

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No.872 of 2016

CORAM:

HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER(J)
HON'BLE MR. T. JACOB, MEMBER(A)

Jagannath Bagh, aged about 61 years, S/o. Rubben Bagh, Retd. Keyman/Engg./Construction under Chief Engineer-III/Con./ECoR/BBS. (Since dead)

Substituted Applicants vide MA No. 645/2019

1. Demoati Bagh, aged about 57 years, Widow of Late Jagannath Bagh,
2. Kumuti Bagh, aged about 32 years, Son of Late Jagannath Bagh,
3. Tulasa Bagh, aged about 34 years, Unmarried daughter of Late Jagannath Bagh

All are resident of Vill – Maliguda, PO – Kendar, PS – Koraput Town, Dist – Koraput, Odisha.

.....Applicant

VERSUS

1. Union of India represented through the General Manager, East Coast Railway, E.Co. R Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Chief Personnel Officer, East Coast Railway, E.Co. R Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Chief Administrative Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. Chief Engineer-III/Construction, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
5. Senior Personnel Officer/Con./Co-ordn., East Coast Railway, At/PO- Mancheswar, Bhubaneswar, Dist. Khurda.

.....Respondents.

For the applicant : Mr. N.R. Routray

For the respondents: Mr. S.K. Ojha

Heard & reserved on :23.03.2021

Order on :09.07.2021

O R D E R

Per Hon'ble Mr. Swarup Kumar Mishra, Member (J):-

This Original Application has been filed by the applicant challenging the order of rejection by not declaring him invalid for service w.e.f. 03.12.2014 and grant of benefit meant for medically de-categorised employees with the following relief:-

“(i) To direct the Respondents to declare the applicant medically de-categorised/invalid for further service w.e.f. 03.12.2014 and extend benefits meant for de-categorised employees;

(ii) And / Or to direct the Respondents to regularize the entire period of service from 03.12.2014 to 30.06.2016 by grant of extraordinary leave and extend benefit of 7th Pay Commission as admissible to all employees;

And pass any other order as this Hon’ble Tribunal deems fit and proper in the interest of justice;

And for which act of your kindness the applicant as in duty bound shall ever pray.”

2. The OA was filed by the applicant Shri Jagannath Bagh who during pendency of the OA expired on 17.02.2018. MA No. 645/2019 was filed for adding the legal heirs of the deceased employee as substitute applicant, which was allowed vide order dated 30.08.2019.

3. The deceased husband of applicant No. 1 was a regular railway employee of Construction Organization of East Coast Railway. While the applicant was working as a Keyman under C.E.-III/Con./ ECoR/BBS suffered from various diseases and undergone treatment in Railway Hospital and other Govt. Hospitals. Finally, the applicant was admitted as an indoor patient on 03.12.2014 in Central Hospital / ECoRly/ Mancheswar. At the time of further check-up, the Respondent No.6 vide letter dated 25.05.2015(Annexure-A/2) referred the applicant to department of Psychiatric, SCB Medical College, Cuttack for examination and advised regarding the treatment.

4. It is submitted that, the Doctor’s of Psychiatric Department, SCB Medical College had submitted a detailed report along with letter dated 09.06.2015 (Annexure-A/3) to Respondent No.6 wherein it is assessed that the percentage of hearing impairment was 90% and the disability related to his mental state and auditory acuity loss and therefore unfit for the job. Thereafter, the family members of the employee have submitted an application dated 27.08.2015 (Annexure-A/4) to Respondent no.1 to refer the case to Medical Board. The Respondent No.6 has issued instruction dated 08.09.2015 (Annexure-A/5) to refer the applicant to Department of Psychiatric and Neurology, AIIMS. The Doctor, AIIMS specifically submitted report dated 09.09.2015 (Annexure A/6) with the

noting that 'his mental status does not permit him to take up any responsible duty in future', in view of the progressive deteriorating nature of the illness. The Respondent No.6 vide letter dated 03.11.2015 (Annexure-A/7) communicated the decision of Medical Board.

