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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration(O.A.) No. 320 of 1987

Brijendra Kumar Varma Applicant.

Versus

Union of India and others Respondents.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

THIS is an application under Section 19 of the Administrative Tribunals Act XIII of 1985. The applicant Brijendra Kumar Varma was engaged as an Act Apprentice in North-Eastern Railway on 13.6.1983. Before ~~he was~~ he engaged as Apprentice he was medically examined. In April, 1984 he got hurt in his left eye while doing some work in the Workshop and was hospitalised and was declared fit on 22.6.1984. He joined his work as an Act Apprentice and completed the training on 7.11.1985. On completion of his training a Selection Committee was constituted to consider for regular appointment, the cases of time completed Apprentices. ~~He was asked to go~~ He was asked to go for medical examination again but when he represented that he has already undergone medical examination, an appointment order was issued on 28.2.1986 appointing him as a Khalasi. However, on 10.3.1986 another order was issued cancelling the appointment order issued on 28.2.1986. No reasons were given in the order terminating his services. According to the applicant, the respondents already informed him that his case would be

considered and he would be taken back in service and when he met the Chief Personnel Officer, he directed the respondents to appoint the applicant as a ~~recalled~~ ^{3rd ord} Khalasi, but no such appointment has been given to him. He has, therefore, sought for quashing of the order dated 10.3.1986 and has prayed for reinstatement ~~of the~~ ^{3rd to 4th} post as a Khalasi with effect from 10.3.1986 along with pay and allowances as admissible.

2. The respondents' case is that while working as an Act Apprentice the applicant received injury in the eye on 7.4.1984 and was treated in the Railway Hospital. On completion of his training the applicant applied for his appointment on 30.1.1986. He was found suitable for appointment in class IV category and given the offer of appointment. It was mentioned in this offer that he had to pass the prescribed medical examination and he had to submit the medical examination report before his appointment. He ~~had~~ accepted this contention and, therefore, a medical memo was prepared and the applicant signed the memo without any objection or reason. He ^{3rd also} declared on 14.2.1986 that he had never been medically examined for service in the Railway ^{earlier}. When he was medically examined he was declared unfit on 17.2.1986 and he signed the medical unfit memo also. He, however, concealed this fact and submitted an application on 25.2.1986 requesting that medical examination in C-1 category may be dispensed with as he was already ^{3rd been} medically examined when he was engaged as an Act Apprentice. He was, therefore, temporarily appointed for one year as Khalasi inadvertently. In the meantime the medical certificate was received in the office on 10.3.1986 which declared him unfit. Therefore,

the appointment letter issued on 28.2.1986 was cancelled on 10.3.1986. According to the respondents the other candidates, who were appointed as Khalasi under the same order, were declared medically fit by the Medical Officer prior to their appointment and, therefore, there was no question to cancel the order issued in their favour. The applicant knew that he has not been declared fit but he concealed the same and, therefore, he is liable to face the consequences.

3. We have heard the learned counsel for the parties and have also perused the papers which are ~~37 on the paper book~~ filed. The submissions made before us was that the second medical examination at the time of absorption was not necessary as the applicant had already been examined medically when he joined as an Act Apprentice. It was also submitted on behalf of the applicant that the termination order did not show as to why the termination had been made and, therefore, it was not maintainable. On behalf of the respondents it was contended that the applicant went for medical examination and he failed in the medical examination which was conducted on 17.2.1986 but he concealed this aspect and requested that since he has already been medically examined at the time of his joining as an Apprentice he need not be examined again. Since he had concealed the fact of his failure in the medical examination, the termination of the appointment which was made subject in his passing the medical examination was cancelled and it was not necessary to give him an opportunity to show-cause why his services should not be terminated.

3. In the Workshop order no.80 issued on 28.2.86

appointing the Act Apprentices, who had been found suitable, it has been mentioned against the applicant's name that his appointment is being made on the basis of medical examination done at the time of his joining apprenticeship, in terms of some instructions issued by the Personnel Branch on 25.2.1986. Six persons were appointed by this order and except for the applicant all others have been shown to have undergone and passed the medical examination in C-1 category on 17.2.1986. From the documents placed as Annexures 'R-1' & 'R-2' of the counter affidavit it is clear that the applicant gave a declaration on 14.2.1986 that he has not been examined for any appointment in the Railway earlier and on the basis of this declaration he was sent for medical examination and the certificate issued on 17.2.86/7.3.86 shows that he was declared unfit.

