

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.609 of 1999.

Allahabad, this the 28th day of November, 2006.

Hon'ble Mr. Justice Khem Karan, Vice-Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

Sri Mukesh Srivastava
Son of Sri J.B. Lal,
Resident of Shastri Nagar,
T.P. Nagar, Agra working under
Senior Section Engineer, T.R.D.
Western Railway, Idgah, Agra. ...Applicant.

(By Advocate : Shri A.P. Mathur)

Versus

1. Divisional Railway Manager, Western Railway,
Kota Division, Kota (Rajasthan).
2. Medical Director, Jagjivan Ram Hospital,
Bombay.
3. Senior Section Engineer, T.R.D., Western
Railway, Idgah, Agra.
4. Union of India through Secretary, Rail
Bhawan, New Delhi.

....Respondents.

(By Advocate : Shri A. Sthalaker)

O R D E R

By Hon'ble Me. Justice Khem Karan, V.C. :

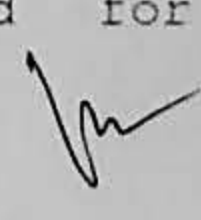
There is no dispute that the applicant was given appointment on a post in Class-III as back as on 1982 under physically handicapped Quota. There is further no dispute that since then he has had been working under the respondents. It appears that some one sent a complaint, stating

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therein that the applicant was not a physically handicapped person and so his appointment under that quota was wrong and illegal. There is further no dispute that the respondents directed the applicant thrice or more than that, to subject him to medical examination so as to examine whether he was physically handicapped person. Copies of these requisition have⁴ been annexed as Annexure-1 to 4. The applicant appeared for such medical examination but owing to the non availability of certain papers from the department, the same could not be carried out to the satisfaction of the authority concerned.

2. The grievance of the applicant is that after putting in more than 22 or 23 years of service, he can not be asked again and again to subject himself to medical examination just to test whether he was medically handicapped person. He has also stated that there is^{no} ⁴ rule which provides that Member of clerical cadre such as the applicant has to be periodically subjected to the medical examination. He prays that the order dated 8.5.1999 (Annexure-AIA) passed by Senior Section Engineer, Western Railway, Idgah, Agra by which the applicant has been directed to subject himself to the medical examination, be quashed and the respondents be further directed not to interfere in the functioning of the applicant as Class-III employee by way of ~~making~~^{asking} him to subject himself medical examination again and again.

3. By filing reply, the respondents have tried to say that since there was a complaint that the applicant was not a physically handicapped person and since on the date fixed for medical



examination, the same could not be carried out for want of certain papers so impugned order has been passed so as to check the applicant, as to whether he is physically handicapped person.

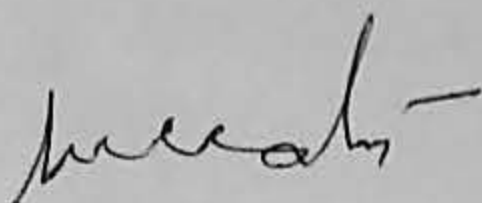
4. During the course of the arguments, we put a direct question to Shri S.K. Pandey as to whether the alleged medical examination to be done pursuant to the order impugned in this OA is with a view to check whether the applicant is physically handicapped person or with a view to see whether he is medically fit to be continued on the job, Shri Pandey gave a reply that the proposed medical examination was just to check whether the applicant was a physically handicapped person. In other words, the medical examination in question is not a routine ^{one} ~~test~~ to be done in the case of the clerical staff. We fail to understand the justification behind subjecting the applicant again and again for medical examination just with a view to check whether he is a physically handicapped person especially when the applicant has worked for more than 22 or 23 years. It does not appear to be fair and just to keep him under constant threat for ever.

5. We have all sympathy with the applicant. After all, there should be an end to such type of repeated threats, to the service of the applicant. We are inclined to grant the relief claimed by him.

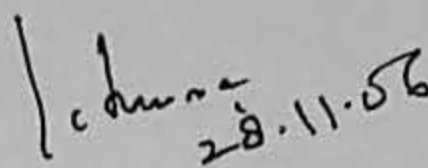
6. Impugned order dated 8.5.1999 is hereby quashed with a direction to the respondents not to subject the applicant to any medical examination solely with a view to test whether he

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is physically handicapped person or not. The OA stands disposed of accordingly. No order as to costs.



Member-A


28.11.56

Vice-Chairman

RKM/