5. It is submitted that on 07.04.2016(Annexure-A/8) the son of the Employee had submitted an application to Respondent No.1 and requested to intervene in his father's case to declare him unfit for further service. Thereafter, the wife of the applicant has submitted an appeal dated 30.06.2016(Annexure-A/13) to the Respondent No.1 and requested to take necessary steps/action to declare the applicant medically invalid for further service w.e.f. 03.12.2014 and extend all the benefits meant for an unfit employee.

6. It is further submitted that, being aggrieved by the inaction on the part of the respondents in not taking any decision to declare her husband medically unfit for further service w.e.f. 03.12.2014 the wife of the applicant had filed O.A. No.505/ 2016 before this Tribunal. Vide order dated 27.07.2016 (Annexure-A/14) the O.A. was disposed of by this Tribunal with a direction to Respondent No.1 to dispose of the appeal within a period of three months. The Respondent No.2 in compliance to the order of this Tribunal dated 27.07.2016 passed in O.A. No.505/2016 was disposed of the appeal and pass the speaking order dated 11.11.2016 (Annexure-A/15).

7. The deceased husband of applicant no. 1 being aggrieved by the order dated 11.11.2016 (Annexure-A/15) without finding any other alternative remedy was constrained to approach this Hon'ble Tribunal by filing this OA. It is submitted that in view of the medical certificates as well as admission of facts made in the speaking order dated 11.11.2016 (Annexure-A/15), this is a fit case for interference of this Hon'ble Tribunal to direct the respondents to declare the applicant medically de-categorised for further service w.e.f. 03.12.2014 as well as grant of benefits meant for de-categorised employee. Hence, the order of rejection dated. 11.11.2016 is otherwise bad and illegal as such liable to be quashed.

8. The respondents in their counter inter alia averred that the averments made in Para 4.1 to 4.3 of the O.A., it is submitted that the applicant was working as Keyman in the office of CE (Con)-III, East Coast Railway, Bhubaneswar before his retirement on 30.06.2016 on attaining the age of superannuation. On 03.12.201, Sri Bag had been admitted as an indoor patient for the first time in Central Hospital, East Coast Railway, Bhubaneswar, with a history of mental

abnormality and diabetes. Prior to 03.12.2014, he had been performing his duties normally without any long period of absence from office due to sickness. Thereafter, he was advised to take psychiatric medicines by the Honorary Visiting Specialist (Psychiatry), Central Hospital, East Coast Railway, Bhubaneswar. However, the applicant did not attend the Psychiatric clinic of Central Hospital, East Coast Railway, Bhubaneswar, regularly, owing to which his compliance to medications was irregular.

9. It is further submitted that after assessment by AIIMS, Bhubaneswar, vide letter dated 08.09.2015 the applicant was diagnosed to be suffering from Vascular Dementia with Psychosis unspecified. It was also stated that the present mental status of the applicant would not enable him to assume or carry out any responsible duties in the future. However, the percentage of mental disability of the applicant was not mentioned in the AIIMS report. Subsequently, Medical Board was conducted at Central Hospital, East Coast Railway, BBSR on 29.10.2015 and the applicant was diagnosed to have only Psychosis with mild to moderate cognitive impairment, besides having hearing loss as well as cataract in both eyes. He was also to have normal recent and remote memory. It was opined that his condition was likely to improve upon compliance to regular medications. Hence, he was advised to take long-acting Psychotropic drugs in injection form, use hearing-aid and undergo cataract surgery, following which his condition would be reviewed after three months of regular medication. However, the applicant's son expressed unwillingness for cataract surgery of the applicant in a written communication to the Hospital dated 17.12.2015.

10. It is submitted that the Review Medical Board was conducted on 06.02.2016, but final decision could not be taken as the applicant had not undergone cataract surgery for correction of his vision. After a great deal of persuasion, the applicant finally agreed on 30.04.2016 to use hearing-aid and undergo cataract surgery. Thereafter, since the applicant was uncooperative and equipped with casual attitude before and after cataract surgery, the process got delayed and thus, his fitness could not be finalized before his retirement on 30.06.2016.

