

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD.

Allahabad this the day ...5th May... 1997.

ORIGINAL APPLICATION NO. 1046 OF 1996.

CORAM : Hon'ble Dr. R.K. Saxena, Member-J
Hon'ble Mr. D.S. Baweja, Member-A

A.N. Mazumdar, S/o Late A.N. Mazumdar,
ETL (Train Lighting Supervisor) Under Chief
Electrical Foreman, Coaching Training Lighting
Northern Railway, Allahabad.

..... Applicant.
(By Advocate Shri Satish Dwivedi)

Versus

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager,
Nawab Yusuf Road, Northern Railway, Allahabad.
3. Dr. Mrs. C.J. Garg ,
Former Chief Medical Superintendent,
Northern Railway at present posted as Chief
Gynaecologist, Northern Railway Hospital,
Moradabad.
4. Dr. H.K. Srivastava,
retired Chief Medical Superintendent,
Northern Railway Hospital, Allahabad, through
Chief Medical Superintendent , Northern Railway
Hospital, Allahabad.

..... Respondents.
(By Advocate Shri S.K. Jaiswal)

O R D E R

By Hon'ble Mr. D.S. Baweja, Member-A

1. This application has been filed praying
for the following reliefs :-

a) to direct the respondents to issue certificate as to fitness or unfitness for the duty of the post held by the applicant.

b) to direct the respondents to pay salary from July 1996 onwards and also pay the same in future till the date of retirement.

c) to treat the entire sick period from 25.11.1994 till the date of joining as duty and not to adjust the period as leave of the applicant.

2. The applicant while working as ETL (Train Lighting Supervisor) under Chief Electrical Foreman, Coaching Train Lighting, Northern Railway, Allahabad, felt acute problem ~~in~~ performing duty at night time due to diminishing vision. He made a representation to allot him duty which involves day working. The applicant was referred to the Railway Hospital for medical check up. The applicant was placed under sick list on 25.11.1994 and since then he is continuing on sick leave and he has not been declared either fit or unfit for the ~~present~~ job. Being aggrieved, the present application has been filed on 24.9.1996 praying for the reliefs as detailed above.

3. The applicant has detailed the developments leading to his continuing ~~on~~ sick list from 25.11.1994 as follows. The applicant has stated that he is an old patient of Central Serous Retinopathy since 1969 due to which his vision was diminishing. The Medical Officer recommended posting which did not involve

XX

night duty. However, he was not allowed such a duty, and he filed a Civil Suit. The Civil Suit was decided in his favour and he was given duty in day time from 12.5.1978. Subsequently, he was again medically examined and was declared fit for night duty from 16.8.1982. However, the applicant was still experiencing the problem of working ~~at~~ night time due to poor vision and represented against the same from time to time but no action was taken. In 1994 the applicant experienced acute problem due to poor vision and again requested for day duty. The applicant thereafter was sent for medical up and he was placed on the sick list from 25.11.1994. He was examined by Senior Divisional Medical Officer (Eye), Railway Hospital, Allahabad and he was referred to ~~the~~ Central Hospital at New Delhi. The applicant was examined at Central Hospital on 9.12.1994 and thereafter a Medical Board was constituted to determine the applicant's fitness for the present post. The Medical Board was fixed on 29.12.1994 but no board was held in this case and thereafter it was fixed on 1.6.1995. However, this date was also postponed and the applicant was again sent to Central Hospital at New Delhi and was admitted therein ^{on} 22.6.1995. He was informed that the Medical Board would be held on 26.6.1995 ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXX~~ but no Medical Board was held on this date and ~~he~~ instead, he was referred to All India Institute of Medical Sciences (A.I.I.M.S.). He was examined there ~~on~~ 28.6.1985 and was advised V.E.R Investigation. Since the machine was out of order, this investigation could not be done. Thereafter the applicant reported to the

