

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1320 of 2003

Thursday day, this the 22nd day of March 2007

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. M. Jayaraman, Member (A)

Mohammad Islam, Son of Shri Jhinku, Resident of Village Fariha,
Post Fariha, District Azamgarh.

Applicant

By Advocate Shri S.A. Azmi

Versus

1. Union of India through G.M., N.E. Railway, Gorakhpur.
2. Divisional Railway Manager (D.R.M.), N.E. Railway, Varanasi.
3. Station Superintendent, Fariha Railway Station, N.E.R., Azamgarh.
4. Chief Medical Superintendent, Division Hospital, N.E. Railway, Varanasi.

Respondents

By Advocate Shri Anil Kumar

OR D E R

Mr. M. Jayaraman, Member (A)

We have heard Shri S.A. Azmi, Counsel for the applicant and
Shri Anil Kumar, Counsel for the respondents.

2. The following reliefs have been prayed for by the applicant in
this O.A.: -



"(i) to issue an order or direction in the nature of certiorari quashing the impugned order dated 30.07.2003 (Annexure No.11 to the Compilation No.1).

(ii) to issue a writ, order or direction, commanding/directing the respondents to pay the arrears of salary to the applicant with effect from 25.07.2001 up till now with a reasonable interest.

(iii) to issue a writ, order or direction, commanding/directing the respondents to permit the applicant to work and to perform his duties on the post of Kantawala or any other suitable alternative post according to the medical fitness (Eye Vision) of the applicant equivalent to the present category of the applicant in operating department of N.E. Railway and not to interfere in the functioning/service of the applicant."

3. The brief facts of the present case are that the applicant was appointed as Kantawala in the year 1976 in N.E. Railways and on 24.09.1999 he was sent for medical check up for his eyes and was declared fit to work for the post A-2 alongwith the eye glasses. He was again examined on 26.06.2001 and on 10.07.2001 he was once again referred to Chief Medical Superintendent, Divisional Hospital, N.E. Railway, Varanasi who referred him to Medical Superintendent, N.E. Railway, Gorakhpur and thereafter on 16.07.2001 to R.P. Centre for Ophthalmic Sciences, A.I.M.S., New Delhi. The applicant's pleading is that he appeared for the eye examination in all the above mentioned places even though he was declared fit vide certificate dated 26.06.2001, but he was not given any work nor he was paid any salary. Therefore, he made representations dated 18.08.2002 and 21.08.2002 before respondent no.2 namely D.R.M., N.E. Railway, Varanasi. Since he did not get any reply, he filed an O.A. No. 296 of 2003, which was finally disposed of on 02.04.2003 with specific direction to the respondents to consider the representation of the applicant and to pass a reasoned and detailed order thereon within a period of three months from the date of receipt of a copy of this order and in case applicant has been found unfit in a particular category due

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to his eye vision the respondents should offer him alternative job or to pass appropriate orders in accordance with law within the stipulated period under intimation to applicant. However, the applicant received the impugned order dated 22.07.2003, which was forwarded by letter dated 30.07.2003 enclosing the speaking order through which his representation was disposed of.

4. The main grounds adduced by the applicant in this O.A. are that he was working as Kantawala without any complaint against his working and in fact his work had been appreciated by all the concerned authorities. As and when he was sent for medical check up, he obeyed the orders and directions of the superior officers and attended the said medical examination. He specifically submits that he appeared before the Medical Board on 28.09.2001 where he was medically examined at R.P. Centre for Ophthalmic Sciences, All India Institute of Medical Sciences, New Delhi and the medical report was sent to the department but no copy was given to him. When no work was given to him, he filed O.A. No. 296 of 2003, which was disposed of by this Tribunal on 02.04.2003 with certain specific and positive directions but the respondent no.4 passed the impugned order dated 22.07.2003 in an illegal manner and in gross violation of Court's Order. He has not been given any notice or information nor any opportunity has been given to the applicant. He has, therefore, requested for quashing the impugned order and for issuance of direction to the respondents to pay arrears of salary w.e.f. 25.07.2001 and to permit him to work in whatever capacity he is fit for.

5. The respondents have resisted the above O.A. by saying that the applicant is responsible for the predicament he is in as he has absconded from service and did not report to the Divisional Hospital Varanasi for receiving the memo of medical check at AIIMS, New Delhi, which was on 22.10.2002, whereas as per the Medical Board, Medical Superintendent, Gorakhpur vide their letter dated 16.10.2001, the applicant's case was to be referred to AIIMS, New

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Delhi. The telegram was sent to the applicant on 27.08.2002 and another letter dated 31.08.2002 and one D.O. letter dated 07.11.2002 issued to Senior Divisional Operating Manager, Varanasi for giving direction to applicant to report to Divisional Hospital, Varanasi so that he may be sent to AIIMS, New Delhi. The applicant has not presented himself but only filed the O.A. 296 of 2003. Even then, in due regard to Tribunal's direction dated 02.04.2003, the impugned order dated 22.07.2003 was passed wherein the above has been fully explained. Since the applicant has been continuously absent and that there was no leave due to him, the respondent had no alternative except to stop the salary from September 2001 to December 2001. However, he was paid salary for the months of January 2002 upto July 2002, after he joined. Later on again, the applicant has absented and no salary was paid from August 2002.

6. We find force in the arguments put forward by the respondents. Beyond saying that he was not allowed to join, the applicant has no explanation as to why he stayed away from the work. It is rather surprising to see that a person may be subjected to medical examination so many times, each time he has been found to be fit but again and again the applicant himself has come up with the complaint of poor vision, which has been taken note by the authorities and he has been sent for medical examination. It is seen from the record that even a reputed Institution like AIIMS, New Delhi could not find anything wrong with his vision. As per the records, the respondents have stated that the applicant has stayed away from the work. It is noteworthy that for the period the applicant joined duty namely January 2002 to July 2002, he was paid salary due to him and as stated by the respondents he has not been paid any salary for the period of absence since he absented from work. In these circumstances, we cannot blame the respondents for not paying any salary to the applicant. If the applicant means business and wants to work sincerely, he must show the same in his deed. The applicant is, therefore, advised to take his job seriously and attend his duties after

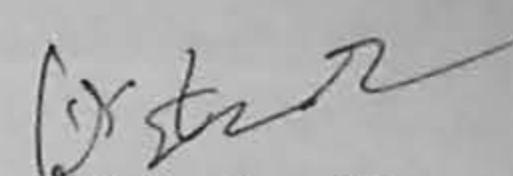
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which only he can claim any salary. Since as per the respondents' version, the applicant never presented himself before the Medical Superintendent, Varanasi, because of which he could not be tested again, the applicant is advised to present himself before the authorities for medical examination in accordance with the rules.

7. In the light of above discussion, we are of the view that O.A. has no merit, which is accordingly dismissed with no order as to cost.


Member (A)


Member (J)

/M.M./