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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.280 of 1987

Keemti Lal Applicant

Versus

G.M.Northern Railway, New Delhi
and 4 Others. Respondents.

Hon.Ajay Johri, A.M.

Hon.G.S.Sharma, J.M.

(By Hon.Ajay Johri, A.M.)

In this application received under Section 19 of the Administrative Tribunals Act, 1985 Keemti Lal the petitioner who was working as a Shunter on the Northern Railway at Moradabad has challenged an order dated 3.12.85 passed by the Divisional Railway Manager (DRM) Moradabad discharging him from service and the decision of the Medical Board dated 7.8.85 declaring him a malingerer and unfit for duty.

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2^d petitioners

2. The facts of the case - Having joined service as Cleaner in October, 1950 the petitioner had risen to the rank of Shunter in October, 1977. He would have normally retired from service on 31.10.86, but he was discharged from service by the impugned order dated 3.12.85 (Annexure-I) which reads :-

" In terms of decision taken by the Medical Board held on 7.8.85 Shri Keemti Lal S/O Mohan Chand, Shunter/MB has been declared malingerer and accordingly as per Indian Railway Medical Manual para 512(2)(ii), the M.S./MB has declared him unfit for all classes w.e.f. 3.12.85. Therefore he is discharged and ceased to be in Railway Service in terms of M.S/MB vide his letter No.157-Med/5/MB-Pt.III dt.3.12.85."

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Before the discharge order was issued he was sent for the periodical vision test on 11.2.85. No report was submitted for 7 months by the doctor. A Medical Board was thereafter arranged at Moradabad on 9.7.85 to examine the petitioner but still no certificate was issued to him. He was also not paid any salary for the period though according to rules he should have been treated on duty for the period he was under medical examination. Against the Medical Board decision he filed an appeal on 5.11.86 which was dismissed on 2.12.86 by the Chief Medical Officer. He was not issued any charge-sheet before his discharge and no opportunity of hearing or show cause notice was given to him before discharge. So there was violation of relevant rules.

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3. The respondents' case is that the petitioner was directed to appear at the vision test on 11.2.85 and, thereafter, before a medical Board on 9.7.85 and was declared a malingerer and unfit for all classes of service. Hence he was discharged w.e.f. 3.12.85. When his vision was found defective on 11.2.85 he was advised to report with glasses. He was given leave upto 2.3.85. He reported back on 13.3.85 saying that no glasses fitted him. The Eye Specialists report was that the vision was not consistent and considered him to be a malingerer. Thereafter a medical Board which met on 9.7.85 was convened. During the course of medical examination it came to notice

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that he wanted to be declared medically unfit so that he could get employment for his son on compassionate ground. So he is not entitled to any relief.

4. We have heard the learned counsel for both sides. The contentions raised by the learned counsel for the petitioner were that he has been discharged without following proper procedure and no retirement benefits were given to him while the learned ~~learned~~^{by} counsel for the respondents submitted that the petitioner had acted dishonestly and having been declared malingerer he was discharged from service and he ceased to be in Railway Service, the procedure as laid down under Article 311 of the Constitution was not required to be followed.

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5. From the facts of the case it is evident that the petitioner was discharged from service on being declared a malingerer and thereby medically unfit for any class. Para ^{on} ~~on~~ Invalidation from service as given in the Indian Railway Establishment Manual by Jand published by Bahri Brothers on page 917, ^{3^d indicates that} the services of an employee who is declared unfit to do any Railway service due to medical incapacity can be terminated without any notice. On the subject of 'malingerer' para 4.3.1 at page 543 of the same book says that on being declared a malingerer the person concerned should not be given an alternative

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attractive employment but only an unattractive post. A decision in such cases has to be taken very judiciously. If malingering is established, he is psychologically not fit to remain in service and may be declared unfit for all classes.

6. An individual having normal colour perception retains such normalcy throughout his life unless he develops some pathological condition of the optic nerve. If during medical examination such individual shows himself as colour blind without having developed one of these pathological conditions, and where there is no doubt about these findings he is declared a malingerer. We are not clear how it can be presumed that a malingerer will also be a psychologically wreck. A person who is colour blind if he really is, cannot be unfit for other jobs. We, therefore, do not find any nexus in a person feigning to be colour blind and his psychological condition so much so that he can be declared unfit for all classes. It has to be proved that he is unfit for other classes. It cannot be automatically concluded that he is unfit for all classes without subjecting him to proper medical examination. Therefore such a provision is against the basic tenets of fair play and justice. We strike down this provision in the rules. A person cannot be declared medically unfit for all classes because he is a Malingerer. He has to be proved to be unfit for service. The Railways by

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~~MB~~ (9)

making such an order deprive him of his livelihood and indirectly the right to live. A termination on this score will be an arbitrary discrimination against the employee.

7. The impugned discharge order carries an endorsement that the SWLI/MB would assist the Shunter concerned in filling up pension form and ensure their submission to the settlement section. The learned counsel for the petitioner had submitted at the bar that the petitioner had not been paid his retirement benefits. No such plea has been taken by the applicant in his application or in the reliefs that he has claimed. He has prayed for quashing the order of 3.12.85, declaration that he continues in service or in the alternative treat him as compulsorily retired. Even in his representations to the respondents he has not complained that he has not been settled.

8. The period of absence of the petitioner has been regularised as duty and by the grant of leave as due. The period has been treated as follows :-

11.2.85 to 12.2.85	Duty
13.2.85 to 2.3.85	LAP
3.3.85 to 8.7.85	$\frac{1}{2}$ LAP
9.7.85 to 3.12.85	LWP.

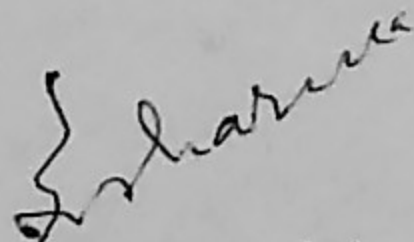
This appears to be in line with the rules on the subject. The petitioner's claim that the period be treated as duty cannot be accepted.

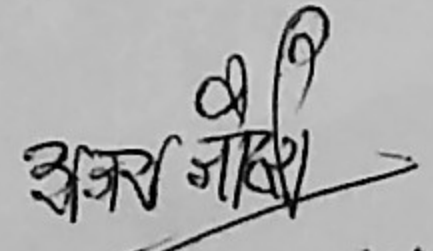
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9. In the result the order declaring the petitioner as unfit for all classes on the basis that he was a malingerer is quashed. The petitioner should have been considered for alternative employment. He should now be deemed to have continued on such employment till his superannuation. He will be entitled to the wages for that post. The respondents will determine the post against which he could have been utilized and pay him for the period in question on that post.

10. The petition is thus partly allowed in the above terms. We make no order as to costs.


Member (J)


Member (A)

Dated the 21st April, 1988.

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