

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA 91 OF 1996

Present : Hon'ble Mr. Justice A. K. Chatterjee, Vice-Chairman

Hon'ble Mr. M. S. Mukherjee, Member (A)

PULOKESH CHAKRABORTY

VS

1. Union of India represented by the General Manager, Eastern Railway, 17, N.S.Road, Calcutta-1
2. The Divisional Railway Manager, Eastern Railway, Howrah,
3. The Sr. Divisional Personnel Officer, Eastern Railway, Howrah
4. The Chief Medical Director, Eastern Railway, 14, Strand Road, 12th Floor, Calcutta-1
5. A.E.E./Operation, E.Rly. Burdwan

..... Respondents

For the petitioner : Mr. A.K.Bairagi, Counsel

For the respondents : Mr. P.K.Arora, Counsel

Heard on : 16.10.96 : Order on : ~~16-10-97~~ 19-2-1997

O R D E R

M.S.Mukherjee, A.M.:

This petition filed u/s 19 of the Administrative Tribunals Act, 1985, is directed against different certificates issued by Railway Medical Authorities declaring the petitioner as unfit for certain categories of running duties but fit for job of Clerk, Gr.I/Clerk, Gr.II.

2. The petitioner was duly promoted and posted as Assistant Driver Electric Loco in the year 1986. Thereafter, he was further promoted as Elec. Shunter in the year 1989 and further on 16.11.91 he was again promoted and posted as Electric Driver, Gr.C after passing the prescribed eye sight test and having been medically selected for category A-1 jobs. Since 16.11.91 he had been performing the duties of Elec.

Driver, Gr.C when on 16.11.94 he fell ill and was admitted to the Asansol Railway Hospital for treatment as an indoor patient from 16.11.94 to 12.12.94. Thereafter, the DMO, Asansol, referred the petitioner to the B.R.Singh Hospital, Sealdah and he remained under treatment in the B.R.Sing Hospital as an indoor patient from 25.11.94 to 12.12.94.

3. The petitioner contends that on 12.12.94, the DMO, B.R.Singh Hospital referred him back to DMO, Burdwan regarding his fitness and that the petitioner allegedly appeared before the DMO, Burdwan for several times for medical fitness. Subsequently, as per DMO, Burdwan's report, the AEE/OP/Burdwan issued a G-37 form for special medical check up of the petitioner on 28.1.95 and on the basis of such G-37 document, the DMO, Burdwan referred the petitioner to DMO, Orthopedic, Howrah for such special medical check up. The petitioner claims to have attended the DMO, Orthopedic, Howrah on 29.1.95 and that the Medical Superintendent (MS)/Orthopedic, Howrah, issued him a certificate bearing No. 055549 dated 17.2.95, a copy of which the petitioner claims to have added as Annexure-B to this petition.

4. According to the said certificate of MS,Orthopedic, Howrah, the petitioner was allegedly declared "fit in A-1, but not fit as Driver or Motorman." After obtaining this certificate, the petitioner claims to have attended the DMO, Burdwan again on 21.2.95 and the DMO, Burdwan further issued a certificate bearing No. 0232313 dt. 21.2.95 according to which the petitioner was declared "Fit in A-1 but not fit as Driver or Motorman." The petitioner alleges that while issuing this certificate, DMO, Burdwan, did not medically examine him at all. A copy of this certificate is claimed to have been annexed as Annexure-C to this petition.

5. Thereafter, the petitioner claims to have met the Sr.



Crew Controller, Burdwan on 21.2.95 and produced the certificate of DMO, Burdwan and the latter sent him to DEE/Operation/Howrah. A copy of this letter is said to have been annexed as Annexure-D to the petition.

6. Thereafter, the DEE/Operation/Howrah referred the petitioner's case to Sr. DPO, Howrah for alternative job and eventually as per order of Sr. DPO, Howrah, the petitioner was posted as Clerk, Gr.I in DSC/II on 11.9.95 and the petitioner submits that since then he has been working as Clerk, Gr.II.

