

Central Administrative Tribunal
Cuttack Bench

ORIGINAL APPLICATION NO. 126 OF 1988

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Date of decision : October 4, 1988

Girija Sankar Mishra, S/o Late Fakir Mohan Mishra,
aged about 34 years, Head Clerk, S.E.Railway,
Carriage Repair Workshop, At/P.O. Mancheswar,
P.S. Sahid Nagar,
(Bhubaneswar) Dist.Puri.

.... Applicant

Versus

1. Union of India represented through the General Manager, S.E Railway, Garden Reach, Calcutta-43.
2. Medical Superintendent, S.E Railway, Khurda Road,
3. Chief Medical Officer, S.E Railway, Garden Reach, Calcutta-43.
4. Chief Workshop Manager, Carriage Repair Workshop, S.E Railway, Mancheswar, Bhubaneswar-5, Dist.Puri.
5. Divisional Personnel Officer, S.E Railway, Khurda Road,
6. The Addl. Chief Mech. Engineer(W), South Eastern Railway, Carriage Repair Workshop, Mancheswar

.... Respondents

M/s S.P Misra, A.K Misra,
B.S Misra, A.R Dash, S.Latif

... For Applicant

Mr. B.Pal, Sr. Standing Counsel (Railway Admn.) For Respondent

C O R A M

THE HON'BLE MR K.P ACHARYA, MEMBER (JUDICIAL)

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1. Whether reporters of local papers have been permitted to see the judgment ? Yes
2. To be referred to the Reporters or not? ~~to~~ Yes
3. Whether His Lordship wish to see the fair copy of the judgment ? Yes.

JUDGMENT

K.P ACHARYA, MEMBER (JUDICIAL) In this application under Section 19 of the Administrative Tribunals Act 1985 the petitioner prays to set aside the recommendation given by the Medical Board holding the petitioner to be orthopaedically handicapped to the extent of less than 40%.

2. Shortly stated, the case of the petitioner is that he is a Head Clerk attached to the Carriage Repair Workshop under South Eastern Railway posted at Mancheswar. The petitioner is said to be a physically handicapped person suffering from ankylosis of bone and stiffness in the right hip joint. Due to the above physical disability, the petitioner applied to the appropriate authority for granting him a conveyance allowance which is prescribed under the rules. The petitioner was asked to appear before a Medical Board which opined that the physical disability of orthopaedical nature of the petitioner was less than 40% and in such circumstances the competent authority rejected the prayer of the petitioner for grant of conveyance allowance. Hence this application.

3. In their counter the Opposite parties maintained that the competent authority had no other option but to reject the application, because under the rules for getting advantage of the conveyance allowance, the orthopaedical disability must be above 40% and the Medical Board having opined that the orthopaedical disability of the petitioner was less than 40%, the authority had no other option but to reject the application of the petitioner.

4. I have heard Mr S.P Misra, learned Counsel for the petitioner and Mr B.Pal, learned Senior Standing Counsel for the Railway Administration at length. Before I discuss the questions of fact and the arguments advanced in this case, it is worthwhile to quote the relevant portion of the contents of Annexure 1 dated 14th December 1978.

" A copy of Railway Board's letter No.F(E)I-78/AL-7/5 dated 23.10.78 is published for information, guidance and necessary action.

Copy of the Railway Board's letter No. F(E)I-78/AL-7/5 dated 23.10.78 addressed to the General Managers, All India Railways and others.

Grant of Conveyance Allowance to blind and orthopaedically handicapped Railway Employees

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The question of granting some assistance to blind employees and orthopaedically handicapped employees with disability of lower extremities, who generally require physical assistance for going to and coming from the place of their duty, has been under consideration of the Government. The President is now pleased to decide that such of the Railway employees borne on regular establishments (including workcharged staffs), who are blind or are orthopaedically handicapped with disability of lower extremities, shall be granted a conveyance allowance @ 10% of basic pay subject to a maximum of Rs.50/- per month, subject to the following conditions:-

i) An orthopaedically handicapped employee will be eligible for conveyance allowance

only if he has a minimum 40% permanent partial disability of both the upper and lower extremity of deformities;"

