

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHIO.A. No. 1052
T.A. No.

1987.

DATE OF DECISION 31.7.1989.

Shri Prem Lal Yadav

Petitioner

Shri K.V. Sree Kumar

Advocate for the Petitioner(s)

Versus

Union of India & Ors

Respondents.

Shri P.P. Khurana,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
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?

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O.A. No. 1052/87
D.A.X. 50.

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Shri K.V. Sree Kumar Advocate for the Applicant (s)

Versus
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JUDGEMENT

(Judgement of the Bench delivered by
the Hon'ble Mr. Justice Amitav Banerji,
Chairman)

Shri P.L. Yadav, the applicant, who was serving as Driver-cum-Mechanic in the office of Food and Nutrition Extension Officer, Community Canning and Preservation Centre, Sector 23-C, Chandigarh, has filed this Application against the order terminating his services on medical grounds and non-communication of the report of the Medical Review Board.

The applicant was initially appointed as Motor Driver in the Dandakaranya project and subsequently he was confirmed on the said post with effect from 12-11-1974. In the year 1981, surplus staff of the Rehabilitation Department was merged in

other Departments. The applicant was sent to the office of Deputy Technical Adviser, Northern Region, Block No. 10, Jamnagar House, New Delhi by the Ministry of Home Affairs, Department of Personnel and Administrative Reforms, Government of India, New Delhi and since then he is working as a Driver-cum-Mechanic.

The applicant's case is that while working in the unit, on certain occasions the applicant made certain complaints/reports against his officers regarding some irregularities and mis-appropriations and due to the same, some of the officers were annoyed with him and he was chargesheeted on many occasions on baseless and flimsy charges. Nothing could, however, be proved against the applicant. The respondents tried to terminate the services of the applicant on medical grounds. He was initially got medically examined in Post Graduate Institute, Chandigarh for psychiatry test ~~and~~ which was negative. He was again sent to General Hospital, Sector-16, Chandigarh and the Doctor there clearly opined that there was no evidence of mental illness and he was fit to perform his duties. He was again sent to the General Hospital where it was opined that the applicant was not fit for working and permanently incapacitated because of his defective vision. He could not apply for his re-examination by the medical review board because he was under treatment and thereafter his services were terminated on medical ground by order dated 4.3.1985. The respondents declined to condone the delay

and disallowed the applicant to appear before the medical review board. The applicant thereafter filed an Original Application No. 60 of 1986 before the Central Administrative Tribunal, Chandigarh Bench. By an order dated 24.7.1986, the Bench held that the respondents should have condoned the delay of 10 days and directed the respondents to refer the case of the applicant for medical review board, who was also allowed to stay in the quarter for another 3 months. That, thereafter, the applicant was directed to appear before the medical review board at Ram Manohar Lohia Hospital, New Delhi on 15.10.1986. He went there on several days. After the medical examination, the applicant was orally informed that he was fit to work. By an order dated 27.11.1986, the applicant was informed that the Medical Review Board found him medically unfit to work due to sub-standard vision. The respondents thereafter confirmed the order of pre-mature retirement of the applicant. He had requested several times to provide him the medical review board report, but the respondents did not comply with. In the meantime, the applicant was forcibly evicted from his quarter on 12.1.1987 with the help of police. The applicant was forced to leave Chandigarh and go to his native village at Madhya Pradesh. He had, therefore, no option but to ask his counsel to withdraw the OA filed by him at Chandigarh. On 15.1.1987, the Application for withdrawal was allowed and the CA was dismissed as withdrawn. Thereafter, the applicant made several requests to provide him with a copy of the

medical review board report, but no reply had been given.

He had even sent legal notice to the respondents on 11.2.1987.

Ultimately, the respondents by a letter dated 2.4.1987 informed the advocate of the applicant that the applicant is not entitled to any benefit as claimed by him. Thereupon, the applicant filed the present OA on 27.7.1987 before the Principal Bench of the Tribunal. There are three prayers in the Application:-

- (i) Quash the order of premature retirement of the applicant dated 4.3.1985 passed by the respondents;
- (ii) Direct the respondents to provide a copy of the medical review board report to the applicant;
- (iii) Direct the respondents to reinstate the applicant with all back wages and consequential benefits.

In the written statement on behalf of the respondent No. 1 and 2 it was pointed out that the applicant had been retired on the basis of the report of the Medical Authority, Chandigarh and his services had not been terminated. He was medically examined by the Central Standing Medical Board, Dr. Ram Manohar Lohia Hospital, New Delhi and also on the directions of the Chandigarh Bench of the Tribunal, who had reported him unfit for the post of Driver-cum-Mechanic on account of sub-standard vision. The opinion of the Board had also been communicated to him. It was also urged that the Application was barred by limitation as according to the applicant himself the cause of action was the order dated 4.3.85 whereas the OA was filed in August, 1987. The applicant was medically examined on 15.10.1986 by the Central Standing Medical Board, Dr. Ram Manohar Lohia Hospital, New Delhi

New Delhi. The respondents also took plea that the whole report of Central Standing Medical Board was not sent to the applicant as the Medical report was of confidential nature and only the ground for his being found unfit for the post of Driver-cum-Mechanic was communicated. It was further stated that the Application on the same ground for the production of Medical Report was filed by the applicant before the Chandigarh Bench of the Tribunal in case No. 60 of 1986 and it was dismissed as withdrawn on 15-1-1987. The present Application was not tenable on this ground also.

We have heard learned counsel for the applicant. We have also perused the Medical report which has been brought by the representative of the department. There are now two points to be clarified. Firstly, the OA was filed before the Chandigarh Bench of the Tribunal and it was dismissed as withdrawn on 15.1.87. He could not have filed another OA on the same ground before the Principal Bench of the Tribunal. It is true that the applicant has disclosed the filing of the earlier OA, but the cause of action of the present OA is the same as the earlier one. This Application is, therefore, not maintainable. Even on the merits, we have seen the record which shows that the applicant's vision was sub-standard and this ^{the} conclusion arrived at Chandigarh. Thereafter, the applicant had been examined by the Central Standing Medical Board which comprised three Doctors and they had clearly opined that the applicant's vision was bad and he

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was not fit for holding any Government job. Secondly, we have also perused the report of the Chairman of the Medical Board which clearly indicates that the applicant's vision in the Right eye without glasses was 6/60 and even with glasses it became 6/36. His vision in the Left eye without glasses was 6/36 and with glasses it became 6/12. It was also opined that his vision was sub-standard. Thus, the applicant's premature retirement on the ground of sub-standard vision cannot be said to be unjustified. We do not see any reason to hold that the applicant's case was decided arbitrarily or with malice. The contention of the learned counsel for the applicant that the applicant should have been given a job as Mechanic is also untenable for the reason that a person who is unfit for holding any Government job due to his sub-standard vision, cannot be given a job of Mechanic even.

For the reasons indicated above, we find no merit in this case. We have already held that the CA is not maintainable. The O. A. is accordingly dismissed without any order as to costs. A prayer was made that some directions be given for early payment of dues to the applicant. We do not think it necessary to issue any such direction in this regard as we have no doubt that the respondents will take necessary action in this regard early.

B.C. Mathur

(B.C. MATHUR)
VICE-CHAIRMAN

"SRD"

AB

(AMITAV BANERJI)
CHAIRMAN