

13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ORIGINAL APPLICATION NO. 32/1995.

JODHPUR THE 22ND DAY OF JUNE, 1998.

.....

Fateh Singh S/o Shri Bhola Ram aged about 45 years at present working as Gangman under the office of P.W.I., Churu (Bikaner Division).

..... APPLICANT.

VERSUS

1. The Union of India through General Manager(P), Northern Railway, Baroda House, Headquarter Office, New Delhi.
2. The Chairman, Railway Board, Rail Bhawan, New Delhi.
3. The Divisional Railway Manager, Northern Railway, D.R.M. Office, Bikaner.
4. The Assistant Engineer, Northern Railway, Ratangarh.
5. The Chief Medical Officer, Northern Railway, Baroda House, New Delhi.
6. The Divisional Personnel Officer, Northern Railway, D.R.M. Office, Bikaner.
7. The Senior Medical Superintendent, Northern Railway, Bikaner.

.....RESPONDENTS.

.....

Mr. S.N.Trivedi, Advocate, for the applicant.

Mr. V.D.Vyas, counsel for the respondents.

.....

CORAM :

HONOURABLE MR. A.K.MISRA, JUDICIAL MEMBER

HONOURABLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

.....

PER HONOURABLE MR. A.K.MISRA :

The applicant has filed this O.A. with the prayer that the impugned order dated 12.12.1994 (Annex.A/1) be quashed and set aside and the respondents be directed to take the applicant back on duty with all consequential benefits alongwith simple interest on arrears.

for

2. The applicant has further prayed that he may be treated to be in continuous service of the respondents and the respondents be directed to provide him a suitable job as per his medical categorisation in case he is not found fit in medical category B-I.

3. Notice of the O.A. was given to the respondents who have filed their reply to which no rejoinder was filed by the applicant.

4. Briefly the facts of the case are that the applicant was appointed as Gangman on 25.7.1983 by the respondents. On 6.8.1991 when the applicant was performing his duty on CTR work in respect of repair of line, a chopped iron piece struck his left eye and he ^{was} rushed to the hospital. He was given treatment and was referred to the Divisional Hospital, Northern Railway, Lalgarh, Bikaner on 22.10.1991. Due to the injury in the left eye, the applicant suffered gross loss in vision in the left eye. Thereafter, the applicant was referred to the Central Hospital, New Delhi, where a Medical Board was constituted. The Medical Board after examining the applicant on 9.3.1993 informed that such a gross loss in vision in the right eye cannot be explained as there is no positive ophthalmological finding in the right eye to explain it. The Members of the Board were of the opinion that he is malingering from right eye. Thereafter, the applicant preferred an appeal through proper channel in the month of September 1993 with the prayer that the observation relating to malingering be deleted and the applicant be examined and be classified as per his state of eye sight etc. for further continuance in service. But he was not taken back on duty inspite of repeated representations and was ultimately compulsorily retired from service on medical grounds by letter dated 12.12.1994 (Annex.A/1), without consideration for appointment of his ward

2/4

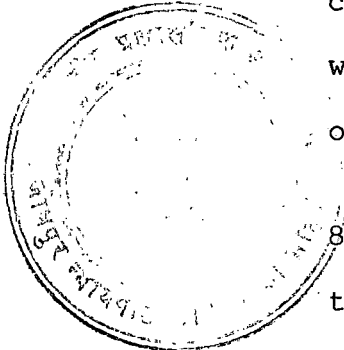
under Para 512 (2) (ii) of the Indian Railway Medical Manual. It is alleged by the applicant that he has been compulsorily retired from service without affording an opportunity of hearing and contrary to the finding and the opinion of the eye specialist of a general hospital. The applicant is a Gangman and an illiterate person and was serving on a post which involved only manual labour. The applicant was not seeking a lucrative post because no such posting could be given to him due to his illiteracy. The finding of the Medical Board is perverse and based on extraneous consideration, therefore, the same deserves to be quashed and applicant deserves to be taken back on duty.

5. The respondents have given their detailed reply. It is alleged by them that the applicant has not availed all the remedies available under the rules before filing the O.A. The respondents have not disputed the applicant's appointment as Gangman and applicant's suffering injury in the left eye. The respondents have disputed the applicant's allegation that he had preferred an appeal against the finding of the Medical Board. The applicant was rightly declared malingering by the Board because of his own conduct as he did not want to see though he was capable of seeing. The certificate given by the general hospital, Churu, cannot be relied upon as the same was given many months after the applicant was declared a malingeringer by the Medical Board. There was no opthomological finding in respect of loss of vision in the right eye. Therefore, applicant's persistent conduct of not able to see from right eye conclusively led to the finding that he was malingering from right eye and in terms of the relevant rule, he was rightly retired from service. In view of the facts as stated, the applicant is not entitled to any relief. The O.A. deserves to be dismissed.