The conditions laid down in the above quoted portion of Annexure I was also repeated in the year 1980 as contained in Annexure 2. The relevant portion runs thus :-

" The President is now pleased to decide that in modification of para I(i) of letter dated 23.10.78 and clarification given under point 1 of letter dated 26.9.79 referred to above the conveyance allowance shall be allowed to an orthopaedically handicapped employees if he or she has a minimum of 40% permanent partial disability of either upper or lower limbs xx xx "

The very same thing also finds place in a letter of the Railway Board dated 27th October 1979 contained in Annexure 3. In such circumstances there is no escape from the conclusion that in order to avail the conveyance allowance by a physically handicapped or orthopaedically disabled person, the orthopaedical disability must be 40% or more. If such disability is assessed to be less than 40%, I am of the view that the competent authority would be justified in rejecting the application of a person intending to avail the conveyance allowance. In the present case, admittedly, after the petitioner was examined by a Medical Board, it was opined that the disability was less than 40% and hence the application was rightly rejected.

Thereafter in the year 1986 the petitioner renewed his application because his suffering was going from bad to worse. The Medical Superintendent, Khurda Road gave a report contained in Annexure 5 dated 17 September 1986 which runs thus:-

" The above named appeared before the standing medical board KUR on date

On review of the old records, it is seen that he was examined by the Standing Medical Board at KUR on 13.4.83 and again on 3.8.83 and the PPD was assessed as less than 40% (forty percent) non-schedule and the same was approved by the then CMO-GRC. His condition still remain the same.

Hence the recommendation made early stands good"

5. Mr S.P Misra, learned counsel for the petitioner submitted that when the petitioner was first examined by the Medical Board there was no orthopaedic surgeon present as a member of the Board and eventually the petitioner was not examined by any orthopaedic surgeon. Report contained in Annexure 5 indicates that the petitioner had never been examined by any orthopaedic expert. Mr Misra drew my attention to the certificate given by Prof Dr R.C Mohanty who is Professor of Orthopaedic Department under the State of Orissa and also the Hony. Consultant of ALIMCO Sales Centre. Dr Mohanty had examined the petitioner and

stated as follows:-

" He is 45 (forty five) percentage of disabled orthopaedically due to Bony Ankylosis of Right Hip ."

To add to this one would find from Annexure 5 that the report is based on old record . Nothing is indicated therefrom that the petitioner was examined afresh by the Board and particularly by an orthopaedic expert.

6. In view of all these facts and circumstances, I think for the ends of justice, the petitioner should be examined by a Medical Board in which a orthopaedic expert (surgeon) should be a member of the Medical Board, who should examine the petitioner and render his opinion to the Board in regard to the percentage of the disability of the petitioner and after the Board gives its opinion, the competent authority should pass necessary orders according to law as to whether the petitioner is entitled to the conveyance allowance. It was told to me by Mr B.Pal, Senior Standing Counsel for the Railway Administration that at Calcutta, Garden Reach, there is a well-equipped hospital and an orthopaedic surgeon would be available to examine the petitioner. I would therefore direct that the petitioner be allowed to appear before the Medical Board at Garden Reach, Calcutta soon after receipt of the communication from the Medical Board as to the date on which it will meet to examine the petitioner and the petitioner should be allowed to appear before the Board on the appointed day. I hope that this matter would be finalised

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within a month from the date of receipt of a copy of this judgment.

7. Before I part with this case I think it is worthwhile to mention that the previous report of the Medical Board should not weigh in any manner what-so-ever with the ^{The petitioners} Medical Board of Calcutta and ~~he~~ ^{they} should be examined afresh. Circular contained in Annexure 2 indicates that the disabled person who would be examined by the Board is entitled to travelling allowance etc. I hope the period of journey and stay at Calcutta would be treated as on duty and the travelling allowance and daily allowance as per rules should be paid to the petitioner by the Railway Administration. Thus the application is accordingly disposed of leaving the parties to bear their own costs.



Received 4-10-88
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Member (Judicial)

Central Administrative Tribunal
Cuttack Bench, Cuttack
October 4, 1988/N.J.Joseph, Sr. P.A.