

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

DATED: THIS THE 7 DAY OF October 1997

Coram : Hon'ble Mr. Justice B.C.Saksena VC
Hon'ble Mr. S. Das Gupta AM

ORIGINAL APPLICATION NO. 1658/94

1. Sri Surendra Prasad Sinha
son of Late H arihar Lal,
resident of qua-rter no. 1393-D
Manas Nagar Railway Colony,
Mughalsari, Distt: Varanasi holding
the post of Head Clerk, D.R.M.Office,
Eastern Railway, Mughalsarai,
District Varanasi .

2. Smt. Leelawati Devi wife of
Sri Surendra Prasad Sinha,
r/o quarter no . 1393-D Manas Nagar,
Mughalsari, District Varanasi - - - Petitioners

C/A Sri B.K.Srivastava
Sri A.K.Singh

Versus

1. Union of India through the
General Manager, Eastern Railway,
Calcutta.

2. The Chief Medical Director/Officer
Eastern Railway, Calcutta.

3. The M/ Medical Superintendent,
Eastern Railway, Mughalsarai.
District Varanasi.

4. The Divisional Railway Manager,
Eastern Railway, Mughalsarai,
District Varanasi. - - - - - Opposite Partie

C/R Sri A. Tripathi

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ORDER

By Hon'ble Mr. S. Das Gupta A.M.

Through this application filed under section 19 of the Administrative Tribunals Act 1985, the applicants have challenged a order dated 14.9.1994 by which the decision of the Chief Medical Officer, Eastern Railway was communicated to applicant no.1 stating that his case for retirement on medical ground could not be considered as he had less than one year's service left. They have sought quashing of the said order and declaration to the effect that applicant no.1 be deemed to have been medically retired w.e.f. 15.9.1993 and thus entitled to all benefits arising therefrom. They have also sought a direction not to evict the applicant no.1 from the railway quarter he was in occupation of and that only normal rent be realised from him till the final decision in the present O.A.

2. The application has been filed jointly by Sri ^{Sunita} S.P. Srivastava, who was working on the post of Head-Clerk in the office of the Divisional Railway Manager, Eastern Railway and his wife. It has been stated that the applicant no.1 had been suffering from mental depression for sometime past. He reported sick w.e.f 3.3.1993 and a sick certificate dated 3.3.1993 was given by the Asstt:Divisional Medical Officer, Manas Nagar Health Unit, Eastern Railway, Mughalsarai, who kept the applicant no.1 under observation and treatment for about 3 months and thereafter referred the case to the Sr. Medical Supdt., Eastern Railway, Mughalsarai. The Sr. M. S., Mughalsarai kept the applicant no.1 under observation and treatment for more than 2 months and thereafter referred the case to B.R. Singh hospital, Eastern Railway, Sealdah in August, 1993. The Head of

psychiatry

the Department of that hospital kept the applicant no.1 under his observation and treatment for more than a month and diagnosed the disease as Schizophrenia and referred the case back to the Sr.M.S. Mughalsari with the observation that complete recovery of the applicant no.1 may ~~not be possible~~ be recommended and that his case be referred for permanent invalidation. The Sr.M.S., Mughalsarai thereafter referred the case to the Chief Medical Office /Director, Eastern Railway, Calcutta seeking permission for convening Medical Board to consider the applicant's case ^{of} fitness or otherwise. Thereafter through a letter dated 11.10.1993, he was informed that the Medical Board would be held. The Medical Board was actually held in the Medical College hospital, Calcutta on 5.1.1994. The Medical Board after examining the applicant no.1 advised further investigation and treatment with a direction to reappear thereafter before the Medical Board after such investigation and treatment. In accordance with this advice, C.T. Scan of the applicant no.1 was taken and he was admitted in the mental hospital at Ranchi for conducting B.G. test. B.G. test was conducted and the attending Psychiatrist of the mental hospital at Ranchi reported that the applicant no.1 was suffering from chronic ^{Schizophrenia} Psychic and was not fit for duty, through his report dated 26.2.1994. Thereafter the impugned letter was issued to the applicant no.1 by which he was informed that his case could not be considered as he had only less than one year's service left. The applicant no.1 at that time was due to retire on attaining the normal age of superannuation on 31.1.95.

3. The applicant's case is that he had reported sick as far back as on 3.2.1993 but was made to undergo various test and in this process, finalisation of his

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was delayed. Had the decision in his case been taken in time, he would have been retired from service on medical ground and in that case he would have been entitled for all benefits accruing from such retirement. On this ground he asserts that he should be deemed to have medically retired. The applicant no.1 has also sought reliance in the instructions contained in the Railway Board's circular letter dated 29.12.93 in which it has been stipulated that the Medical Officers should not normally take more than 3 months to finalise the proceedings of medical examination from the date the case is received in the Medical department for the invalidation of a railway employee from service on medical ground.

