

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD.

Original Application No.1153 of 2003.

Allahabad this the 26th of September, 2003.

Hon'ble Mr.Justice R.R.K. Trivedi, V.C.
Hon'ble Mr.D.R Tiwari, Member-A.

Hardwari Lal aged about 53 years,
Son of Late Ram Swaroop Resident of
T/73-A Loco Shed Railway Colony,
Moradabad.

.....Applicant.
(By Advocate : Sri T.S. Pandey)

Versus.

1. Union of India through General Manager
Northern Railway Baroda House,
New Delhi.
2. Divisional Railway Manager, Northern
Railway, Moradabad Division, Moradabad.
3. Divisional Manager Operating
Northern Railway, Moradabad. Division
Moradabad.
4. Chief Medical Suptd. Railway Hospital,
Moradabad N.Rly, Moradabad.

.....Respondents.
(By Advocate : Sri A.K. Gaur)

O_R_D_E_R_

(By Hon'ble Mr.Justice R.R.K. Trivedi, V.C.)

This O.A., filed under section 19 of Administrative
Tribunals Act 1985, the applicant has prayed to quash
the order dated 05.09.2003 (Annexure 2) and give
direction to the respondents to allow the applicant
to carry on his duty as Mail Express Guard and to treat
the period of sick since 08.08.2002 till date as in
service period without loss of leave of the applicant.

2. The facts of the case are that the applicant was initially appointed as Guard Goods on 12.09.1976.



He was promoted as Guard Passenger and finally as Guard Mail Express vide order dated 29.10.1993. In accordance with the provision of Indian Railway Establishment Manual, every Guard is required to be medically examined periodically. Accordingly, the applicant was examined by the Railway Doctor in Category A-two on 06.08.2002. The applicant was advised to have operation of cataract of his eyes, thereafter the applicant went on sick on 08.08.2002. The eyes of the applicant were operated upon for cataract on 03.09.2002. It is claimed that after the operation, the applicant became fit, but, he was not allowed to resume duty. Consequently applicant filed O.A. No.594/03 in this Tribunal which was disposed of by order dated 13.07.2003. In para 4 (viii) of the O.A., it has been stated that the copy of the order dated 13.07.2003 is being annexed as Annexure 10, We are sorry to observe that no such copy has been filed alongwith O.A. Learned counsel for the applicant, however, gave photostat copy of the order dated 13.07.2003. Direction given by the Tribunal was as under:

"The OA is disposed of finally with liberty to the applicant to file a representation before respondent No.2 within a period of 10 days. If the representation is so file, shall be considered and decided by respondent No.2 by a reasoned and detailed order within two months from the date of copy of this order alongwith representation is filed. There shall be no order as to costs".

3. Learned counsel for the applicant has submitted that this Tribunal gave the liberty to the applicant to file his representation before Chief Medical Superintendent.

Consequently, the representation was filed by the applicant, Copy of which has been filed as Annexure 10. The representation of the applicant has been decided by the impugned order dated 05.09.2000. In the order, it has been submitted that under para 5.12 (10) of Medical Manual Part-I, the employee who have under went the operation for cataract disease are to be declared fit for category A-three. Thus, by Rule after operation unless the applicant is declared fit by Medical Board, he cannot be treated fit for category A-two, which is necessary for giving him the duty of Mail Express Guard. In the impugned order it has been stated that applicant was required to fill up Medical Form No.5 in triplicate. In the circumstances, the applicant could only be treated as per provision of Medical Manual Fit for A-three category and he could not be assigned duty of Mail Express Guard.

4. Learned counsel for the applicant has cited the example of one Sri U.K. Mishra who was allowed to work as Guard Goods but in the order it has been stated that he was erroneously allowed to work as Guard Goods for which disciplinary action against Station Superintendent, Rosa was recommended by the Competent Authority. In our view, if Sri U.K. Mishra was allowed to work as Guard Goods contrary to the provision of Medical Manual Part-1, this could not be treated as precedent and breath of law, ~~and the~~ could not be permitted again.

5. In these circumstances of the case, we do not find any error in the order. The applicant has not filled the Medical Form No.5 and he can not blame anybody except himself for the loss, he suffered.

6. Considering the case, in our opinion, the applicant is not entitled for any relief. At the end, the learned counsel for the applicant also submitted that Medical Form No.5 is not meant for referring the matter to the Medical Board. It is only for declaring an employee medically unfit. Be that, as it may, the fact remains that applicant has not yet been declared fit by Medical Board, ^{whatever} whatever may be the procedure, applicant should have prayed for being considered by Medical Board for declaring him fit in category A-two. The O.A. is accordingly dismissed.

No order as to costs.

D. D.
Member-A.

D
Vice-Chairman.

Manish/-