

Central Administrative Tribunal, Principal Bench

Original Application No.918 of 1993

with

Original Application No.1354 of 1993

(12)

New Delhi, this the 8th day of September, 1999

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice Chairman
Hon'ble Mr. N. Sahu, Member (Admnv) -

O.A. 918/93

Shri Pramod Kumar Kapoor,
S/o Shri A.D. Kapoor,
Welfare Inspector,
Western Railway,
Kota Division,
Tughlakabad

.....Applicant

(By Advocate: Shri B.S. Mainee)

Versus

Union of India : through

1. The General Manager
Western Railway,
Church Gate,
Bombay

2. The Divisional Railway Manager,
Western Railway,
Kota

3. The Sr. Divisional Electrical Engineer
Western Railway,
Tughlakabad

.....Respondents

(By Advocates: Shri P.S. Mahendru and Mrs. B. Sunita
Rao through proxy counsel Sh. R.K. Shukla)

O.A. 1354/93

Shri Pramod Kumar Kapoor,
S/o Shri A.D. Kapoor,
Welfare Inspector,
Western Railway
Kota Division,
Tughlakabad
C/o Shri B.S. Mainee
Advocate,
240, Jagriti Enclave,
Delhi-110092

.....Applicant

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Versus

Union of India : through

1. The General Manager
Western Railway,
Church Gate,
Bombay

Shri B.S. Mainee

2. The Divisional Railway Manager,
Western Railway,
Kota

3. The Sr. Divisional Personnel Officer
Western Railway,
Kota

4. Shri S.S. Rathore,
Medical Superintendent
Western Railway,
Kota

.... Respondents

(By Advocates: Shri P.S. Mahendru and Mrs. B. Sunita
Rao through proxy counsel Sh. R.K. Shukla)

O R D E R

By Hon'ble Mr. N. Sahu, Member (Admnv)

O.A. 918/93 was filed by the applicant for a direction to the respondents to assign proper seniority to him and consider him for promotion in the cadre of Welfare Inspector. Subsequent to filing of the O.A., the applicant was reverted to the post of Assistant Station Master (in short 'ASM'). The applicant had filed another O.A. 1354/93 challenging the respondents' action in reverting him. A prayer was made in M.A. 1854/98 to link both these cases and dispose them of together and hence this common order.

2. In O.A. 1354/93, the applicant seeks a direction to the respondents to allow him to perform his duty as Welfare Inspector which post he was holding for the last one year. He is aggrieved in this O.A. by the action of the respondents in sending him for medical examination once again when he was declared to be medically unfit for ASM's post. The background facts leading to the dispute in both the OAs are as under.

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3. The applicant was appointed as ASM of the Western Railway in the grade of 1200-2040 and was posted under Divisional Railway Manager (in short 'DRM'), Kota. He was promoted to the next higher grade of 1400-2300 with effect from 2.6.88. It is laid down in the rules that ASMs have to pass periodical medical examination, particularly the vision test because ASM is a safety post. Applicant was accordingly sent for medical test on 7.1.92 and was declared medically decategorised. The screening committee met to decide an alternative post in the equivalent grade for him. The applicant was found suitable by the screening committee held on 6.2.92 for the alternative post of Welfare Inspector in the grade of 1400-2300. Thereafter an aptitude test was proposed to be conducted. The said test was conducted after a postponement on 11.5.92 when the applicant was declared fit for the post of Welfare Inspector. Accordingly the applicant was posted as Welfare Inspector Grade-3 in the scale of 1400-2300 at Tughlakabad by an order with effect from 12.5.92. The applicant states that his posting was deliberately delayed till 11.5.92 to give scope for other Welfare Inspectors to join and to gain seniority. He was assigned seniority from the date of his joining as Welfare Inspector. He states that under the rules, a person who is declared medically unfit and absorbed in an alternative post, has to be assigned seniority on the basis of length of service in the equivalent grade. Applicant had been finally and permanently absorbed in the alternative job of Welfare Inspector because Medical Superintendent, Kota had declared him

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unfit for A-2 category and fit for A-3 and below with glasses for distant vision. He worked for more than a year as Welfare Inspector. As things stood thus on the basis of complaints received against the applicant alleging that he "managed" to get the medical test, six months before his due date, the applicant was sent for special medical re-examination. According to the applicant, there is no provision for such re-examination. In pursuance of this re-examination dated 21.5.93, respondent no.4 declared the applicant fit for A-2 category with glasses. This is impugned by the applicant on the ground that the same doctor had declared him unfit for A-2 category and fit for A-3 and below category with glasses for distant vision on 7.1.92. On the basis of the re-examination by the doctor, the applicant was reverted to the post of ASM.