Hospital at Allahabad, Chief Medical Superintendent Allahabad vide letter dt. 20.10.1995 advise the applicant that the Medical Board would be held on 9.11.1995. However, no medical board was held on 9.11.1995. ~~xxxxxxxxxx~~
~~xxxxxxxxxx~~ medical board was held on this date but the applicant was admitted in the Hospital and was discharged on 30.11.1995. He was again sent to All India Institute of Medical Sciences for V.E.R investigation vide letter dated 13.12.1995. V.E.R investigation was done thereafter on 20.12.1995. Thereafter, the medical board was fixed on 13.2.1996 and was held on this date but no decision was conveyed to him inspite of the repeated reminders. Vide letter dated 16.5.1996, the applicant was directed to attend the Central Hospital, New Delhi for M.R.I Examination. The applicant alleges that Chief Medical Superintendent Allahabad has arbitrarily and without any reason issued letter dated 16.5.1996 to delay the decision with regard to fitness or otherwise of the applicant. This application has been thereafter filed on 24.9.1994.

4. The main ground advanced by the applicant ~~challenge~~ is that Under Rule 560(B) of Indian Railway Medical Manual, after expiry of six months, the applicant should have been declared either fit or unfit or the post held by him but no such order was passed and the applicant has been continued on sick list without any treatment for more than two years. The application therefore, ^{labels} ~~attacks~~ the action of the respondents as arbitrary, discriminatory and malafide.

5. The respondents have⁵ filed the counter reply through Dr. Vidya Sagar, Medical Superintendent, Northern Railway, Allahabad, on behalf of all the respondents. The respondents submit that no Medical Board was fixed on 29.12.1994 ^{by} Chief Medical Superintendent, Railway Hospital, recommended for the same vide his order dt. 29.12.1994. He sent the proposal to Chief Medical Director, New Delhi. On certain quarries made by the Chief Medical Director ^{and} ^{was replied.} ^{known approved of} The same was not on the proposal and on his direction, the applicant was advised to report to Central Hospital, New Delhi. From there, he was directed to All India Institute of Medical Science for investigation. V.E.R investigation was advised which could not be done due to machine being defective. It is further admitted that the Medical Board was proposed on 9.11.1995 but the same could not be held due to non sparing of the Doctors due to exigencies of the service. The applicant thereafter was sent to All India Institute of Medical Sciences and V.E.R examination ^{Arch'd} was held on 20.12.1996. Thereafter the Medical Board was held on 20.2.1996. The Medical Board was of the view that V.E.R investigation has not been explained the reasons for gross diminution of vision and recommended M.R.I Examination. After taking the approval of the Chief Medical Director for M.R.I Examination, the applicant was advised vide letter dated 10.5.1996 to get M.R.I Examination done but he has not complied with the same and the matter is pending at this stage. It is further submitted that since no gross pathology co-relating his gross diminution of vision could be established, no treatment was advised. The respondents aver that ^{no} ^{any} harassment ^{been done @} to the applicant and fitness or otherwise ^{could} ^{be given only} M.R.I Examination is done. The applicant is not cooperating for finalisation of his case and as such the allegations of arbitrary discriminatory and malafide action are totally baseless. The

respondents contend that the application has no merit and the same deserves to be dismissed.

6. The applicant has filed the rejoinder affidavit repelling the submissions of the respondents. The applicant has stated that he could not go for M.R.I examination as inspite of repeated representations, the payment of his previous T.A. bills from December 1994 onwards had not been paid. The applicant also made an application for advance T.A. for going to Delhi for M.R.I examination but the same has also not been granted. No action has been taken on this representations by the respondents. The applicant is ready to go for M.R.I examination but he is being prevented to do so by not making his advance payment ~~of~~ T.A. to him.

7. We have heard Shri Satish Dwivedi and Shri S.K. Jaiswal the learned counsel for the applicant and respondents respectively. We have carefully gone through the material placed on the record and also considered the arguments advanced during the hearing.

