District-Saran-841101 (Bihar).
5. The Assistant Divisional Engineer (Line), East Central Railway, Sonpur, Post-Sonpur, District-Saran-841101 (Bihar).

..... Respondents.

By Advocate :- Shri B.K. Choudhary with Shri D.K. Verma.

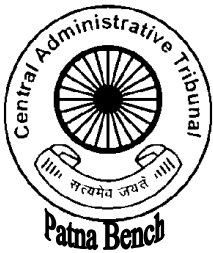
O R D E R [ORAL]

Per M.C.Verma, Member (Judl.):- The matter is at notice stage hearing. Advance copy of the OA has been served upon the respondents counsel and Shri B.K. Choudhary Advocate with Shri D.K. Verma have appeared for respondents.



2. Heard. Learned counsel Shri M.P. Dixit while pressing the OA submits that applicant was sent for periodical medical examination where colour vision was detected and that he was declared unfit for service. That thereafter on 06.05.2020, Assistant Divisional Engineer referred the matter to DRM for taking decision for removal from service of the applicant. Learned counsel added further that applicant is not being allowed to join the duty. He further argued that as per Rules and as per Railway Boars' instructions, a person suffering from colour blindness has not to be removed from service but to be offered alternative job and in violation of norms applicant has been removed from service. He request to issue notice. Upon query that letter dated 06.05.2020 (Annexure A/1) which has been impugned in the OA merely reflects that final decision regarding removal or non removal of the applicant has yet to be taken then how it can be said that applicant has been removed from service and whether in absence of final decision is this OA is not premature, learned counsel simply states that respondents are

and not allowing the applicant to join the service explained further that applicant has not given alternative job and he has wrongly been declared unfit for service by the medical authority. He also placed reliance of the order of Hon'ble High Court passed on 03.11.2015 in CWJC No. 2955 of 2014 (Sanjay Kumar vs. UOI).



3. Learned counsel Shri B.K. Choudhary, who has appeared for respondents submits that applicant was examined by the Medical Board on 19.02.2020 and he was declared medically unfit for all classes and the Board did direct further to deal the matter as per IRMM Vol.-I para 512(2). There is nothing on record to show that applicant approach for joining and he was refused. That applicant could not be allowed to join the service unless he bring fitness certificate. Regarding query whether any decision for keeping the applicant in service or to remove him from service as indicated by order dated 06.05.2020 has been taken or not, learned counsel answered that if order has not been passed, that may be passed. He also urged that the judgment relied upon by the applicant is not applicable in the facts and circumstances of present case.

4. Considered the submissions Para 1 of the OA which is supposed to have the details provides mentioning of

order against which the application is being made reads as under :-

“Particular of the order/against which the application is made :



- (i) For declaring the order dated 06.05.2020 issued by the respondent No. 5 as contained in Annexure A/1 together with order dated 04/06.03.2020 issued by the Respondent no. 4 so referred therein instead of offering him alternative job on a post suitable for a colour blind person as null void, abnatio wrong, arbitrary and illegal in view of the provisions contained in. The persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 and order passed by Hon'ble Patna High Court dated 03.11.2015 passed in CWJC No. 2955 of 2014 (Sanjay Kumar vs. UOI) as well as contained in Annexure A/7.
- (ii) For declaring the impugned action of respondents whereby applicant is not being allowed to join in service in spite of the fact that no order of removal from service has been issued till yet, as illegal, punitive, unjust and unconstitutional.
- (iii) For declaring the impugned action of respondents whereby applicant is not being paid his monthly salary since November 2019 to till date as illegal, punitive and against the judgment reported in 2003 (1) ATJ 506 (P.Parthsarthy vs. UOI).

5. The letter dated 06.05.2020 (Annexure A/1) does not show that applicant has been removed from service and it merely reflects that decision as to whether applicant has to be kept in service or has to be removed from service needs to be taken by the addressee of the letter. No such decision has

been taken. As far submission that applicant is not being allowed to join the service relates, until and unless fitness certificate is issued or produced, legally applicant could not be allowed to join.



6. Taking note of entirety, we want to dispose of this OA at this stage itself with direction to the respondents to take a final decision within stipulated time frame regarding service of the applicant. Accordingly, we direct the respondents to pass speaking and comprehensive order within three weeks from the date of receipt of a copy of the order. We hope that while taking such decision, respondent Authority would keep in mind the provision of IRMM circular/instruction of the Railway Board to reach on conclusion whether the applicant be kept in service or be removed from service or alternative job be given to him.

7. With the above observation and direction, the OA is disposed of. Before parting, it is made clear that we have not expressed any opinion on the merit of the OA.

[Sunil Kumar Sinha]
Member (A)

[M.C. Verma]
Member (J)

Pkl/

