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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.433 of 1987

(Writ Petition No.861 of 1979 of the High Court)
(of Judicature at Allahabad, Lucknow Bench)

Jagdishwar Swarup Vashisht Petitioner-Applicant

Versus

Union of India & Others Opposite Parties.

Hon. Justice Kamleshwar Nath, V.C.

Hon. K.J. Raman, A.M.

(Hon. Justice K.Nath, V.C.)

The Writ Petition described above is before this Tribunal under Section 29 of the Administrative Tribunals Act XIII of 1985 for disposal.

2. The applicant was a Guard in the Railway Service when the Divisional Medical Officer submitted his report dated 8.10.75, Annexure-I that the applicant was a case of F.T.C. Affective Disorder, was given treatment and was fit to resume duty under para 593 of the Indian Railway Medical Manual. That constituted medical decategorisation of the applicant for the post of Guard. By order dated 28.10.75, Annexure-2, the Divisional Personnel Officer recorded that the applicant had been decategorised for Guard duty under para 593 of the Indian Railways Medical Manual, ^{under} Annexure-I and therefore had been granted six months Extra Ordinary Leave from 25.8.75. It was indicated that every effort ^{would} be made to accommodate the applicant in an alternative job. However on 24.3.76, the Divisional Personnel Officer passed an order, Annexure-3 stating that no alt.

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job could be provided to the applicant and as such he stood discharged from Railway service with effect from 24.2.76 (AN), i.e. on expiry of six months of Extra Ordinary Leave. The applicant has challenged the order of discharge and has sought a mandamus to command the opposite parties to treat him to continue in service.

3. The first point raised by the applicant is that he has been discharged from service by the orders of an authority which is subordinate to his Appointing Authority. In the Counter Affidavit of opposite party No.4, the Assistant Personnel Officer, it is stated that the offer of appointment as a Guard, accepted by the applicant, was given by the Divisional Personnel Officer by letter No. 729 dated 19.11.51, Annexure-A6. Para 5 of this Annexure clearly mentions that the applicant's appointment was provisional subject to verification of his character and antecedents; it was signed by the Divisional Personnel Officer described specifically as the authority competent to appoint staff. The applicant has not filed any other appointment order. The case of the applicant in rejoinder is that Annexure-A6 is only a communication of his appointment and not the appointment itself. It specifically mentioned that selection was held by the Central Government Services Commission, Bombay and the Appointing Authority of the applicant, after such selection, was the Chief Administrative Officer, Eastern Punjab Railway. We have not been able to find anything on the record in support

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of the contention. As already mentioned, the order of appointment is contained in Annexure-A6 and it was ^{under} the signature of the Divisional Personnel Officer, described as authority competent to appoint staff. We find therefore that the applicant was discharged by an authority who was competent to do so.

4. The only other point raised in the petition is that the medical decategorisation of the applicant was arbitrary as there was nothing to show that the applicant was suffering from mental disease. This contention is thoroughly answered by the counter affidavit dated 3.9.79 of Dr. S.L. Kapoor, a Divisional Medical Officer who issued the certificate, Annexure-I dated 8.10.75 stating that the applicant was a case of F.T.C. Affective Disorder. Dr. Kapoor averred that the applicant had reported to his "authorised medical attendant. Dr. J.P. Dagg who referred the case to me (Dr. Kapoor) as the case of Mental Depressive Psychosis" adding that the applicant was already a psychiatric case. Dr. Kapoor went on to say that on examination on 26.8.75 and the consideration of the limited history of his complaint obtained from the Out Door patient Department, the applicant appeared to be more towards Schizophrenia than M.D.P. He mentioned that nevertheless both the diseases fall in the same group i.e. functional psychosis. He therefore referred the case to the specialist of the Gandhi Memorial Associated Hospital, Lucknow, known as Medical College. However, a certificate issued on 10.9.75, Annexure-A2 by the Supdt. of the Medic

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mentioned that the applicant was "suffering from F.T.C. Affective Disorder" (provisionally) admitted in the Hospital on 4.9.75 but discharged on 10.9.75 as fit to join duties. Dr. Kapoor wrote back to the Supdt. Medical College to enquire whether the psychosis levelled-F.T.C. Affective Disorder fall within Psychiatric Disorder, vide Annexure-A3. The reply, Annexure-A4 dated 17.9.75 mentioned that the applicant's clinical history and evaluation revealed that he was free from active psychiatric illness at that time, and as such had been declared fit to resume duty. Dr. Kapoor again made an enquiry by Annexure-A5 to clarify specifically whether F.T.C. Affective Disorder was covered in Psychiatric illness or not. The final reply to the query came from Dr. Narotam Lal in Annexure-A6 dated 29.9.75. Dr. Narotam Lal mentioned that it had been clearly indicated in the earlier letter of the Medical College that the applicant "was not found suffering from any mental disorder during his admission on 4.9.75" and as such had been declared fit to resume his duty. The letter went on to say that that the expression F.T.C. meant "follow through case" as the applicant's history indicated an emotional illness of maniac depressive nature (Affective Disorder) about two years ago, but had not been treated in the Medical College. The Doctor went on to say that the said diagnosis was only on history, ^{and} ^{that} the Affective ^{disease.} Disorder is only a psychiatric ⁱⁿ Dr. Kapoor made a detailed statement on all these materials in para 8 of the counter, and said that those reports ⁱⁿ that of the psychiatric showed that the a case of Affective Disorder of maniac

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and thus it was a case of psychiatric diagnosis and for that reason he had given a certificate, Annexure-I by applying para 593 of the Indian Railway Medical Manual.

5. It is noticeable that while on the one hand this material indicated a history of some mental disorder of about 2 years which according to the expert medical opinion indicated emotional illness of maniac depressive nature, on the other hand the applicant has not filed any medical certificate of any mental expert to show that he was not suffering from any such ailment. Again it is common knowledge, as also stated in the affidavit of Dr. S.L. Kapoor, that ~~either~~ person suffering from mental disease has periods of lucidity and therefore the report of the Medical College contained in Annexure-A.2, or its subsequent reiteration in Annexure-A4 that the applicant was fit to join duty, for which he was discharged on 10.9.75 or was free from any active psychiatric illness at the time of admission on 4.9.75 cannot be enough to show that the applicant did not suffer from the mental disease in question. The post which the applicant was holding was of a Railway Guard, which is ~~the~~ a sensitive post from the point of view of safety of the travelling public and public property. The material on the record of this case therefore shows that there was basis for the Divisional Medical Officer to issue the certificate, Annexure-I dated 8.10.75 and therefore there is no ~~palpable~~ ^{palpable} ~~perpetrable~~ illegality or error in the application of para 593 of the Indian Railways Manual. We are of the opinion, therefore, th

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of discharge of the applicant from service was not illegal.

6. As we are taken through the record however, we notice that an interim order had been passed by the Hon'ble High Court on 29.1.80 requiring the opposite parties to pay salary to the applicant within a certain grade. This interim order was however subject to the applicant's undertaking to refund the amount if the writ petition fails. We also notice that the applicant was appointed in 1951 and the applicant was about 49 years of age when he filed writ petition in 1979. The chances are that the applicant must have attained the age of superannuation, if he had continued in service. We think that at this late stage of the case which has lingered on for ten years it would be rather harsh to require the applicant to refund the amount if at all received by him. (See Art.39A of the Constitution of India). The petition is dismissed with the observations that if the applicant has at all received any amount under the interim order, it shall not be recovered from him. Parties shall bear their costs.

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Member (A)

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Vice Chairman

Dated the 9th November, 1989.

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