8. From the rival contentions, it is an admitted fact that the applicant was placed on the sick list from 15.11.1994 due to dimishing vision and since then he is continuing on the sick list. From the details furnished by the either party, it is observed that the applicant was examined by the Senior Divisional Medical Officer (1) Railway Hospital, Allahabad, and thereafter he was referred to Central Hospital, New Delhi. Based on the report of the

Central Hospital, Chief Medical Superintendent Railway Hospital, Allahabad, sent a proposal to the Chief Medical Director, New Delhi, for holding Medical Board to determine the fitness or otherwise of the applicant for the present post. There was some correspondence on the subject and the Chief Medical Director, New Delhi, ^{there} advised the applicant be sent for further investigation Central Hospital, New Delhi. The applicant was admitted in the Central Hospital, New Delhi and from there, was referred to All India Institute of Medical Sciences where he was examined on 28.6.1995 and V.E.R Investigation was advised ~~out~~. However, the machine was out of order and applicant reported back to Railway Hospital, Allahabad. ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxx~~
~~xxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ The Medical Board was fixed on 9.11.1995 but the same was not held as a concerned Doctors could not be spared due to the exigencies of the service. The applicant was again sent for V.E.R investigation to All India Institute of Medical Sciences, New Delhi and V.E.R investigation was done on 20.12.1995. Thereafter, the Medical Board was held on 13.2.1996 which recommended further investigation through M.R.I examination as the cause for diminishing of the vision could not be established. After obtaining the approval of the Competent Authority, the applicant was directed to undergo M.R.I Examination at Delhi vide letter dt. 10.5.1996. Thereafter, the applicant did not go for M.R.I examination and has filed the present application on 24.9.1996. The applicant has admitted ~~of~~ the fact that he was advised to undergo the M.R.I Examination at New Delhi but he has maintained silence as to what happened thereafter till the filing of the present application in September

1996. Only in rejoinder reply, the applicant has disclosed while replying to the averments in the counter reply that he could not go for M.R.I Examination as the payment of the travelling allowance for the earlier months ~~from~~ the December 1995 onwards, as well as the advance travelling allowance asked for going to Delhi have not been paid. From these factual details, it is quite apparent that the applicant was under investigation to diagnose the cause of diminishing ~~the~~ vision. We note that the investigations have taken considerable time but from the averments made we are not able to sense ~~that~~ any intentional delay had been caused by the concerned medical authorities. The applicant has alleged malafide against Dr. H.K. Srivastava Chief Medical Superintendent, Railway Hospital, Allahabad. We, however, find that the grounds advanced alleging ~~as~~ malafide are flimsy and without any basis. It is not brought out as to how and why Dr. H.K. Srivastava was prejudiced against him and what interest he had in delaying the case of the applicant. We find that no motive has been attributed ~~to~~ Dr. H.K. Srivastava except making a general statement. Infact, Dr. Srivastava took over the charge of Chief Medical Superintendent ^{1.1.95} only ~~in 1995~~ and the applicant had been placed on sick list much earlier. Further, it is only taking over of Dr. Srivastava, the Medical Board was held on 13.2.1996. Considering these facts and circumstances, we are convince that the delay ~~in~~ carrying out the investigation and deciding the case of the applicant for fitness or otherwise for the present post, was not deliberate and with malafide intention.

9. Whether an employee is fit for holding the particular post he is holding at present are fit for some other post is a matter which lies within the domain of the competent Medical Authority. Such a matter cannot be a subject of challenge seeking judicial interference until and unless a case is made out that delaying of the case has been ~~delayed~~ ^{done} with malafide intention. As deliberated above, we find no case for deliberate and malafide action for the delay caused in the investigation. It seems to have taken place in the normal course.

10. As brought out earlier, the applicant also seems to have been not interested in expediting the investigation. Infact, he was asked to go for M.R.I Examination, he did not go for the same. The applicant did not come out with the factual position for not undergoing the M.R.I Examination after having been directed and instead sought the judicial interference by filing this application. If the applicant was keen to expedite his case, he would not have made the issue of non payment of travelling allowance or sanction of the advance travelling allowance. We are not going to the merits of this issue, as no relief on this aspect has been prayed for and there are no averments ^h with this effect to this Original Application. The applicant seems to be ^{hence} putting pressure to declare him unfit for the present post. Looking to these facts, we are unable to find any merit in the prayer of the applicant that direction be issued to declare the applicant fit or otherwise for the present post and no judicial interference is called for.

- 10 -

11. The other reliefs prayed for are linked with the issue of being declared fit or otherwise for the present post and, therefore, they do not merit ~~any~~ consideration.

12. In the result of the above discussions, we are unable to find any substance in the application and the same is accordingly dismissed. No order as to costs.

S. Haweij

MEMBER (S)

D. D. Dardess

MEMBER (J)

am/