11. It is further submitted that leaves during the sick period had been sanctioned as per the applications of the applicant. Pra 530(1)(b), Chapter-V of IREC(Vol.I) (Annexure-R/1), states that Extraordinary leave maybe granted to a Railway servant in special circumstances wherein the Railway servant has to

apply in writing for the grant of extraordinary leave when other leave is admissible. Whenever, the applicant had applied for sick leave, nowhere in his applications he had ever claimed for grant of extraordinary leave. As per his application, he has availed leaves that were available in his leave balance. But after his leave balance got exhausted salary could not be drawn in his favour thereafter. The salary from 04.03.2016 to 30.06.2016 (date of retirement) was not drawn due to non-availability of leave and sanction of SLWP(Sanctioned Leave Without Pay) for the same period. In view of the aforesaid facts and circumstances, the O.A. is devoid from any merit and is liable to be dismissed with cost.

12. The applicant has filed rejoinder to the counter wherein reiterated the points raised in the O.A.

13. Heard Ld. Counsels for both sides and have gone carefully through the pleadings and materials on record. It is the specific case of the applicant that the department has never issued any medical certificate showing the medical fitness of the employee for the period from 03.12.2014 to 30.06.2015, whereas the SCB Medial college has categorically opined that “he is unfit for the job he is holding that involves cognitive acumen and prompt exact decisions of key man in Railway involving tract directions. Continuing in the post may involve mass accident”. The applicant also submitted that there is no pleading in the counter about the medical fitness of the employee in any category rather the respondents have admitted the illness. It is also submitted on behalf of the applicant that the respondents have never conducted any medical board for assessment of the disability of the employee. Learned counsel for the respondents on the other hand submitted that the report of SCB Medical College did not mention the applicant of being unfit for all categories of job in Railways. He further submitted that the applicant was not cooperating with the hospital or doctor’s advice on treatment owing to which his compliance to medications was irregular.

14. It is admitted by the applicant that on 07.10.2016 the son of the applicant had submitted an application requesting to declare his father unfit as a disabled employee followed by representation dated 30.06.2016 submitted by his wife requesting to declare her husband as medically invalidated from service w.e.f. 2014. The wife of the applicant had filed OA No. 505/2016 which was disposed of with direction to dispose of the representation filed by the wife of the applicant. The respondents in compliance of the order of this Tribunal had disposed of the

representation denying the benefit sought for by her. It is seen from the records that the applicant did not attend the psychiatrist in Bilaspur to whom he was referred for consultation after his treatment at SCB. Similarly after Medical Board was conducted at Central Hospital, East Coast Railway on 29.10.2015, when the employee was diagnosed to have only Psychosis with mild moderate cognitive impairment, besides having hearing loss as well as cataract in both eyes and was opined to take long acting psychotropic drugs, use hearing aid and undergo cataract surgery, the deceased employee did not cooperate and as also the son of the applicant expressed unwillingness for cataract surgery vide letter dated 17.12.2015, which would have enabled the Medical Board to come to a proper and logical conclusion regarding the medical fitness of the applicant.

15. It is also seen from the record that Review Medical Board conducted on 06.02.2016 could not take any decision since the applicant had not undergone cataract surgery. Thereafter the applicant agreed on 30.04.2016 to use hearing aid and undergo cataract surgery for which the necessary paraphernalia for doing the same was undertaken by the respondents. But since the applicant was not cooperating for the cataract surgery, final decision on his fitness could not be finalized before his retirement on 30.06.2016. From the above, we do not find any irregularity or illegality on the part of the respondents in not declaring the deceased employee as medically unfit. It is found that the deceased employee as well as his son were not cooperative with the respondents so as to finalize fitness by the Medical Board which is one the important pre-conditions as per Rule for declaring an employee medically unfit.

16. Besides that the applicant had retired from service after attaining the age of superannuation on 30.06.2016 and all the retirement dues have been released in his favour. In view of the discussion made above, this Tribunal is not satisfied that any direction can be given to declare the deceased employee as medically unfit w.e.f. 03.12.2014. In the above circumstances the applicant is not entitled to any relief in this case.

17. In the result the OA is dismissed. No order as to cost.

(T. JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)