

CENTRAL ADMINISTRATIVE TRIBUNAL
 ALIAHABAD BENCH
 ALIAHABAD.

Allahabad this the 12th day of February 1997.

Original application No. 888 of 1993.

Hon'ble Mr. D.S. Baweja, AM

Chhannu Ram, S/o Jggoo Shunt Man
 Gr. I, Down Yard, U/Station Super-
 intendent E. Rly. Moghalsarai,
 Dist. Varanasi.

..... Applicant.

C/A Sri S.K. Day

Versus

1. Union of India through the General
 Manager, E. Rly., 17 Netajee Subhas Road,
 Calcutta.

2. The Divisional Railway Manager, E. Rly.,
 Moghalsarai.

3. The Chief Medical Officer, E. Rly.,
 B.R. Singh Hospital, Calcutta.

..... Respondents.

C/R Sri D.C. Saxena

ORDER

Hon'ble Mr. D.S. Baweja, AM

The applicant through this application has
 prayed that respondents be directed to appoint the applicant
 s son on compassionate ground treating the applicant unfit
 for Railway Service.

2. The relevant facts of the case narrated by
 the applicant as follows. The applicant while working as
 Shuntman Grade I under Station Superintendent Moghalsarai,
 Eastern Railway, suffered from eye trouble during 1990-91.
 He took treatment from Railway Hospital at Moghalsarai but
 there was no improvement and with loss of eye sight he
 became disabled to perform his duty. In order to determine

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his disability, a Medical Board was constituted vide letter dated 25.6.91 by Chief Medical Officer. The Medical Board was held on 16.7.91 at Mughalsarai. This Medical Board declared the applicant unfit for all categories in Railway Service. For the reasons not disclosed to the applicant, another Medical Board was held on 8.10.91 and this Board also considered him unfit. Inspite of findings of two Medical Boards, the applicant was not declared unfit for Railway service and instead Chief Medical Officer (CMO) vide letter dated 15.11.91 directed him to appear before Divisional Medical Officer (DMO) (Eye) Sealdah for remedical examination. After the report given by DMO (Eye), CMO vide letter dated 16.12.91 directed Medical Superintendent (MS) Mughalsarai to keep the applicant under treatment for six months. After the expiry of the six months, the applicant was neither declared fit nor unfit for service. The applicant made a representation dated 11.9.92 but no action was taken and applicant continued out of job since 2.2.91 and finally retired on 30.6.93. Being aggrieved, this application has been filed on 28.5.93.

3. The main ground advanced by the applicant is that the applicant was not declared unfit for service inspite of clear findings of the two Medical Board and retired with a view to deprive him to avail the benefit of compassionate appointment for his son.

4. The respondents have filed the counter reply. The respondents submit that applicant reported sick on 2.2.91 and was declared fit on 1.9.92 vide fit certificate No. 460029 from 1.9.92. However the applicant did not join duty thereafter and finally retired on 30.6.93. It is however admitted that Medical Board was first held for

the applicant on 16.7.91. Chief Medical Officer(CMO) did not approve the findings and directed that he should be examined by another Medical Board of Senior Administrative grade officers. Accordingly another Medical Board was held and its proceedings were sent to CMO. CMO did not agree with the recommendations and directed that he should be examined by the Eye Department of B.R.S Singh Hospital, Sealdah. The report of DMO(Eye) B.R. Singh Hospital was also sent to CMO. But he did not approve the proceedings of the Medical Board and advised to review the case after six months. Thereafter the applicant was declared fit for duty from 1.9.92, but he did not join. In view of these facts, the respondents contend that the application lacks merit and deserves to be quashed.