4. In the counter affidavit filed by the respondents, the basic facts of the case are not disputed. They have, however, stated that all efforts were made to finalise the case of the applicant no.1 within the stipulated period but as a number of no.1 medical tests was necessary, the matter could not be finalised within the stipulated period. They have further stated that since in any case the applicant no.1 was retired from service on attaining the age of superannuation on 31.1.1995, the question of declaring the applicant no.1 as deemed to have retired from service on medical ground does not arise. They have also stated that in accordance with the instructions contained in the Railway Board's letter no.88/N/S/X dated 27.6.1990, retirement on medical ground was not permissible when the employee had less than one year's service left.

5. The applicants have filed a rejoinder affidavit, reiterating their contentions in the O.A.

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and also denying the contrary averments in the C.A. They have also relied on the decision of Patna bench of the Tribunal in O.A.No.162/94 Mrs Dorothy Tirky Singh versus Union of India and others.

6. The case was argued on behalf of the applicants by Sri B.P.Srivastava while Sri A. Tripathi appeared on behalf of the respondents. We heard the arguments advanced by the learned counsel for both the parties and perused the pleadings on record.

7. As we have already stated, the facts are not in dispute. Admittedly the applicant no.1 was given a sick certificate on 3.3.1993 and thereafter he was under the observation and treatment of various medical authorities. After going through the various investigative and treatment process, the applicant no.1 was finally ~~was~~ subjected to Medical Beard proceeding on 1.1.1994 but even thereafter the Medical Board considered it necessary that the applicant no.1 underwent certain further investigation and treatment. Thus by the time of these processes were complete, admittedly the applicant no.1 had less than one year service before normal retirement which was due on 31.1.1995. The respondents have specifically stated quoting the circular of the Railway Board that the applicant no.1 could not have been retired on medical ground having less than one year service at that time. Although a copy of the circular has not been brought on record by the respondents, the applicant no.1 has not disputed the existence of such a circular. We have, therefore, no reason to disbelieve that the instructions of the Railway Board do exist making it impermissible to retire a railway employee on medical ground when they ^{less than} are left with one year of service prior to their normal date of retirement.

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8. Even assuming that no such order of the Railway Board exists, question will arise whether in the given circumstances, the applicant no.1 had a legal right to be retired prematurely on medical ground. This in fact the applicant has claimed through the relief clause. It is to be remembered that the courts/Tribunals are only to enforce a right which has accrued to a litigant through operation of a rule or law. While an employee can claim a right to continue on the post held by him until his retirement on reaching the age of superannuation, we do not see any corresponding right to an employee to be retired prematurely on medical ground. The only right given to a government employee to retire prior to the normal date of superannuation is by way of voluntary retirement for which a request has to be made by the employee himself and such a request will be accepted if certain conditions are fulfilled as stipulated in the rules relating to such voluntary retirement. There is, however no such rule by which an employee can claim that he be retired declaring him as medically incapacitated. It is for the Employer to decide whether an employee is so incapacitated that his further retention in service would be of no use to the Employer. It is not for the employee to decide whether is of no use to the Employer and, therefore, should be retired prematurely. It would be another matter if he seeks voluntary retirement, in which case the existing rules relating to the voluntary retirement will come into operation. Admittedly no such request for voluntary retirement had been made by the applicant no.1.

9. We have gone through the judgment of the Patna bench of the Tribunal in the case of Mrs. Dorothy Tirk Singh. Copy of the judgment is annexed to the R.A.

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In that case the applicant's request for being examined by the Medical Board of Psychiatrist was not accepted by the respondents. She, therefore sought a direction that she be examined by such a Medical Board. There was a further prayer that the 2nd applicant be appointed on compassionate ground. The Patna bench of the Tribunal on consideration of unusual circumstances of the case ^{the fact} ~~and~~ that no Medical Board was held to consider the request of the applicant no.1 for her invalidation on medical ground, directed the respondents to consider the case of the applicant no.2 for appointment on compassionate ground.

10. In the case before us it is not that the applicant no.1 was not examined by the Medical Board. There was examination by a Board of Psychiatrist ^{and he} ~~who~~ was advised to undergo further investigation and treatment and then reappear before the Medical Board. However, ~~even~~ before he could so reappear, less than one year's period was remaining and, therefore, his invalidation out of service on medical ground was not accepted. Also in the case before us, there is no prayer that any ward of the applicant no.1 be considered for compassionate appointment. Infact there is nothing in the averments to indicate that any request was made for such an appointment or if made the same was rejected.

11. As already explained in detail, we do not consider that by declining to retire the applicant prematurely on medical ground, the respondents have violated any right that the applicant no.1 had to be so retired. This application, therefore, is devoid of merit.

12. Inview of the foregoing, O.A. is dismissed. Parties shall bear their own costs.

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