In The Central Administrative Tribunal
Calcutta Bench

OA.398 of 1996

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. G.S. Maingi, Administrative Member

N.C. Das   ... Applicant

- VS -

Union of India, through the
General Manager, C.L.W.,
Chittaranjan (Burdwan)

.... Respondent

For the Applicant : Mr. B. Chatterjee, Advocate
Ms. B. Mondal, Advocate

For the Respondents: Mr. P.K. Arora, Advocate

Heard on : 31-3-2000   Date of Order : 31-3-2000

ORDER

D. PURKAYASTHA, JM

Applicant Shri N.C. Das, Ex-Deputy Shop Superintendent/KLS-
15 of C.L.W., Chittaranjan, filed this application for direction
upon the respondents that he should be declared to have been retired
from service on medical ground on 28.4.1995 instead of 31.1.1996
on the ground that on 28.4.1995 the Chief Medical Superintendent,
CLW, Chittaranjan Hospital declared him unfit in all categories of
further railway service. But respondents did not Constitute a
Medical Board for holding examination and declaration for such pur-
pose. Ultimately he was asked to get admission in the CMS/KG Hos-
pital for necessary action. But he did not get admission in that
Hospital as directed by the authority. Again on 25.9.95 (Annexure-
A/4 to the application) the respondents referred him back to the
Medical Superintendent for doing the needful. According to the
applicant, he made representation to the authority on 2.1.1995

(Annexure-A/5) stating his grievance therein; but the respondents did not take any action on the representation. Hence, he has filed this case before this Tribunal.

2.   Respondents filed written reply denying the allegations made in the application. Ld. Advocate Mr. Arora for the respondents drew our attention to the representation (Annexure-A/5) dated 2.1.1995 which is addressed to the General Manager, CLW, Chittaranjan on 2.1.1995. Ld. Advocate Mr. Arora, referring to the representation, submits that the applicant is found guilty of suppressing the material facts. Therefore, he is not entitled to get relief as claimed in this case from this Tribunal. Referring to the said representation he also submits that the applicant incorporated certain facts relating to the period as mentioned in the letter dated 2.1.1995 which indicates that the representation has been manufactured by the applicant for the purpose of this case. Ld. Advocate also submits that applicant did not send any representation to the General Manager, CLW, Chittaranjan as stated in the application. Therefore, application should be dismissed on the sole ground.

3.   On the submissions made by Ld. Advocate Mr. Arora for the respondents, we asked the Ld. Advocate for the applicant to satisfy us as to whether the representation dated 2.1.1995 has been at all sent to the General Manager, CLW, Chittaranjan as stated in the application. But applicant could not show any document that the said representation has been sent to the General Manager either by Registered Post or by hand. We do not find any independent corroboration in respect of submission of representation dated 2.1.1995. We are of the view that when the respondents denied receipt of the representation (Annexure A-5 to the application), then burden lies with the applicant to prove that the said representation has been sent to the General Manager on 2.1.1995. If the representation sent to the General Manager, C.L.W., Chittaranjan on 2.1.1995 is accepted then the fact as stated in the representation cannot be accepted.

It is noted by us that the representation dated 2.1.1995 (Annexure-A/5) contained certain clarification of the facts relating to the period September 1995. That fact indicates that, the representation was not sent on 2.1.1995. Since the discrepancy could not be reconciled by the Ld. Advocate for the applicant, therefore, we are not inclined to interfere in this case as the applicant did not come with clean hand before this Tribunal. Therefore, application is dismissed awarding no costs.

(G.S. Maingi)
Member(A)

(D. Purkayastha)
Member(J)

DKN