5. The applicant has filed the rejoinder reply reiterating the averments made in the application. It is also further contended that in the face of findings of two Medical Board, declaring applicant unfit for any service on Railway, Divisional Medical Officer Dr. U. Singh who is not an eye specialist cannot declare him fit for duty with effect from 1.9.92. The applicant further assails that fit certificate alleged to have been issued is manipulated as this does not contain the date of issue and signature of the applicant. Therefore the question of joining duty on being declared fit from 1.9.92 ^{did} does not arise. The applicant has also cited the support of the following judgements wherein the similar issue has been decided:-

- (i) Judgement dated 7.6.96 of Patna Bench in O.A. 117 of 1994.
- (ii) Judgement dated 13.12.95 of Patna Bench in O.A. 163/1993.
- (iii) Judgement dated 24.11.92 of Allahabad Bench in O.A. 475/1990.

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6. We have heard the learned counsel Sh. S.K. Day for the applicant and Sh. B.C. Saxena for the respondents. We have also perused the material placed on the record.

7. The applicant had filed a Misc. application for summoning some documents from the respondents. During the arguments, this Misc. application was considered and the respondents were directed to furnish the following documents for perusal of the Bench:-

- (a) Recommendations of Medical Boards held on 16.7.91 and 8.10.91.
- (b) Order of Chief Medical Officer on the recommendations of the Medical Boards and other related correspondence leading to the issue of fitness certificate 160029.

Time of three weeks was allowed after reserving the judgement. However the respondents have failed to submit the same. The matter is therefore being decided in the absence of these documents, based on the material brought on record.

8. From the averments made by the respondents, it is admitted fact that the applicant was examined first by a Medical Board on 16.7.91. Chief Medical Officer did not approve the recommendations of this Board and directed to set up another Medical Board of Senior Administrative Grade Officers. This Medical Board examined the applicant on 8.10.91. The proceedings of this Medical Board were also not accepted by Chief Medical Officer and he directed that the applicant be examined by the Eye Department of B.R. Singh Hospital. The report of the Divisional Medical Officer (Eye) of B.R. Singh Hospital Sealdah was also sent to Chief Medical Officer but he again did not accept the report and advised to review the case after six months. Thereafter

the respondents submit that the applicant was given fit certificate No. 460029 from 1.9.92. The applicant finally retired on 30.6.93. The respondents though have stated the above facts but have not clearly disclosed the nature of the recommendations of the Medical Board held on 16.7.91 and 8.10.91 and the report sent by D.M.O.(Eye) B.R. Singh Hospital. The applicant on the other hand has averred that he was declared unfit for service for any category. The respondents have not specifically denied this averment but from the submission made in para 7, it is quite implicit that both the Medical Boards had recommended to declare the applicant unfit for any service. Further the respondents ^{also} failed to bring the documents on record as directed in para 7 above. Therefore from this fact-situation, version of the applicant that he was recommended for being declared unfit for any service by both the Medical Boards ^{be} is to ^{be} accepted.

9. Whether an employee is fit to continue in service or is to be medically decategorised is a matter solely within the domain of the competent medical authority and his opinion normally should be final and such a matter should not call for judicial interference. However if such a issue is challenged, the only point to be examined is whether the competent medical authority has not acted in an arbitrary manner? In the present case, we are rather intrigued by the manner in which the matter has been dealt with by the competent authority. After not approving the recommendations of the two medical Boards, C.M.O. referred the matter to eye Department of B.R. Singh Hospital. The report of D.M.O. (Eye) of B.R. Singh Hospital was also

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sent to C.M.O. However instead of taking decision, the matter was again sent back to Mughalsarai with a direction to review the matter after six months. Finally respondents state that the applicant was given fit certificate from *Some vital questions arose.* 1.9.92. During this period of six months where was the treatment given? Who was to carry out the Review after six months? Was it to be another Medical Board or by specialist *Singh* in B.R./Hospital? Was D.M.O. Mughal Sarai competent to issue fit certificate? Why did C.M.O. not agree with the recommendations of two Medical Boards? What were the considerations to refer the case back to Mughalsarai and to review after six months? In view of these questions arising in *my* mind and with no satisfactory answers forthcoming either in the counter reply or from the respondents' counsel during oral submissions, ~~he~~ directed to produce the records as detailed in para 7 above. The respondents failed to produce these records compelling ^{us} to take adverse inference of the same. The manner in which the overwhelming medical opinion of the Boards was being ignored, it leads to believe that C.M.O. was not inclined to declare the applicant medically unfit and drag the matter till the applicant enters the last year of his service. Arbitrariness in dealing with the case by C.M.O. is quite apparent. The issue of the fit certificate from 1.9.92 as discussed in the next para below further substantiates this finding of arbitrary action by the competent medical authority.