7. The petitioner's grievance is that the decision to medically decategorise him against his functioning as Driver, or Motorman has been highly arbitrary, unfair and that all these medical opinion had been taken out of malafide and motivated intention. The petitioner made a representation on 28.5.95 to the Medical Superintendent, Orthopedic Hospital, Howrah for reconsideration of his case by holding fresh medical examination, but without any result.

8. In filing this application, the petitioner has prayed for setting aside the impugned decision of the Medical authorities declaring him invalid for working as Driver or Motorman and to direct the respondents to restore him back to his former post of Elec. Driver, Gr.C. He has also prayed for a direction so that he is medically examined afresh by an impartial Medical Board other than the Railway doctors. He has also prayed for a direction on the respondents so that he may be posted as ATF(R), which post belongs to the group of running staff, so as to enable him to earn consequential benefits.

9. We have culled out the above facts to make the sequence of events as clear and coherent as possible, although the task is highly difficult as the text of the petition is very difficult with rather conflicting/confusing contentions and

10.

certificate No. 0242313 is, however, at Annexure-D to the petition, which declares the petitioner as "Fit not as Driver or Motorman".

13. From all the records produced, it is, however, clear that the petitioner had been referred to for medical opinion because as admitted by the petitioner himself, while on duty on 16.11.94 he fell ill and he was admitted to the Asansol Railway hospital as an indoor patient from where he was further referred to B.R.Sing Hospital for further treatment for different specified periods. It appears from the discharge certificate of B.R.Sing Hospital, which the petitioner has added as Annexure-B to the petition, that the diagnosis of the petitioner was convulsion/disorder. Further from a document which has been annexed as Annexure-E (which appears to be a certificate issued on 16.8.95 by DMO, Howrah), it is seen that the petitioner had been recommended for change of occupation vide certificate No. 055549 dt. 17.2.95 as he was declared permanently medically unfit for the duties of his original post and that after further examination, the DMO, Howrah has recommended that the petitioner should be provided with suitable alternative employment on medical grounds in category 'Aye one' only. Obviously, the petitioner has been given the post of Clerk, Gr.I by virtue of this certificate and the petitioner has admitted that since 11.9.95 he has actually been working as Clerk, Gr.I

14. Now, as against above culled out from the petition of the OA, it is found from the late affidavit in reply from the respondents that the petitioner, who had originally joined the railways as Gangman in 1978, was subsequently duly promoted as 2nd Fireman by an order dt. 21.5.87 and posted at Burdwan. In 1988 he was moved to Electrical TRS Wing as Asst.

Driver(E) by conversion, as per prescribed instructions of Sl. No. 243/83 by an order dt. 15.7.88 and he was posted as CTFR, Burdwan. Later, the respondents aver, he was further promoted as Engine Turner (Eject) by an order dt. 16.7.90. He was further promoted as Goods Driver (Elec.)/Burdwan by an order dt. 24.10.91. Following this, the reply adds, the petitioner was declared unfit for "Driver/Motorman" duty, although "fit in AYe One category" vide the medical certificate dt. 17.2.95. The affidavit in reply, while contesting the petition, adds that the petitioner has been declared by the certificate dt. 17.2.95 as permanently medically unfit for the duties of his original post and to provide him with a suitable alternative employment of permanent nature. The Rlys. have accordingly provided to him an alternative job in ministerial cadre as Clerk, Gr.I in DRM's Office/Howrah - a permanent job, by protecting 30% of his pay for rendering service as running staff.

15. From the aforesaid facts it appears that the petitioner had been declared by the DMO/Burdwan by his certificate No. 0242312 dt. 21.2.95 that he was "fit not as Driver or Motorman". The petitioner submits that the said certificate had not been given in his favour after appropriate medical examination. Subsequently, he preferred an appeal before the Medical Superintendent, Orthopedic, Howrah on 28.8.95 but his appeal had not been considered by the Medical Superintendent, Orth. Howrah with ulterior motive and that it was rejected arbitrarily. A copy of the said appeal dt. 28.8.95 has been annexed as Annexure-F to the petition. Finally, the DMO, Burdwan issued a further certificate dt. 16.8.95 declaring the petitioner as "permanently medically unfit for the duties of his original post" but he recommended that on medical ground he should be provided with suitable

the annexures described to have been added to the petition have not actually been enclosed and the annexures actually enclosed do not bear the reference number or the annexures referred to in the petition do not tally with the actual annexures.

