

(A3)  
1  
9

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

.....  
Registration O.A. 808 of 1987

V.N. Tewari      ...      ...      ...      Applicant.

Versus

Divisional Railway Manager,  
Northern Railway, Allahabad and another    ... Respondents.

\_\_\_\_\_  
Hon'ble Mr. D.K. Agrawal, Member (J)  
Hon'ble Mr. K. Obayya, Member (A)

( Hon'ble Mr. K. Obayya, Member (A) )

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to the respondents to re-instate him on the post of Shunter Driver or in the alternative to provide him with a suitable Class-III post with protection of pay, seniority and other consequential benefits.

2. Briefly, the facts of the case are that the applicant joined service in the Northern Railway as a cleaner in the Loco-shed in the year 1961. He was promoted in due course to the posts of Fireman and Shunter (Steam). The post of Shunter (Steam) is in the category of running staff. The running staffs are required to maintain their medical classifications to perform their duties properly. On 2.4.1985, the applicant was medically examined and found unfit for A-I category. He was found fit for B-I, B-II and other lower category. As a result of this medical decategorisation, he was not eligible to continue as Shunter (Steam). The applicant preferred appeal to the Chief Medical Officer (C.M.O.) who examined him on 26.12.1985 and certified that he was unfit for A-I, A-II and A-III category but fit for B-I and B-low etc. The applicant was informed of his medical decategorisation and that his case would be considered for absorption in alternative post suitable to his present medical category.

b

Contd ... 2p/-

(AB/2)

(16)

3. It is contended by the applicant that he made several representations to the Railway Administration and also sought personal interview with the D.P.O. but he was neither called for any screening nor any alternative job offered. It is further contended that he got himself examined in the Indian Institute of Medical Sciences, New Delhi and was certified fit to perform his duties but this certificate has not been honoured by the Railway Administration.

4. In the counter filed on behalf of the respondents, it is stated that the applicant was promoted as Shunter (Steam) on 5.2.1982 and this being "running" post, he was required to maintain prescribed medical classification for which he was examined on 2.4.1985 and found unfit for A-I category and found fit for B-I and other lower categories. He also preferred appeal to the C.M.O. who examined him on 26.12.1985 and certified that he was unfit for A-I, A-II and A-III category but fit for B-I and B-low categories, consequently the applicant was not eligible to continue as Shunter (Steam). It is further stated that with a view to provide him alternative job, he was called for screening on 2.8.1985, 20.10.1985 and also on 15.1.1986 but the applicant did not turn up for screening. The Chief Personnel Officer enquired into the matter and reported that the applicant evaded to appear before the screening committee. The applicant did not cooperate with the department, did not attend the screening consequently, after a show cause notice, he was discharged from service as per rules.

5. In his rejoinder, the applicant has denied that he was called for screening and that he avoided to take up any alternative job. On the other hand, he attended the

B

(AB  
3)

(11)

- 3 -

office on 15.1.1986 but was informed that he will be intimated when the post is available to him.

6. The counsel of the parties filed their written arguments and stated that they have nothing further to add. We have carefully considered the rival contentions and also the written arguments. The applicant having been medically found unfit for A-I category was undoubtedly not eligible to be continued as Shunter (Steam). We also do not see any force in the contention that the certificate issued by the Indian Institute of Medical Sciences has any binding on the Railway Administration. The Railway Administration has their own system of medical examination and certificate issued by the duly constituted Boards under the prescribed rules ~~and~~ consistent with held safety standard are only valid and followed in the administration. Further, we find that the case of the applicant was never referred to the Indian Institute of Medical Science by the Railway Administration. The Indian Railway Establishment Manual lays down as to the steps to be taken in the matter and providing alternative appointments to the medically decategorised employees. Rule-2604 indicates that the medically decategorised employees are ceased to perform the duties of the post and should be granted leave extendable <sup>up</sup> to 6 months and meanwhile, to find permanent or a temporary alternative post for a such employee. The stand of the respondents is that they had granted maximum leave permissible under the rules to the applicant from 3.10.1985 to 31.3.1986 and during this period, the applicant also was called for screening on 8.8.1985, 29.10.1985 and also on 15.1.1986 but the applicant never turned up for screening and did not cooperate, the matter as to why he was not given a post had also been enquired by the Chief Personnel Officer who held that the applicant was not cooperating with the

(A3/4)

(12)

department. The applicant had filed copies of the interview slips obtained by him when he sought to meet the concerned officers (Annexures- 5 to 17). A careful examination of these interview slips disclose that these are not on the dates he was called for screening; but on some other dates. The respondents version is that the interview slips are given at the reception counter in the office and are to be surrendered with the officer met and if they are retained with the same person, who has obtained them, it would mean that he has come away without seeing any officer. May be this is true or the applicant met some others and carefully preserved the slips to establish his visits to D.R.M's office. To us this does not appear to be that important or material to establish that the applicant appeared for screening on the dates fixed. The fact remained that he was not screened either because he failed to appear before the committee or for other reasons, and this has led to his discharge from service.

7. It would appear that the applicant was pursuing the matter in his own way, and in the background of his service for more than 25 years his case calls for sympathetic consideration. We consider that it would meet the ends of justice, if the applicant is given one more opportunity to appear before the committee for screening and appointment in an alternative post. The applicant has no case so far as his claim for reinstatement as Shunter(Steam) having been found medically unfit to perform the duties of running staff. But he is eligible to be considered for suitable alternative appointment as a medically decategorised employee, in accordance with the rules laid down in Chapter-XXVI of Indian Railway Establishment Manual,

8. In these circumstances, we direct the respondents to consider the case of the applicant for suitable alternative

6

(A3/3)

(B)

appointment in accordance with rules applicable to medically incapacitated staff and appoint him in an alternative post within a period of 2 months from the date of receipt of a copy of this order provided the applicant cooperates with the department and makes a representation to D.R.M., Allahabad within 10 days of receipt of this order. We would also like to make it clear that the applicant will not be entitled for back wages but his past service may be considered for seniority and other consequential benefits as per law. The application is allowed as above.

Parties to bear their own costs.

*R. Bhagat*  
Member (A)

Dated: 18/11/91  
(n.u.)

*D.K. Goyal*  
Member (J)