

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

REGN. NO. OA 2300/91

Date of decision: 6<sup>th</sup> May, 91

Sh. Diwakar .. Applicant

versus

Union of India & Ors. .. Respondents.

CORAM

THE HON'BLE MR. T. S. OBEROI, MEMBER (J)

THE HON'BLE MR. B. N. DHOUDIYAL, MEMBER (A)

For the Applicant .. Sh. K. C. Nagpal,  
Counsel.

For the Respondents .. Sh. H. K. Gangwani,  
Counsel.

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

JUDGEMENT

(DELIVERED BY HON'BLE MR. T. S. OBEROI,  
MEMBER)

The applicant, a Trolley Man under PWI Shamli, is aggrieved by his having been declared as 'malingrer' and hence medically unfit for all categories of service in the Railways vide DRM letter No. 54-Med/1/91 dated 23.3.91, and has prayed for appropriate directions to the respondents not to retire him from service, on the said grounds and also to declare the order dated 12.7.91 (Annexure-1) to be inoperative and ultra vires.

2. The other necessary facts, to appreciate applicant's case, are that during the course of periodical examination, the applicant is alleged to have not cooperated with the Medical Officer, in the matter of applicant's medical examination. This was repeatedly tried on 19.4.91, 26.4.91 and again on 29.4.91, but the result

being the same, the applicant was accordingly declared 'malingrer' as mentioned above and hence decided to be retired from service as per Annexure 1. The applicant is said to have represented vide his application dated 12.6.91 (Annexure 2) against the above report by the Medical Officer concerned, stating that the said report is motivated because of certain other reasons, and that the applicant had got himself medically examined privately from Dr. Rajendra Prasad Centre for Ophthalmic Sciences, New Delhi, as per Annexure-3 and has been opined of having vision as 6/6 in both eyes.

3. The respondents in the counter filed, besides some preliminary objections regarding limitation etc., have averred that because of repeated trial the applicant having shown no progress in the matter of his vision test, there was no recourse left to the respondents but to resort to his retirement from service. The allegations regarding any ulterior design on the part of the Medical Officer concerned, for declaring the applicant as 'malingrer' were vehemently denied.

4. Rejoinder has also been filed on behalf of the applicant broadly repeating his earlier submissions as in the OA.

5. We have heard the learned counsel for the parties. The learned counsel for the respondents also placed on record certain documents regarding the standard of vision etc., directed to be filed as per earlier order dated 27.3.92. We have perused the same carefully.

*Aben*

6. While the Railway Doctors have after repeated tests declared the applicant not cooperating with them and declared him 'malingrer', his vision as per his examination at Dr.Rajendra Prasad Cetre for Ophthalmic Sciences has been opined as 6/6 in both eyes. Thus, the decisions from two institutions are entirely conflicting with each other. Obviously there is some thing which has brought forth this situation. While the applicant by no means should be allowed to see change of his duty as a Trolley Man which may perhaps involve more of physical exertion to a comparatively lighter one, it has simultaneously to be ensured that no harshness is meted to him so much so that he has been directed to be retired from service, on this ground. Obviously, the position has to be suitably balanced and real cause leading to this,unearthed. With that end in view, we direct the respondents to refer once again the applicant, through their channel, to any other Government Hospital(leaving Dr.Rajendra Prasad Centre for Oplhthalmic Sciences as well as Railway Hospitals) to examine the applicant, in the matter of his vision and other aspects and related to that,/\_ on receipt of such report, may deal with the applicant's case appropriately, in accordance with the rules.

7. The stay granted in favour of the applicant not to be dispossessed from the accommodation in his occupation shall continue to remain in force till further appropriate orders by the respondents, after receipt of the report regarding applicant's medical examination, as mentioned above.

*Deen*

7X

8. A copy of this order be sent to the respondents forthwith, who shall accomplish action in this regard within two months from the date of receipt of a copy of this order.

The OA is decided accordingly with no order as to costs.

B. N. D. H. D. Y. A. L.  
(B.N.DHOUNDIYAL)

MEMBER(A)

6/5/92

T. S. O. B. E. R. O. I.  
(T.S.OBEROI)

MEMBER(J)

6/5/92