10. Now we come to the issue of declaring the applicant fit from 1.9.92 vide fitness certificate No. 460021 (CA-I). The applicant has strongly asserted that the certificate is a manipulated document. He has denied of having been issued any such certificate as the certificate does not

carry the signature of the applicant as required as per the rules. On going through the medical fit certificate, we find that applicant's contention has some weight. The certificate does not have the signature of the applicant. It also does not show the date of issue. If the certificate has been issued without the signature of the applicant, it is to be inferred that that fitness certificate was not issued to the applicant. If the fitness certificate was not issued to the applicant then how he could be expected to join duty. If for a moment, it is accepted the fit certificate was issued and the applicant did not join the duty, then what action was taken by the respondents for being unauthorisedly absent? How this period has been regularised till the retirement? The respondents have not come out with full facts in order to establish their version of declaring the applicant fit from 1.9.92. Vague and evasive submissions in the counter reply and non furnishing of the required record compel me to draw adverse inference and doubt the authenticity of the fit certificate.

11. I have gone through the judgements cited by the applicant to support his claim. In both the judgements in O.A. 117/1994 and O.A. 163/1993 of Patna Bench, the issue involved was the same with regard to the applicants not being declared unfit. However the distinguishing feature in these O.A.s is that applicants were not declared unfit being in the last year of service in terms of Railway Board's letter dated 27.6.90. This letter lays down that employee is not to be declared medically unfit in the last years of service except on the ground of terminal stages of fatal illness or massive injury with recent loss of both lower limbs. The applicants were not suffering from any

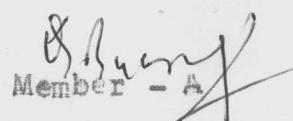
of these ailments and therefore inspite having accepted bing not fit for service they were not declared unfit, the matter was allowed to drop and continued on leave till retirement in compliance with the instructions laid down by the letter dated 27.6.90. Considering this background it is held that applicants shall be treated as having been invalidated. This is not the case of the applicant in the present case. There is also no averment on the behalf of the respondents as to non declaring ^{unfit on account of} being in the last year of service. The Medical Boards were held in 1991 and the applicant had more than one year of service. In view of this, the ratio of these judgements is not directly applicable. However the ^{present} case is to be examined on its own merit with respect to declaring the applicant unfit for service and whether the matter was ^{dropped} so that the applicant enters last year of service. The third judgement in O.A. 475/1990 of this Bench covers the case where the applicant retired just on day after being discharged from the hospital after being admitted for two years and direction ~~hav~~ been issued to consider the case for compassionate appointment. The ratio of this judgement shall be applicable only after the findings are made with regard to medical unfitness based on the facts and circumstances of the present case.

12. Considering the facts and circumstances in totality as discussed above in para 9 and 10 and the ratio of the judgements referred to in para 11, above, lead to conclude that the applicant ~~deserves~~ to be treated as medically unfit for service from 8.10.91, When the second Medical Board of Senior Administrative Grade Officers was held.

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13. The main thrust of the relief of the applicant is for seeking compassionate appointment of his son on being declared unfit for service and retiring from service consequently. Once it has been held above that the applicant deserves to be declared medically unfit the request for the grant of the compassionate appointment has to be considered by the competent authority as per the extant rules applicable for such appointments.

14. In the result of the above, the application is allowed with the direction to treat the applicant having been medically unfit from service from 8.10.91. His request for compassionate appointment for his son shall be considered by the competent authority in terms of the extant rules applicable for such appointment. The applicant shall submit the application for compassionate appointment within one month of the date of judgement and the respondents shall take further action within three months thereafter. No order as to costs.


Arvind
Member - A

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