2/11

6. We have heard the learned counsel for the parties and gone through the record.

7. It was argued by the learned counsel for the applicant that the applicant was not given any chance to meet out the allegations of malingering and was retired from service without any basis. On the other hand, the learned counsel for the respondents has argued that the applicant was declared malingering from right eye by a Board of Doctors who were independent and in no way connected with the Bikaner Division. No doubt, the applicant had suffered total loss of vision due to injury in the left eye but no ophthalmological reasons were diagnosed at the time of examination of the applicant for having lost his vision in the right eye. A person cannot lose eye sight of one eye because of the injury suffered in the another eye. Moreover, a person who is adamant in not seeking a particular object cannot be forced to see it and therefore, the finding of malingering can only be derived because of the conduct of the patient which in the instant case has been arrived at because the applicant insisted that he was unable to see from right eye when there were no cogent ophthalmological reasons for loss of vision in the right eye.



8. We have considered the rival arguments. In our opinion, there is nothing on record to contradict the finding of the Medical Board which has observed that "such a gross loss of vision in the right eye cannot be explained as there is no positive ophthalmological finding right eye, to explain it." Hence, the Members of the Board is of the opinion that he is malingering from right eye." Whether a person can see from his eyes or not is his own capacity. If he is unable to see then certainly there must be some reason so visible to the experts to agree with the patient that he cannot see. If the eye is otherwise healthy and

2

there is no visible disease or defect in the eye then certainly the Doctors can come to a conclusion that the patient can see. But without any such circumstance the patient's insistence that he cannot see then the finding can only be that he is a malingerer. In the instant case, the total loss of vision in the left eye due to injury is not in dispute. There is nothing on record to show that due to injury in the left eye the applicant has lost his vision in the right eye. The letter Annex. R/1 which was written by the Senior Medical Superintendent, Bikaner, to the Chief Medical Officer, Northern Railway, New Delhi, on 8.4.1992, clearly mentions that the patient is complaining loss of vision in the right eye and is not accepting the glasses. This letter also mentions that the case of the applicant was earlier referred to the Central Hospital on 21.2.1992. At that time, the Doctor observed that loss of vision cannot be explained, the fundus examination is normal and there are no evidence of sympathetic ophthalmitis. Refraction test was done at Divisional Hospital twice, but there was no improvement and he is not accepting any glasses. It is in these circumstances, the Doctor prayed for constitution of a Medical Board and requested to examine the applicant. From the series of tests conducted on the applicant, it appears that the applicant was found to be suffering with no visible disease in the right eye. There was no ophthalmological finding in respect of loss of vision in the right eye. The applicant refused to accept the glasses for improvement in vision as was observed by the Doctor and also refused to see on the pretext that he was unable to see. For all these reasons, the finding of the Medical Board cannot be said to be perverse or against the facts.

9. The applicant was repeatedly medically examined and was

2/4

found to be suffering with no disease in the right eye to explain the applicant's insistence about loss of vision. Therefore, there was no reason for the respondents to serve upon the applicant a notice to show cause in respect of his malingering. Had it been a case of single Doctor giving a finding of malingering in respect of the applicant's right eye, things could have been different. But here, the examining Doctor, ^{and} then expert of the Central Hospital gave a finding against the applicant's insisting that he cannot see from the right eye. Thereafter, the Medical Board informed the same. Therefore, in our opinion, no notice was required to be given to the applicant before he was removed on medical ground of malingering.

10. The learned counsel for the applicant has further argued that applicant was aged about 43 to 44 years when the finding of the Medical Board was given against him. The applicant did not gain anything by malingering. There is no allegation of the respondents that the applicant wanted to instal some of his dependent or relative in his place by so called malingering. Therefore, there was no reason for the applicant to continue to insist that he cannot see from his right eye. We have considered this argument. In our opinion, the argument is more hyphothetical than factual. No doubt, there is nothing on record to show that the applicant wanted to instal somebody in his place by quitting the service on medical ground but this cannot explain and land support that the applicant was not malingerer in the instant case when examined by the expert Medical Officer and the Medical Board. As per the provision contained in Rule 512 (2) (ii) of the Indian Railway Medical Manual, a person found to be malingering, cannot be medically found fit for alternative medical category for further continuance in service. Hence, there is no reason, as argued by the learned counsel for applicant to direct the respondents to re-examine the applicant for alternative medical

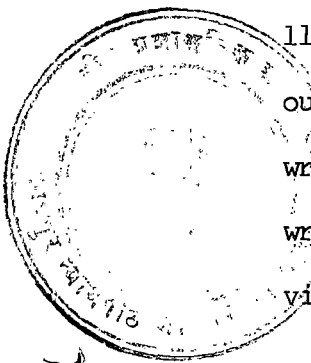
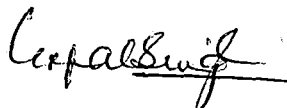
2/4

.7.

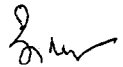
category for further continuance in service.

11. In our opinion, the applicant has not been able to make out a case that the finding in respect of his right eye vision has wrongly been given by the Medical Board and the applicant has wrongly been categorised as malingeringer in this respect. In our view, the Original Application deserves to be dismissed.

12. The Original Application is, therefore, dismissed with no orders as to cost.

(GOPAL SINGH)
Member
(Administrative)



(A.K.MISRA)
Member
(Judicial)

.....


MEHTA

Read Copy
Jegdis
26/6/98

for
Haw
30/6

Copy of order
Sent to Counsel for
Pet by Regal AD
File no
off
30/6/98

Part II and III destroyed
in my presence on 11.4.2000
under the supervision of
section officer () as per
order dated 31.12.2003


Section officer (Record)