

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 592 of 1996

Present : Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman
Hon'ble Mr. S. Dasgupta, Administrative Member

Ahmed Anseri, s/o Abdul Razzaque aged about 30 years worked as Peon in the office of CPO (Handicraft Centre) Office, South Eastern Railway, Garden Reach, Calcutta, resident of SER North Colony, 18A/7, Unit No.4, Garden Reach, Cal-43.

..... Applicant

-Vs-

(represented by Mr.S.Bhattacharjee,
Counsel)

1. Union of India, through the General Manager, South Eastern Railway, Garden Reach, Calcutta - 700 043 ;
2. The Chief Personnel Officer, South Eastern Railway, Garden Reach, Cal-43 ;
3. Chief Medical Director, South Eastern Railway, Garden Reach, Cal-700 043;
4. The Chief Medical Officer, South Eastern Railway, Garden Reach, Cal-43 ;
5. Sr.Divisional Medical Officer (Cardiology) S.E. Rly., Garden Reach, Calcutta-700 043 ;
6. Sr.Divisional Medical Officer (Cardio, Administration), Southern Railway Head Quarter Hospital, Perambur, Madras-600023.

..... Respondents

(represented by Mr.K.Md.Ali & Mr.S.Choudhury,
Counsel)

Heard on : 25.2.1998 - Order on : 18.3.1998

O R D E R

S.N. Mallick, VC

In this application, the petitioner's prayer in brief is that the respondents be directed to appoint him in a Group - 'D' Post on acceptance of the medical certificate dated 6.2.96 allegedly given by the Institute for Cardiac Treatment and Research, Southern Railway Hospital, Madras, wherein the petitioner has been declared fit for job. A xerox copy of this certificate has

been annexed to this application as Annexure - A/16. The petitioner's prayers as per paragraphs 8(A) and (B) are too lengthy and to some extent argumentative. Anyway, the petitioner's case in brief is as follows.

2. The petitioner was a casual worker under the respondent authorities and acquired temporary status as a casual worker and his service was subsequently regularised and he was appointed and posted as a Peon in Group-D category in the ^{office of} CPO (Handicraft Centre) under Sr. Personnel Officer's Memo No. P/R&R/Cl.IV/DR/HQ/3498 dt. 8.9.93 (vide Annexure A/3). While working as Peon, the petitioner was sent for medical examination for 'C2' category and he was so examined on 21.9.93. Thereafter, the petitioner was not allowed to join his duty in the said Handicraft Centre for which he made several representations. The petitioner was informed by a letter dated 12.1.94 (vide Annexure A/6) that since he was declared unfit in 'C2' category by the Railway Medical Authority, there was no question of his appointment as Peon in CPO's Office/Garden Reach. According to the petitioner, Rule 510 of Indian Railway Medical Manual (IRMM) was not applicable to him for his appointment in Group-D post of the railways. The petitioner moved this Tribunal in O.A. No. 119 of 1994, which was disposed of by an earlier Bench by its order dated 19.12.94 with a direction upon the railway authorities to give another look at the matter by constituting a Special Medical Board, which includes at least two Ophthalmologists. It was made clear that if the applicant was found fit in the medical examination, he shall be given appointment as and when his turn would come (Tribunal's order is to be found at Annexure-A/9). The petitioner's case is that the respondent authorities did not

comply with the Tribunal's order as noted above.

3. It is the further case of the petitioner that in the CMO's Memo No.HME/1/14 dated 3.1.95, it was stated that the petitioner was unfit for appointment as he was a patient of Metral Stenosis. Relevant Annexure as Annexure A/7 to be found at page 32 shows that the said Memo was dated 3.1.94 and not 3.1.95. Anyway, this material was presumably taken into consideration by the Tribunal while passing the aforesaid order. In the aforesaid judgment passed by the Tribunal, there was reference to his eye examination but no reference was made to the cardiac problem of the petitioner. Anyway, the petitioner's present case is that the respondents have not dealt with his case properly, according to law and according to the direction of the Tribunal. It is stated that in reference to his appeal dated 28.8.95, he was informed that he was suffering from "Rh.Metral Stenosis" and was unfit by the CMD's letter No.5342 dated 8.9.95, vide Annexure A/12. According to the petitioner, the respondents unfairly gave emphasis on his cardiac problem for declaring him unfit for Group-D post and they gave a total go-by to his being unfit in C2 category relating to his vision. It is his further case that he on being referred to by the respondent authorities, reported to the Cardiology Department of Southern Railway Hospital at Madras, where he was declared fit for job by his Attending Physician Dr.H.S.Somanath as per Annexure A/16. In spite of that report, CMD/GRC by his letter dated 14.3.96 (Annexure - A/17) informed the petitioner that the Institute of Cardiac Treatment and Research/Southern Railway, Madras had given the opinion that he was suffering from Rheumatic Heart Disease Moderate Aortic Regurgitation and the disease

being in a progressive condition could not be considered for re-examination. No note was taken by the respondent authorities of the opinion of the Attending Physician that the petitioner was fit for job in the medical report and certificate dated 6.2.96 being Annexure A/16.

