

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 11th day of August 1998.

Original Application no. 1805 of 1994.

Hon'ble Mr. S. Dayal, Administrative Member
Hon'ble Mr. S.K. Agrawal, Judicial Member

Baboo Lal, s/o Late Lachoo, R/o 243, Nainagarh Nagra,
Jhansi.

.... Applicant

C/A Shri M.P. Gupta
Shri S.K. Mishra

Versus

1. The Union of India through the General Manager, Central Railway, Bombay, V.T.
2. The Deputy Controller of Stores, Central Railway, Jhansi.

.... Respondents

C/R Shri P. Mathur.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. The applicant seeks the following reliefs in this application:-

i. A direction to the respondents to order retirement of the applicant in accordance with rules on medical grounds with consequential benefits.

ii. A direction to the respondents to treat the

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applicant to be on duty from the date of declaration of medical unfitness till the date of actual retirement and pay him salary and other allowances for this period.

iii. A direction to the respondents to consider the applicant's son for compassionate appointment.

iv. A direction to the respondents to pay cost of the application to the applicant.

3. The facts of the case are that the applicant, who was working as Stores Majdoor in Central Railway, Jhansi, was examined by the Chief Medical Superintendent, Central Railway, Jhansi on 14.05.93 and was declared unfit in C-2 category for Khalasis but was fit for C-2 category where hearing was not required. The Deputy Controller of Stores wrote to the Chief Personal Officer (S & M), Bombay V.T. informing the latter of the medical report of the applicant by letter dated 16.06.93. The only action claimed to have been taken by the Respondents on this latter was to have referred the matter on 11.12.93 for reconsideration of the Chief Medical Superintendent whether the applicant could continue to work with hearing aid. The Chief Medical Supdt. confirmed his earlier decision by his letter dated 20.12.93. The Deputy Controller of stores addressed letter dated 02.02.94 for screening of the applicant by a screening committee and for making an alternate job available addressed to Chief Works Manager and another letter of the same date with same contents addressed to D.R.M. (P). The reply received from D.R.M.(P) dated 11.02.94 was that the medically declassified officials of Deputy Controller of Stores were not screened by the office of D.R.M. (P) and that no alternate job was available. The Deputy Controller of Stores referred the matter to Chief Personal Officer by letter dated 27.04.94

for providing alternate job or for terminating the services of the applicant. The Chief Personal Officer replied by letter dated 29.07.94 received in the office of Deputy Controller of Stores on 19.09.94 suggesting the employment of the applicant in such jobs as office cleaner, mali or waterman. The respondents have mentioned that the applicant was appointed as waterman while the applicant has stated that he was asked to report to D.S.K. pool without being told as to what job he was to perform. Although the respondents have mentioned office order no. 117 dated 10.10.94, they have not produced a copy of the same. On the other hand the applicant has produced letters dated 20.09.94 and 03.10.94 of the respondents in which the respondent was asked to report for duty on his job and letter dated 10.10.94 in which the applicant is stated to have reported in D.S.K. pool. The applicant has denied to have reported in D.S.K. pool. The applicant has claimed that he should be retired on medical ground from the date of his medical certificate while the respondents have maintained that the applicant was offered a job but he absconded and, therefore, he was not entitled to be given the relief.

4. The arguments of Shri M.P. Gupta for the applicant and Shri Prashant Mathur for the respondents have been heard and the pleadings on record have been taken into consideration.

5. The basic issue which has to be decided is whether the applicant is entitled to retirement on medical grounds on the basis of the certificate of Chief Medical Superintendent from the date of the certificate or any subsequent date before his superannuation and whether he is entitled to

consequential benefits on account of retirement on medical grounds. The learned counsel for the applicant had put forth the arguments that the alternative job was not offered within six months, that the job offered had lower pay scale and could be refused on that account, that the applicant could not be compelled to accept the alternative job offered and that the benefits granted by the Railway Administration to those retiring on the basis of medical grounds could not be denied to him.

