

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 04th day of December 2002.

Original Application no. 734 of 1995.

Hon'ble Mrs. Meera Chhibber, Member (J).

Ghanshyam, S/o Sri Radhey Vallabh,
R/o Electric Fitter Second Grade,
Agra Fort, R/o Khema, Tahsil &
Distt. Mathura.

... Applicant

By Adv : Sri S. Goswami

Versus

1. Union of India through the General Manager,
Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager, Western Railway,
Jaipur.
3. Divisional Electrical Engineer, Western Railway,
Jaipur.

... Respondents

By Adv : Sri Lalji Sinha

ORDER

Mrs. Meera Chhibber, JM.

By this OA, the applicant has sought ~~for~~ a direction to the respondents to make payments from August 1992 towards monthly salary which comes approximately to sixty thousand rupees and also 35 days leave encashment and house allowance which was not paid to him, after August 1992 till the date of retirement i.e. 31.10.1993 with interest at the rate of 18% p.a. He has further sought a direction to the respondents to consider the claim of the applicant's son Shri Brij Kishore for his employment declaring him retired as Medically unfit.



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2. It is submitted by the applicant in O.A. that the applicant was posted as II Grade Fitter (Head Quarters) at Agra Fort, Railway Station in Jaipur Division, Western Railway and while in service he suffered severe attack of Monopligia affecting his left arm badly in July 1991. He was given treatment at different hospitals, but he did not recover from his illness. He was admitted in Bombay Hospital on 25.3.1993 and discharged from there on 4.4.1992 and, thereafter, he was suggested to go for periodical checkup as he was still to be given Physiotherapy treatment. He has further submitted that since the applicant was to retire on 29.10.1993, he was kept in sick list. There was a provision in the Railways for Consitution of Medical Board for determination of fitness of an ailing employee in whose services a period of less than four years is left. It is further submitted that the applicant was sent to Jaipur from Agra Fort to see the Chief Medical Superintendent at Jaipur for presenting him before the Medical Board, but he was returned again to Agra on the pretext that permission was duly sought for consitution of Medical Board from the General Manager. The applicant has submitted that he was not paid his salaries since August 1992 to 31.10.1993. Since, the applicant was due to retire shortly, he made a representation that his son Shri Brij Kishore be given employment in his place declaring him medically unfit (Ann. A2), but neither the respondents gave any reply to him nor he was paid his salary from August 1992. He has no other option, but to file the present O.A. He has thus submitted that he is entitled for salary, house allowance as well as leave encashment because all this while he was sick.

3. The respondents have opposed this O.A. by submitting that when the applicant suffered from Hemiplegia, he was

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sent to Divisional Railway Hospital Jaipur on 01.10.1991, from where he was discharged on 10.10.1991. There was no other abnormality was found except Hemiplegia in left arm. They have further explained that the power of hand and wrist was found to be 1/5 and elbow and shoulder 2-3/5, whereas the left lower limb was normal. After giving treatment the muscle power of left upper limb improved to Grade III-IV, the patient could walk, there was no other neurological deficiency. He was discharged from Railway Hospital Jaipur as he himself preferred to go to Agra Fort. Thereafter, the follow up treatment was taken up at Agra Fort. By letter dated 2.12.1991, the applicant was directed to go to Divisional Railway Hospital, Jaipur for periodical check up. On 3.12.1991 he was examined and the power of his left lower limb was Grade IV, which is near normal, while the left upper limb had Grade III power, for which treatment and exercise was advised. By letter dated 1.1.1992 the applicant was again directed to go to Divisional Railway Hospital, Jaipur for further periodical check up and advise and on 2.1.1992 the hospital found improvement in him. However, he was sent to JRH/BCT for check up and advice but instead of going direct from Jaipur to JRH/BCT the applicant on his own went to Agra Fort, where he continuously took treatment in Railway Hospital, Agra Fort. He reported at JRH/BCT only on 25.3.1992 where he was admitted and after investigations he was discharged on 4.4.1994. Once again instead of reporting to Divisional Railway Hospital, Jaipur he went to Agra Fort on his own. Therefore, it could not be proved as to what advise has been given to him. A perusal of record obtained from Agra Fort shows that the power of his lower left limb was normal i.e. Grade V while for left upper limb it was Grade III-IV, which is near normal. He

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was accordingly advised physiotherapy. Since the applicant was sick for a pretty long time, it was decided to constitute a Medical Board and the applicant was advised to appear before the Medical Board on 6.1.1993 and for this purpose he was issued pass from Agra Fort to Jaipur on 5.1.1993 by the D.M.O., Agra Fort, but the applicant did not report before the Medical Board. He was again sent by D.M.O. Agra Fort to Divisional Railway Hospital on 12.1.1993, but since the Medical Board had been fixed on 6.1.1993, he could not be examined by the Medical Board. It is thus submitted that since the applicant had improved considerably, there is no ground to invalidate him from service. However, since he did not perform a simple manual work by his left upper limb he was continued on sick list and given treatment. He finally retired on 25.10.1993 and since there was no leave in his credit he was not paid salary from August 1992 to 31.10.1993, and since the applicant did not appear before the Medical Board, when he was directed to do so, no medical report could be given by the Medical Board nor he could be given alternative appointment and since this could not be done because of his fault, he cannot claim compassionate appointment in favour of his son. The respondents have thus submitted that there is no merit in the case and the same may be dismissed.

4. I have heard learned counsel for the respondents at length and perused records.

5. The applicant was directed to appear before the Medical Board on 6.1.1993 and was even issued the pass from Agra Fort to Jaipur on 5.1.1993 itself, but for the reasons best known to the applicant he did not appear before the Medical Board. Therefore, he cannot turn around now and blame the department

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or seek direction that he ~~should~~ be declared medically unfit. Whether he was medically fit or unfit it could have been decided by the Medical Board, if he had appeared before the Medical Board. Since, he did not appear, before the Medical Board and superannuated on 31.10.1993 in normal course, he cannot claim that he should be declared as having superannuated as medically unfit nor can I decide this issue sitting here in the Court. The respondents have categorically stated that there was no leave due to the applicant, therefore, he could not be paid the salary or leave encashment. It goes without saying that since there was no leave due to the applicant the period of absence have to be treated as leave without pay. The respondents have stated so in the counter affidavit and I have no reason to disbelieve the same.

6. Since the applicant ~~had~~ superannuated on 31.10.1993 in normal course and got all his pensionary benefits, no case has been made out for interference with regard to the claim of the applicant for giving compassionate appointment to his son. In any case the Hon'ble Supreme Court has repeatedly held that the Court cannot give direction to the respondents to give appointment to any person on compassionate ground, as these are the matters which are to be considered by the respondents by keeping in mind various factors as laid down by the instructions issued from time to time.

7. In view of the above discussion, I do not find any ground to interfere in the matter. The O.A. is dismissed accordingly with no order as to costs.



Member J