

8

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

ORIGINAL APPLICATION NO.644 OF 2005.

ALLAHABD THIS THE 9th DAY OF February 2007

HON'BLE MR. P.K.CHATTERJI, A.M

Abdul Rasheed aged about 43 years, son of Sri Abdul Majeed, Resident of 55, Vishat Khana, Near Char Khambha, District Jhansi.

.....Applicant

(By Advocate: Sri S.M Ali)

VERSUS.

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Jhansi.
3. Chief Medical Superintendent North Central Railway, Jhansi.

.....Respondents

(By Advocate: Sri Anil Kumar)

O R D E R

This O.A. has been filed challenging the order of respondents dated 21.8.2005 in compliance with the direction of the Tribunal in O.A. NO.1036/04 dated 11.10.2004.

2. The facts of the case stated briefly are that the applicant was sent for medical examination before acquiring a temporary status. He was declared fit in B-1 category and got temporary status. The service of the applicant was discontinued reportedly with the assurance that when work would be available his service as casual labour would be recalled. In response to the notification of Divisional Railway Manager Jhansi dated 30.8.2001, the applicant submitted his bio-data. He was called for screening vide letter dated 27.3.2003, and after passing screening test respondent NO.2, it is stated by the applicant, issued appointment letter dated 30.3.2004 (Annexure No. V), The applicant thereafter was sent

meeth

for medical examination vide memo dated 20.4.2004. It is stated by the applicant that the Chief Medical Superintendent treated him as fresh candidates because the competent authority failed to indicate his status as ex casual labour on the memo for medical check up and consequently, the applicant alleges he was declared unfit in a medical test purely on account of Administrative failure. The applicant has further stated that as per I.R.E.M Vol-2 para 2007 4 (b) such of the casual labour, as are found, on medical examination unfit for the particular category for which they are sent for medical examination, may be considered for alternative category requiring a lower medical classification subject to their suitability for the alternative category being adjudged by the screening committee, ^{and} to the extent it is found possible to ~~the~~ allow ~~ing~~ absorption against alternative post requiring lower medical classification

Insert

3. It is further stated by the applicant that he presented himself in District Hospital for medical checkup and Chief Medical Officer issued fitness certificate in his favour, a copy of the certificate dated 9.5.2004 has been filed as Annexure NO. VIII. The applicant submitted a representation alongwith certificate of fitness but respondents did not take any action. Therefore, the applicant filed O.A. 1036/04 upon which the Tribunal directed the respondents to decide the pending representation of the applicant dated 10.5.2004 by a detailed and speaking order. The applicant furnished the copy of the judgment to the respondents and thereafter respondents issued another memo for medical examination dated 2.12.2004. But in the said memo the status of the applicant as ex casual labour was not mentioned. The applicant made a representation on 27.12.04 before the respondents and prayed for issuance a proper medical memo. But without paying

Insert

any heed to his representation, the respondents issued the order dated 21.8.2005 which has been impugned in this O.A.

4. While challenging the order of respondents dated 21.8.2005 the applicant has stated that the statement of the respondents in the said memo that he was not found suitable for any category in the medical examination was not correct. The applicant has drawn my attention to the certificate of the Chief Medical Superintendent dated 9.5.04 (A-VIII) which reveals that Superintendent did not find him disqualified for employment. Under what ground the respondents stated that he was found unsuitable for any category is, therefore, not known.

5. I have gone through the reply of the respondents on this allegations in the O.A. It is stated in para 6 of the C.A that in the year 2004, the applicant was checked by the Medical Board but was found medically unfit vide certificate dated 31.4.2004 (Annexure A-6 page 20 of the O.A.). I have perused A-VI at Page 20 of the O.A. which is a form duly filled up which is used when a candidate is granted permission for medical examination for fitness for appointment. There is no medical certificate dated 31.4.2004 declaring the applicant unfit as stated by the respondents. On the other hand, at A-VIII page 22 of the O.A. there is a certificate declaring the applicant suitable for appointment by the Chief Medical Superintendent dated 9.5.2004. During the argument and in the counter affidavit, the respondents have not clarified this contradiction between their statement that on 30.4.04 the applicant was declared unfit, and the certificate of fitness dated 9.5.2004 (Produced by applicant at A VIII).

meeth

6. The respondents have stated that in compliance with the direction of the Tribunal dated 11.10.2004, they called the applicant for second medial examination but he did not turn up, accordingly his representation was disposed. However, they have not referred to the request made by the applicant for issue of the proper memo indicating the applicant's status as casual labour for medical examination. According to the applicant, it was necessary because ex-casual labours are eligible for consideration under relaxed medical standard.

7. The learned counsel for the applicant referred to the case decided by the Jodhpur Bench of the Tribunal Anil Kumar Gupta Vs. U.O.I 1991, 18 ATC 310. In this case, the applicant was declared unfit for particular category of service while he was declared fit for other category. A second Medical Board on examining him declared him totally unfit. The Tribunal held that this appellate medical board should not have consisted of Medical Officers of lower status than those in the first Board. The Tribunal directed re-constitution of an Appellate Board. This, it is however, observed is not much pertinent to the present O.A.

8. The learned counsel has also referred to the decision of this Tribunal dated 5.7.06 in O.A. NO. 643/05 dealing with similar matter. The Tribunal directed that the applicant should be medically reexamined by the Board of three doctors of the Railway giving him the benefit of ex casual labourers then respondents decide whether ~~if~~ applicant was medical fit for getting appointment in group D for which he was sent for medical examination.

9. I have gone through the record, pleadings and heard the arguments. The impugned order dated

Munshi

28.1.2005 states that he was declared medically unfit for all categories by medical certificate 6.5.2004. Later while replying to the original application, at para 6 of the reply the respondents have stated that he was declared not fit vide medical certificate dated 31.4.2004. Therefore, there^{is} a contradiction between the two positions which has not been resolved. It would appear from the impugned order that it was issued ~~another~~^{rather} hastily. The respondents did not even consider the request ~~for~~ the applicant for issuing a proper memo for medical examination. The claim of the applicant that if properly examined he would not be found unfit in all categories seems credible in the background of this contradiction and confusion.

10. I have also perused the judgment of the Tribunal in O.A. 643/05. In many ways there are similarity between the two cases, I am of the view it would be appropriate if the same benefit as given to the applicant of O.A. 643/05 is given to the present applicant. With these observations the impugned order is set aside and it is directed that the applicant be medically reexamined by Board of three Doctors of the Railways giving him the benefit of being ex-casual labour and then respondents decide whether he is medically fit in any category. If found suitable for any category the respondents will pass suitable order as admissible under the Rules. This should be done within a period of four months from the date of issue of this order. No costs.



Member (A)

Manish/-