

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

O.A. 304/93

Date of decision: 11.6.93.

G.L. Kalra.

Applicant.

Versus

Union of India & Ors.

Respondents.

CORAM:

THE HON'BLE MR. N.V. KRISHNAN, VICE CHAIRMAN(A).
THE HON'BLE MR. B.S. HEGDE, MEMBER(J).

For the Applicant.

Shri S.S. Tiwari,
Counsel.

For the Respondents.

Shri Rajesh, Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. N.V. Krishnan, Vice Chairman(A))

The applicant was working as a Material Train Supervisor (M.T.S.) at the Railway Control Office, Hanumangarh. It appears from the Annexure-A letter dated 29.9.1992 sent by the third respondent, Divisional Personnel Officer, Bikaner to the Assistant Engineer, Hanumangarh Junction, that the applicant was examined by Senior Medical Superintendent, Lalgarh who by his letter dated 25.6.1992 declared the applicant as unfit for his basic post. He was, therefore, called by the Absorption Committee on 18.9.1992 for absorption in alternative post. The applicant then requested the Chairman, Absorption Committee, Northern

(6)

Railway, Bikaner on 18.9.1992 (Annexure 'B') to post him as Head Clerk in the Hanuman Garh Junction. On the recommendations of the Absorption Committee as approved by the D.R.M., Bikaner, the applicant was posted as Head Clerk in the Engineering Branch under the Divisional S.E. Bikaner. Accordingly, the Assistant Engineer was asked to send the consent letter of the applicant.

2. The applicant submitted a representation to the D.P.O. against the Annexure-A order on 1.10.1992 indicating therein that he was filing an appeal against the remarks of the Railway doctor (Annexure D). He filed an appeal against the remarks of Railway Doctor, Lalgarh, to the Chief Medical Officer (4th Respondent) on 3.10.1992 (Annexure 'E') through proper channel. He sent a reminder on 23.12.1992 to the same authority (also marked as Annexure 'E'). In response to this reminder, the 4th respondent (Chief Medical Officer) informed him on 23.1.1993 (Annexure 'H') to send his appeal through proper channel to take further action. However, as the applicant was, nevertheless, being forced to join as Head Clerk, without waiting for the outcome of the second medical opinion, the applicant filed this application seeking the following reliefs:

(u)

(a) Set aside and quash the impugned order at Annexure 'H' to this application.

(b) Direct the Respondent No. 4 to give the reviewed medical report within a short specified period.

(c) Direct the respondents to absorb the applicant on appropriate post only after the Chief Medical Officer's report is received.

3. On 9.2.1993, when the O.A. came up for admission, notice was directed to be issued to the respondents and they were also directed to maintain the status quo of the applicant as on that day, till the next date of hearing, i.e. 22.2.1993. That interim order has since been continued and is still in force.

4. The respondents were represented by counsel on 22.2.1993 but no reply was filed by them and hence they were given till 24.3.1993. On that date when both counsel were present, we passed the following order:

"The main prayer in the application is against the Annexure 'H' letter issued to the respondents in which the applicant has been informed to send his appeal through proper channel. The learned counsel for the applicant pointed out that as a matter of fact the appeal at Annexure 'E' dated 3.10.1992 was already sent through proper channel, which is followed by reminder dated 23.12.1992 to which the impugned letter at Annexure 'H' has been issued. The respondents to make submission if any, within 2 weeks. Call on 08.4.93".

5. Since then, this O.A. came up before us on three occasions. Though the respondents had been given sufficient time, they have not filed a reply. The learned counsel for the respondents states that a letter has been sent by him to the respondents seeking their comments so that a reply could be filed. Till date, no comments have been received from the respondents. He, therefore, seeks additional time.

6. We have given our anxious consideration to the request. We are constrained to observe that the respondents have not taken any serious step to file the reply, particularly after we drew their attention to certain specific features of the application in our order dated 24.3.1993. As sufficient time has already been granted to the respondents, the prayer for grant of further time is rejected and the case heard on merits on the basis of the available records.

7. The learned counsel for the respondent is unable to point out to us the relevant provisions of the departmental rules and regulations which ~~gave~~ ^{l govern} the filing of an appeal to the fourth respondent. This would have been done by him without any instructions from his clients. In any case, we are of the view

u

that in the interest of justice a Government employee can file an appeal to a higher medical authority against the adverse medical report, so that such adverse report is either confirmed, contradicted or modified by the higher medical authority. That apart, it is significant to note that the fourth respondent does not state in his letter ^{or} ~~or~~ Annexure 'H' that no appeal lies, but that it has to be sent through proper channel.

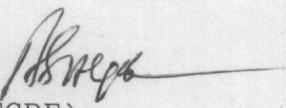
8. In this view of the matter, we are of the view that the applicant is entitled to some relief.

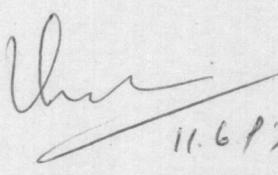
9. At this stage, the learned counsel for the respondent submitted that the interim relief granted may not be continued, ^{as} the applicant has been declared medically unfit, it would be dangerous to keep him on the job held by him earlier ^{as} ~~or~~ it might affect the safety of railways. This is a surprising submission made by the learned counsel, for, according to his own version, he is yet to get any instruction from the respondent about the case. We do not know on what basis this prayer is made. Further, our interim order was served dasti on the respondent and the third respondent received the interim order on 10.2.1993

(11)

He has not cared to move for the vacation of that order on the ground now pointed out by his counsel. We, therefore, do not find any merit in this objection of the learned counsel for the respondent.

10. We, therefore, dispose of this application at the admission stage by directing the fourth respondent to dispose of the appeal filed by the applicant within two months from the date of receipt of this order and communicate his decision to the applicant and the third respondent. We further direct the third respondent to pass such further order in accordance with law, as may be necessary, in the light of the decision given by the fourth respondent, within a further period of one month from the date of such decision. Until then, the respondents are directed to maintain status quo as on 9.2.1993, as directed by the interim order given on that date, which has been continued from time to time. With these directions this O.A. is disposed of at the admission stage.


(B.S. HEGDE)
MEMBER(J)


11.6.93
(N.V. KRISHNAN)
Vice Chairman(A)