

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 28th day of March, 2000

Original Application No.1394 of 1992

District : Jhansi

CORAM :-

Hon'ble Mr. Rafiquddin, J.M.

Hon'ble Mr. M.P. Singh, A.M.

1. Smt. Kapoori Wife of Shri Prabhu Dayal,
R/o Vill-Atodhna, Post-Garhia,
Distt-Jhansi.
2. Prabhoo Dayal
S/o Shri Shyam Lal,
R/o Vill-Atodhna
Distt-Jhansi.

(Sri R.K. Nigam, Advocate)

. . . . Applicants

Versus

1. Union of India through
General Manager,
Central Railway, Jhansi.
2. Divisional Railway Manager,
Central Railway, Jhansi.

(Sri A.K. Gaur, Advocate)

. . . . Respondents

O R D E R

By Hon'ble Mr. Rafiquddin, J.M.

This OA has been filed for issuing a direction to the D.R.M. Central Railway, Jhansi-respondent no.2 to get the applicant no.2 re-examined through a newly constituted Medical Board and in case he is mentally and physically found fit, the applicant be taken back in the ^{employment} appointment with all consequential benefits. The applicants have also sought the relief of providing employment to applicant no.1, wife of applicant no.2 on compassionate ground in case the applicant no.2 is adjudged medically unfit and incapable performing the

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duties. The applicants have also sought the benefit of making payment of all the benefits to the applicant no.2 which are mandatory in the event of retirement from Railway Service.

2. The facts of this case as stated in the OA are as under:

3. The applicant no.2 Sri Prabhu Dayal while working as Pointman at Jhansi under respondent no.2 had mental derangement. The applicant was treated by the Railway Doctor at Agra Mental Hospital on being referred by the Railway Authorities for his treatment. During the continuance of the treatment of the applicant no.2, respondent no.2 constituted a Medical Board consisting of Medical Authorities as well as representations of the administration. The applicant no.2 was produced before the Board and since his condition was really critical, the aforesaid board declared him unfit vide letter dated 10-8-1984 (Annexure-A-4). Thereafter, a notification was issued vide letter dated 30-10-1987 notifying that the applicant has been retired from the Railway Service w.e.f. 12-2-1985, a copy of which has been annexed as Annexure-A-5.

4. The further case of the applicant is that he was also examined by Dr. G.D. Shukla, Mental Expert, of Medical College, Jhansi and was declared fit vide the certificate dated 8-3-1988, a copy whereof has been annexed as Annexure-A-1. The grievance of the applicant is that the respondent no.2 did not grant any ex gratia pension, disability pension, retrenchment benefit or any other benefit to be given to the retired Railway Employee.

5. The applicant has also alleged that the proceedings and declaration made by the Medical Board are vitiated because the applicant no.2 is quite normal and physically

fit to perform his duties as found by Dr. G.D. Shukla, of Jhansi Medical College. Therefore, the applicant ~~is~~ claims that an impartial medical board be reconstituted for which the respondents are legally bound at this stage. In alternative it has been claimed that the applicant no.1, wife of the applicant no.2 should be given an appointment on compassionate ground in case the applicant no.2 is found medically unfit by the medical board.

6. The respondents have contested the claim of the applicant mainly on the ground that the same is barred by time and the applicant no.2 having been declared medically unfit by the Railway Medical Board has been retired from Railway Service w.e.f. 12-2-1985. The applicant no.2 is also not entitled for appointment on compassionate ground under the Rules. The respondents have also denied having received any representation from the applicant no.1 for her appointment on compassionate ground.

7. We have heard counsel for both the parties and perused the record.

8. It is evident from the facts disclosed in the OA that the applicant no.2 was declared medically unfit on 10-8-1984 and a notification was issued on 30-10-1987 whereby the applicant no.2 was declared retired from service. The present OA has been filed challenging the aforesaid notification and the order of the medical board on 20-10-1992. The OA is obviously barred by time. Even if the applicant no.2 claims the cause of action ^{arose} ~~having~~ ~~been arisen~~ after Dr. G.D. Shukla of Medical College, Jhansi found him fit on 8-3-1988, the OA is still not within time. The applicants have not filed any application for condonation of delay. On the other hand it has been pointed out in the OA that the OA is within time because the cause of action is perpetual in nature. It is, however, ^{not} ~~made~~ ^{made}

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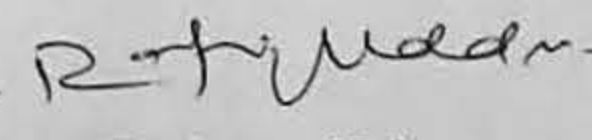
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made clear as to why the cause of action is of perpetual nature because admittedly the applicant no.2 was medically recategorised or declared unfit in the year, 1984. The cause of action, therefore, arose to the applicant in the year, 1984 and the same is not perpetual one. The Apex Court in the case, namely, Ramesh Chandra Sharma Vs. Udham Singh Kanwar reported in (1999) 8 SCC 304 has clearly held that where the OA was filed before the Tribunal after the expiry of three years without making any application under Section 21(3) of the Administrative Tribunals Act, 1985 for condonation of delay, the Tribunal should not have admitted and disposed of the OA on merits in view of the statutory provisions contained in Section 21(1) of the Administrative Tribunals Act. We also find in the present case that the claim is clearly barred by time and no application for condonation of delay having been filed by the applicants, it is not proper to proceed with the case and the same is dismissed. There shall be no order as to costs.


Member (A)


Member (J)

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