4. We have examined the original file. There were complaints to the General Manager about the illegal decategorisation and absorption of the applicant as Welfare Inspector in the scale of 1400-2300. According to the complaint, not less than two doctors can and shall hold a medical decategorisation on visual acuity. In the applicant's case, he was decategorised by a single doctor. This was done on 6.1.92 although the examination should have taken place after he completed six years of service on 13.5.92. It was pointed out that even on 4.1.92, his request for medical examination was returned by CMS, Ratlam for keeping length of service in view. He was therefore directed to be examined after 11.5.92. The General Manager got an inquiry

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done. After receiving the Inquiry Report, the General Manager was satisfied that a medical re-examination was necessary. A special medical examination was directed in the applicant's case. Dr.S.S.Rathore was nominated to conduct special medical examination. On 24.6.93, the Medical Superintendent declared him fit for the post of ASM in A-2 category with glasses for distant vision.

5. The situation we are facing is an amusing situation. The same Medical Supdt. had given conflicting reports on 7.1.92 and 24.6.93. The respondents had acted on the first report and decategorised the applicant and appointed him as Welfare Inspector. According to the respondents, the applicant had not completed six years service and on 1.1.92, he was not due for any medical examination. By mistake he was sent for medical examination. A number of complaints were received from various railway employees. The complainants were from both Welfare Inspectors and ministerial staff. The allegation was that the applicant had 'managed' his medical decategorisation. In the counter it is stated that instead of attending office, the applicant was unauthorisedly absent since 18.6.93.

6. Six Welfare Inspectors had filed O.A.398/93 titled as C.P. Sonkiya vs. UOI & ors. before C.A.T., Jaipur Bench. The order dated 18.11.92 was challenged. The Bench by an order dated 6.7.93 held that status quo as on that date should be maintained.

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7. The respondents' case is that:

(i) they have a right to send the applicant for re-examination. An administrative decision was taken to verify the genuineness of the alleged decategorisation.

(ii) there is no rule prohibiting the respondents from conducting a re-examination; but there is no rule which permits the applicant to have his medical examination six months before the due date.

(iii) The applicant belongs to ASM cadre and had been reposted as ASM with all benefits of seniority and no prejudice of any kind was caused to him. He has no right to claim a post as Welfare Inspector because he did not belong to that cadre.

8. With regard to the applicant's claim of seniority, the respondents stated as under in reply to paras 4.14 - 4.15:-

"In reply to these paragraphs it is submitted that it is correct that the applicant was working as Asstt. Station Master scale Rs.1400-2300(RP) from May-88 and accordingly he was absorbed as WLI, grade-III scale Rs.1400-2300(RP). Shri S.C.Gautam, A.K.Sirsat and S.K.Bhargava had already been promoted as WLI Gr.II scale Rs.1660-2660(RP) - with effect from 30/4/92 i.e. prior to absorption of applicant as WLI. As such he cannot take seniority in higher grade i.e. 1600-2660(RP) as per rules."

9. We are convinced that the applicant was due for medical examination on 14.5.92. He could not have been examined five months in advance. We are also

satisfied that on complaints from various sources, the respondents are competent to get the applicant medically re-examined. The applicant should have contested the second examination as erroneous, if the finding was really so. There is a provision for appeal which he did not prefer. Such an appeal should be preferred within seven days of receipt of adverse report (R.B.No. 66/H/3/11 dated 23.1.67 and 13.6.67). Since no appeal was preferred and the applicant having accepted the said report, nothing further turns on his other claims. After the re-examination, he was posted as ASM, Shyamgarh. By this order, there was no prejudice to his pay, status and privileges.

10. While we uphold the decision of the respondents to re-examine the applicant, we are forced to comment that no action had been taken against the Chief Medical Officer who had given a report one year back which contradicted his later report. We suggest to respondent no.1 to examine this aspect and take appropriate action in this regard. The claim of subsequent events could have been avoided if the first medical report was done in a bonafide, clinical manner. Logical consequences will follow. We express our amazement as to why the respondents have not considered this angle. With these observations we dismiss O.A.1354/93.

11. With regard to O.A. 918/93, as we have approved the orders posting as ASM consequent on the second medical report, we don't think the applicant's

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claim for seniority as a Welfare Inspector has any more relevance. This O.A. has become infructuous.

12. Both the OAs are dismissed leaving the parties to bear their own costs.

(N. Sahu)
Member(Admnv)

(V.Rajagopala Reddy)
Vice Chairman(J)

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Original judgement in dt 9/8/93

by
C.O.C.M.