4. What is obvious from these two documents is that the applicant was also examined on 17.2.1986 but the Doctor kept the certificate pending till 7.3.1986 when he sent it to the Deputy Chief Mechanical Engineer. Obviously the sequence of events, i.e. the applicant approaching the administration to exempt him from further medical examination, the Doctor keeping the fit certificate in his possession from 17.2.1986 to 7.3.1986, the administration considering the exemptions from the practice of giving the medical examination to all such Act Apprentices, who, after their training had completed, sought for appointment in the Railway and got appointment after sometime, were sent for medical examination in accordance with the practice and the Personnel Branch of the North-Eastern Railway giving the relaxation on 25.2.1986 saying that it is not

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necessary to subject them to further examination, go to indicate that the administration was sympathetic towards the case of the applicant. This is further proved by the letter written by ^{3/ the} Deputy Chief Mechanical Engineer addressed to the Chief Workshop Engineer, copy to the Additional Chief Personnel Officer, ~~recommend~~ing that since the applicant was hurt on duty while under going training and but for the accident he would have been appointed as a Khalasi in the class IV category and that he was fit at the time of his appointment as an Act Apprentice and if a similar accident had occurred after his appointment he would have been treated as medically ~~un~~categorised and absorbed in alternative category, His case may also be considered for appointment in a category where the medical fitness ~~is~~ required is of lower standard, i.e. C-2.

5. The respondents have averred that they did offer the post of Record Khalasi and were going to consider his absorption against that post but since there was no vacancy the applicant could not be appointed.

6. At the Bar it was mentioned by the learned counsel for the respondents that since the applicant concealed the fact that he had failed in the medical examination on 17.2.1986 and applied for not being re-examined ^{3/ because} he had already been examined for C-1 category when he joined as an Act Apprentice, he should suffer for concealing the fact of his unfitness in the medical examination. This aspect has since been taken into consideration because it was only in September, 1986 that the question of applicant's appointment in a

category lower than C-1 was recommended for consideration by the Deputy Chief Mechanical Engineer, therefore, it cannot be said that the applicant's case was not under the consideration of the respondents. On the matter of consideration of the recommendation of the Deputy Chief Mechanical Engineer we are told that there has been some further correspondence wherein the Chief Workshop Engineer has asked for the reasons why the Doctor kept the medical certificate in his possession from 17.2.1986 to 7.3.1986 and why it was not sent promptly to the Personnel Branch before the orders of 28.2.1986 giving appointment were issued. We have already noted that the respondents had ultimately considered the case of the applicant for appointment as Record Khalasi. The only thing that happened was that there was no vacancy at that time and, therefore, the applicant could not be appointed.

7. There is no dispute about the fact that the applicant was injured on duty in April, 1984 and he was treated in the Railway Hospital and was allowed to complete his training upto November, 1985 after having been declared fit by the Doctor. There is also no dispute about the fact that the applicant was qualified in C-1 category while he was taken for training as an Act Apprentice. It was only when he was being considered for final absorption in response to the application made by him for appointment in the class IV category and the practice prevailing in the Workshop to consider such applicants as fresh applicants and subjecting them to a medical examination before offering appointment that he was declared unfit for C-1 category. There is also no dispute about the fact that some orders were

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were issued dispensing with the medical examination of applicant and considering him on the basis of the medical examination done when he joined as an Apprentice. The fact, however, remains that the applicant got injured in the eye and on account of this he was not fit for the C-1 category which is necessary for employment of a person as a Khalasi in the Workshop. It was all the more necessary after his accident that the applicant should have been medically examined to determine the category in which he could be absorbed. Somehow this matter remained under consideration and some conclusions ~~as or otherwise~~ were arrived at by the respondents. The rationality of those decisions, however, cannot support the case of the applicant. What would have been the correct action was to consider him under compassion for appointment as a Khalasi in a category where a lower medical classification was permissible. This was done by the respondents but due to lack of vacancy an appointment could not be offered.

8. We, therefore, direct that the applicant's case should be considered for appointment in a post where a lower classification than C-1 is admissible. He is also to be re-examined to see whether he is fit for C-1 category ~~as~~ or whether he qualifies for C-2 category. If he is found fit for C-1 category, he should naturally be restored to his appointment which was offered to him on 28.2.1986 but if he is not fit in C-1 category but for C-2 category he will be offered employment in the class IV category where the medical classification is C-2. The application is disposed of accordingly. We do not agree that medical examination should not have been done and if the tradition and practice in the Workshop

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is to subject such Apprentices for fresh medical examination before they are given appointments we do not find anything wrong in the practice. Parties will bear their own costs.

[Signature]
Vice-Chairman.

[Signature]
Member (A).

Dated: September 24, 1987.

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