6. The learned counsel for the applicant has produced the master circular no. E(NG)1/90/RE3/2 dated 24.04.91 on absorption of medically declassified non-gazetted staff. The scheme of alternative employment becomes clear once this circular is perused. It becomes clear that the scheme is intended to be for benefit of medically declassified railway employees and should not be interpreted so as to be detrimental to their interests. The search for and offer of alternative employment is not meant to be obligatory but an act of grace on the part of the railway administration. Since it is not obligatory on the part of the railway administration to offer alternative employment, it can not be treated as obligatory on the part of an employee to accept the alternative job offered. He has to be granted retirement on medical grounds if the retirement comes before the date of superannuation in case he does not accept the alternative job offered.

7. The applicant has alleged that rules have not been followed in this case. The way the case of the applicant has been handled and the counter reply given justify the levelling of allegation. Paragraph 5.3 of the master circular reads as follows:-

"A permanent Railway servant coming under the category of para 4(b) above, must also cease to perform duties of the post he/she was holding from the date he/she ^{was} declared medically unfit. No officer has the authority to permit him/herto perform the duties in that post beyond that date. He/She should be granted leave as admissible to him/her from the date he/she is incapacitated subject to the proviso that where the Railway servant has not got 6 months leave to his/her credit, his/her leave should be made upto 6 months by grant of Extra-ordinary leave. Althernative employment must be found within this period. If alternative employment cannot be found for such a person within the period of leave his/her service should be extended by grant of extraordinary leave subject to the condition that the total amount of extraordinary leave to be granted does not exceed 6 months."

8. The respondents should have made a declaratory order on receipt of the medical certificate in May, 1993, that the applicant has ceased to perform the duties of his post. He should have been granted leave to his credit and extra-ordinary leave of six months duration but he could not have been allowed to join his duties.. Instead of doing that the respondents asked him in September 1994 to join his duties. The alternative employment should have been offered to him within maximum of one year from the date of receipt of medical certificate but the employment in a lower pay scale was offered only in October 1994 well beyond the permissible time. The certificate given after the medical examination by the Chief Medical Superintendent was quite clear and yet it was referred back to the Chief Medical Superintendent leading to delay in finding out alternative employment for the applicant. He was not examined by a committee to determine categories of jobs in which he was suitable for absorption. The respondents in their counter reply have taken the stand

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that this was not required but the provisions of master circular are to the contrary in paragraph 8.1 of the master circular which reads as follows:-

"With a view to determine the categories in which a medically incapacitated railway servant is suitable for absorption, a Committee should examine him. The committee may consist of two or three officers posted at the headquarters of the officer under whom the medically incapacitated railway servant was working, the railway servant's immediate officer being one of the members of the Committee. After the Committee had examined the railway servant and determine his suitability for certain categories of posts, the officer under whom the railway servant was working will proceed to take further action to find suitable alternative employment for him."

9. Therefore, the reasons advanced by the respondents as to why the applicant was not examined by a committee of officers are not worthy of any credence.

10. The letters of D.R.M., Jhansi dated 11.02.94 and Chief Workshop Manager dated 05.03.94 (Annexures VI & VII of the O.A.) informing the Deputy Controller of Stores that no job was available to accommodate the applicant should have been acted upon and the applicant granted retirement on medical ground with effect from 06.03.94. It was not permissible for the respondents according to the provisions of the master circular to keep the issue of providing alternative employment to the applicant open beyond this time and they were not within their right to offer an alternative employment on 10.10.94. This is because an employee who is so declassified is deprived of his wages

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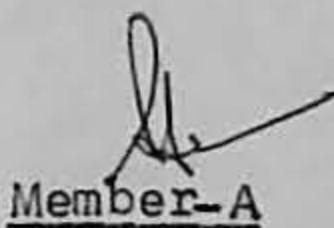
as well as pension till the issue of alternative employment is decided and any extension of the permissible period would be determined to the interest of the railway employees in such cases.

11. In the light of the above discussion, the Railway Administration is directed to treat the applicant as having retired from service on medical ground with 06.03.94 and grant him pensionary benefits and consider the application of compassionate appointment for his son as per rules applicable to such employees within four months from the receipt of a copy of this application.

12. There shall be no order as to costs.



Member-J 11/8/98



Member-A

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