4. The respondents have contested this application by filing a reply, wherein all the material allegations have been denied specifically. It is also denied that the petitioner was given any appointment in Group-D post as alleged by him. It is stated that the applicant being empanelled for regularisation against a Group-D post was ~~year~~^{year}-marked for posting as a Peon in the Handicraft Centre under the Chief Personnel Officer, Garden Reach, Calcutta subject to medical examination. The petitioner was found unfit in the lowest medical classification of C2. It is the case of the petitioner that for any appointment, medical examination of the candidates is a must in respect of General Physical Examination and Vision test as per Rule 509 of the IRMM. It is also stated that passing the medical test is also^a necessary condition for appointment in respect of all candidates or employees in Group - A, B, C and D posts. Rule 510 of IRMM provides for visual acuity examination and in addition to which general physical examination is to be made in respect of the candidates as well as serving railway employees. Rule 509 provides for medical examination of candidates for appointment to Non-gazetted Railway Service and periodical medical re-examination of serving railway employees including general physical examination and vision test. The vision test is provided under Rule 510. Rule 511 provides for general physical examination of a candidate as well as a serving railway employee to check whether such person is in good

mental and bodily health and free from any defect likely to interfere with the efficient performance of the duties of his appointment.

5. It is further stated that in compliance with the Tribunal's judgment dt.19.12.94, an Expert Medical Board comprising one Cardiologist, two Ophthalmologists and C.G. as Chairman was held on 27.1.95 under direction from Chief Medical Director/ S.E. Railway and the applicant was declared unfit in C2 medical category in Gr.D Railway service due to 'Mitral Stenosis' which is a Cardio Vascular ailment. According to the respondents, there was no question of appointing the petitioner as he was declared unfit by the Medical Board. It is the case of the respondents that on two medical examinations, the applicant was declared unfit in C2 category due to 'Mitral Stenosis', a heart complaint not due to any visual acuity problem. According to the respondents, there was no violation of the Tribunal's order dt. 19.12.94. Regarding fitness certificate allegedly issued by the Southern Railway Hospital at Madras(vide Annexure A/16), it is stated that the petitioner was diagnosed as a case of RHD with severe MS, moderate AR, moderate PAH and the word, "fit for job" appearing on the prescription was a subsequent interpolation not made by the Attending Doctor. In other words, it is the case of the respondents that the petitioner forged the above prescription by subsequently interpolating the words "fit for job" there.

6. At the time of hearing, the respondents have produced before this Tribunal a letter dated 8.4.96 written by the Chief Medical Director of the Southern Railway Hospital at Madras to the Chief Medical Director, S.E. Railway, Garden Reach, Calcutta stating that the Attending Physician Dr.Somanath had intimated

that he had never written in the prescription that the petitioner was fit for job. On the other hand, he was of the opinion that he was not fit for any railway employment in any category. It is curious to note that the petitioner has not dared to file any rejoinder to the reply filed by the respondents making the above allegation and no answer came from the Id. Counsel appearing for the petitioner in respect of the letter dated 8.4.96 produced before this Tribunal. In such circumstances, it must be held that the allegations made in the reply have gone unchallenged on the part of the petitioner. Furthermore we must note that the petitioner has incorrectly stated in his application that he was appointed as a Group-D Peon after regularisation as per Annexure A/3. The said order shows that the petitioner was ^{only} allotted for posting in Group-D category in the department described as CPO (Handicraft Centre). Undisputedly, the petitioner has been suffering from Mitral Stenosis as diagnosed by the respondents' Doctor and also by the Southern Railway Hospital at Madras. Whether the petitioner's vision has been corrected or not or whether he has now the required vision for the purpose of employment, is a question of no importance in view of the fact that he is a cardiac patient suffering from Mitral Stenosis in a progressive stage, which makes him unfit for any employment.

7. In view of the ^{unrebutted} ~~unreported~~ allegations made in the reply and in view of the letter dated 8.4.96 produced before us as noted above, we are unable to accept the petitioner's ^{core} ~~allegation~~ that he was declared fit for job by the Attending Physician of the Railway Hospital at Madras as per Annexure A/16. The petitioner has not approached this Tribunal with clean hands and we are of the view that he is not entitled to any relief as prayed for.

Thus, there is no substance in this application which must fail.

8. The application is accordingly dismissed. No order is made as to costs.



(S. Dasgupta)
Member(A)



(S.N. Mallick)
Vice-Chairman