

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No.577 of 1998.

Allahabad this the 17th day of March 2004.

Hon'ble Maj Gen K.K. Srivastava, Member-A.
Hon'ble Mrs. Meera Chhibber, Member-J.

Chhabbi Nath son of Shri Ragghoo under Permanent Way Inspector (Section Engineer/Track) Meja Road, Railway Station, Allahabad Division, resident of Bakchuna (Nai Basti) Sant Nagar, Post Office: Meja Road, District Allahabad.

.....Applicant.

(By Advocate : Sri M.K. Upadhyay)

Versus.

1. Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Allahabad Division, Allahabad.
3. The Divisional Superintending Engineer (Co-ord.) Northern Railway, Allahabad Division, Allahabad.
4. The Senior Divisional Personnel Officer, Northern Railway, Allahabad Division, Allahabad.
5. The Assistant Engineer, Sub-Division, Northern Railway, Allahabad Division, Mirzapur.

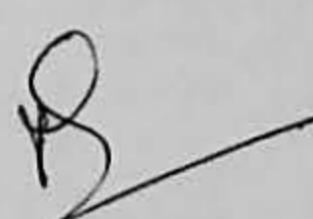
....Respondents.

(By Advocate : Sri A Tripathi)

O_R_D_E_R

(By Hon'ble Mrs. Meera Chhibber, J.M.)

In this case grievance of the applicant is that he was found to be unfit for working as Gangman, therefore, was recommended for sedentary job in category B-1 and below with near vision glasses on 27.02.1990 (page 13) but on 03.09.1997 he was once again told that in case no



alternative job is found for him in B-1 and below he shall be discharged from service because the post of Gangman is in B-1 category (pg.12) even though from 1990 to 1997 he was being made to perform light duty only. He has submitted that he could not have been compelled to remain on forced leave even on extraordinary leave without pay in an arbitrary manner as that is contrary to instructions issued by Divisional Supdt. Engineer vide letter dated 4.12.1995 wherein it was held that old cases which have been decided will not be reopened.

2; Being aggrieved he gave representation but since no reply was coming forth so he had no other option but to file this O.A. He has sought the following relief(s):-

"(a) An order or direction be issued to the respondents to quash the impugned notice issued by respondent No.5 vide No.E/Medical/Unfit dated 3.9.1997 sending the applicant on forced leave by reopening the case as fresh of medical examination and not allow him to perform the alternative job which he was provided w.e.f. 13.4.90 after considering the finding of the Medical Board conducted in February 1990.

(b) An order or direction be issued to the respondents to treat the period of forced leave of the applicant from 16.8.97 to still as duty and arrange payment of pay and allowances for the same period."

3. Respondents have opposed this O.A. on the ground that there is no leave salary ~~is~~ as per his records which shows he was not injured while on duty otherwise he would have reported sick. On the contrary he is shown as absent from 15.12.1989 to 16.12.1989, 27.12.1989 to 31.12.1989, 11.02.1990 to 23.02.1990, 24.02.1990 to 26.03.1990 to 27.03.1990 to 23.04.1990.

B P. Way Inspector
He could not have given alternate job to applicant as power vests only in Divisional Railway Manager.

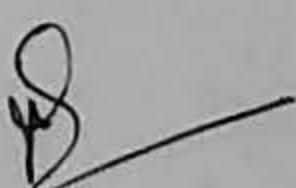
He was working as Gangman but he was not able to

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perform the duties, therefore, Assistant Engineer ordered special medical examination. On receiving the medical report, Assistant Engineer sent a proposal to Divisional Railway Manager for giving light duties to the applicant and till such approval was received applicant was allowed to draw salary by granting him leave. Since he exhausted all his leave he had to remain on leave without pay also for sometime. Divisional Railway Manager (P) has already asked applicant vide his letter dated 29.08.98 to appear before him for alternate job. They have further submitted that at present the report of D.S.C./C and D.P.O in favour of the employee is being given effect to and as soon as the approval of the D.R.M (P) for giving light duty is received employee would be posted on such post.

4. After hearing both the parties, we had directed the respondents to produce the records as none was able to tell us, what happened after 29.8.98. The respondent's counsel produced the records which show that on 10.8.98 applicant was directed to appear in D.R.M Office on 27.8.98 for screening so that he could be considered for alternative job.

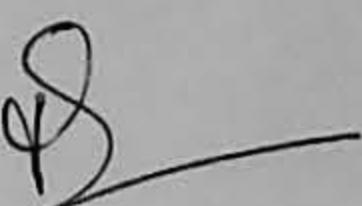
5. Thereafter vide order dated 26.10.98 applicant was discharged from service due to non availability of suitable vacancy. This order was sent to the applicant but it was returned with the remark that applicant refused to take it. It is the respondent's case that they had considered him for alternate job but since no vacancy was available he was discharged. The question ~~was~~ ^{then B} arises whether applicant could have been discharged or not. Applicant's counsel relied on A.T.J 2003 (1) page 596 the judgment given by Hyderabad Bench in the case of P. Pardhararathy Vs. U.O.I & Ors and the D.R.M's letter



dated 20.11.1995 (pg.20).

6. Respondents have explained that after his medical de categorisation even though the concerned officer was not competent, he assigned light duties to applicant but due to applicant's deteriorating health, he could not even carry out the light work and refused to do even sedentary duty, therefore, he had to be referred for special medical examination on 01.08.1997. The Chief Medical Officer returned the letter on 16.8.97 by endorsing his earlier remark. Thereafter an effort was made to find some other alternate post but since it was taking time he was granted leave as admissible to him from 16.8.98 to 7.9.79. He was sent for screening on 27.8.98 on the ground of his physical fitness but he was found unfit, therefore, D.P.O vide his letter dated 08.10.1998 ordered for his discharge. Assistant Engineer in turn discharged him from service vide his order dated 28.10.98 but applicant refused to acknowledge the same. Similarly for his final settlement *also*, he was directed by the officers to **attend the office but he refused to accept the letters therefore, nothing could be done.**

7. It is seen from records that applicant was said to have been found totally incapacitated but I could not find any such recommendation by any medical board in the file submitted to me. On the contrary the medical report which is on record shows that as late as on 16.8.97 also the Chief Medical Supdt. had reiterated his earlier stand that applicant is recommended for sedentary job in category B-I and below with near vision glasses. There is also nothing on record to show that any effort was made by respondents for giving any alternate job to the applicant .



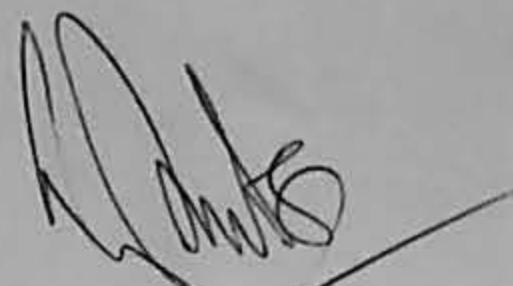
8. It seems that finding has been recorded by the D.P.O. without making any effort for providing alternative job to the applicant, therefore, this case is being remanded back to respondent No.2 to personally look into the matter and in case applicant is found fit for sedentary job by the Medical Board to make an effort to provide him some alternate job or else pass a reasoned and speaking order under intimation to the applicant alongwith medical Board's opinion. This exercise shall be completed within three months from the date of receipt of a copy of the order.

9. With the above directions, this O.A. is disposed off.

No order as to costs.



Member-J



Member-A.

shukla/-