10. The problem has further been compounded by the fact that the respondents despite repeated opportunity would not first file any reply. Therefore, we heard on 16.10.96 both the parties including Mr. P.K.Arora, 1d. counsel for the respondents - the latter arguing the case without of course the benefits of instruction or reply from the respondents. The case was then reserved for judgement.

11. Before, however, the judgement could be pronounced, Mr. P.K.Arora, the 1d. counsel for the railways prayed on 17.1.97 for special leave to file the reply after the hearing had been concluded, which was allowed in his favour with fresh hearing being allowed to the petitioner. Mr. Arora was thereafter heard in presence Mr. Bairagi, the learned counsel for the petitioner, who submitted hat he did not propose to add anything to his earlier arguments. He, however, submitted the relevant IREM for our consideration.

12. Briefly speaking, the petitioner's grievance is that in the medical certificate issued on 22.2.95 by the DMO, Burdwan bearing Sl. No. 0242313, the finding about the petitioner is arbitrary and that this has been done without assigning any reason. We are not in a position to adjudicate on this claim as no copy of the said certificate has been enclosed by the petitioner although in the petition he claims to have annexed the same as Annexure-C. Annexure-C actually supplied is something altogether different and bears a different date and issued by a different authority. The said



alternative employment permanently in category Aye One.

16. The petitioner's grievance is that all these certificates had been given arbitrarily against him without proper medical examination. His contention is that he had been performing duties as a Driver all along satisfactorily and the criterion for fitness in the sight test for a Driver is under category A-1 i.e. vision 6/6. There is no other prescribed physical unfitness for the petitioner for which he could be declared as disabled person to work as Driver or Motorman. He feels that only a motivated medical officer has given wrong certificate about him to prejudice his case and the further certificate requiring him to be given alternative permanent job is also designed to harm him arbitrarily.

17. We have given our anxious consideration to the issues involved. In our considered view, the petitioner cannot challenge the medical report merely calling the same as arbitrary without substantiating the allegation. However, he is nurturing a grievance that adverse medical certificate given by the DMO, Howrah had not been on the basis of proper medical examination and that he feels that the medical officer was motivated against him. The respondents also concede that atleast from 24.10.91 till 1995 the petitioner had been functioning as a Goods Driver and obviously he had been found medically fit during the aforesaid period. He had earlier also worked as Asst. Driver. But merely possessing requisite fitness to act as Driver in the past does not guarantee continuity or right to do so in case his physical condition does not remain the same, and that there is provision in the IREM for further medical check up whenever there is reservations if the petitioner has grievance against a particular medical authority's report, he could seek remedy by making an appeal before the prescribed medical authority for

fresh medical examination. Under para 1020(b) of IREM (2nd Edn) it has been laid down that a railway servant does not ipso facto enjoy the right of appeal against the findings of a medical authority. However, he may lodge an appeal for reconsideration by the Chief Medical Officer and that against such appeal, the CMO has the discretion to order further special examination of the railway servant.

18. In this case, no such special examination has been done as any way the petitioner has appealed before the CMO though he has made a representation before the Medical Superintendent, Ortho, Howrah. Moreover the normal period of limitation of appeal is over.

19. Under the circumstances and in the interest of fair play and justice we dispose of the petition with the following orders :

- i) The petitioner shall, within a month from the date of this order, file a self-contained and lucid representation along with a copy of this order before the CMO/Director for fresh medical check up and through such representation/appeal he shall add all relevant documents and the latter within 3 months from the date of receipt of such representation/appeal shall dispose of it of by getting him (the petitioner) examined by a special medical board under the rules. In the composition of the new medical board, doctors ~~other than the ones~~ who had conducted the medical examination in the past would not be included.
- ii) The respondents shall further decide about the duties of the petitioner on the basis of the report of such fresh special medical examination .
- iii) There will be no order as to costs.

Mukherjee
19/2/97
(M.S.MUKHERJEE)

MEMBER (A)

Arindra
18.2.8
(A.K.CHATTERJEE)

VICE - CHAIRMAN