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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH : JODHPUR

Date of order : 13.05.1997

O.A. No. 336/1995

Mag Singh

... Applicant.

v e r s u s

1. Union of India, through  
the General Manager, Northern  
Railway, Baroda House, New Delhi.

The Divisional Railway Manager,  
Northern Railway, Jodhpur  
Division, Jodhpur.

The Divisional Engineer (HQ),  
Northern Railway, Jodhpur  
Division, Jodhpur.

Mr. S.K. Malik, Counsel for the applicant.

Mr. S.S. Vyas, Counsel for the respondents.

CORAM :

Hon'ble Mr. Gopal Krishna, Vice Chairman.

Hon'ble Mr. O.P. Sharma, Administrative Member.

PER HON'BLE MR. O.P. SHARMA :

In this application under Section 19 of the Administrative Tribunals Act, 1985, Shri Mag Singh has prayed that the order dated 21/25.7.1995 (Annexure A/1) passed by the respondent No. 3, the Divisional Engineer (HQ), Northern Railway, Jodhpur Division, Jodhpur, should be quashed and the respondents be directed to reinstate the applicant in service with all consequential benefits. He has further prayed for a direction to the respondents to provide an alternate job to the applicant in Group 'D' service, such as Farash, Peon and Chowkidar etc., since the applicant is having heart/cardiac problems.

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2. The facts of the case <sup>as</sup> stated by the applicant are that he was appointed as Casual Labour on 5.4.1980 and was granted regular scale of pay Rs. 775-1025 with effect from 9.5.1987. On 10.3.1989, the applicant was called for a medical examination during which he was declared unfit in B-1 and below category by the Railway doctor. Accordingly he was removed from service. He challenged his removal from service by filing an O.A. No. 313/89 which was disposed of by the Tribunal by order dated 17.8.1993 (Annexure A/3). By this order, the Tribunal gave a direction to the respondents that they should get the medical test of the applicant conducted again and if he is not found fit for B-1 category, the applicant shall have a right to approach the Divisional Medical Officer (DMO, for short) by way of appeal. It was further directed that in case the applicant is not found fit in B-1 category then he shall be offered alternate post as per rules. Since the Tribunal had earlier issued an interim direction on 11.4.1989 directing the respondents to allow the applicant to resume duty as Khallasi, the applicant was allowed to continue in service after the order Annexure A/3, disposing of the O.A., was passed by the Tribunal. The applicant was again sent for medical check up on 12.4.1995. The case of the applicant was also referred to the Railway Hospital, Perambur (Madras) where the facility of treatment of cardiacal disease of the applicant was available. As per the opinion dated 19.6.95 (Annexure A/5) given by the doctors at the Railway Hospital, Perambur, while the applicant cannot be suitable for duties as a Gangman, he can be given

alternate light duties. After receiving the opinion from the Railway Hospital, Perambur, the applicant reported to the DMO, Jodhpur. However, the respondents issued an order dated 21/25.7.1995 (Annexure A/1) stating that during the medical examination, the applicant had been found unfit for categories B-1 and below and, therefore, as per the rules he cannot be allowed to continue in service. Accordingly, by order Annexure A/1 he was removed from the service with effect from 13.7.1995. The applicant's case is that since the Railway doctors in the hospital at Perambur were specialists in Cardiology had recommended that the applicant can be given alternate light duties, it was improper on the part of the respondents to have removed the applicant from service. The applicant was also not given an opportunity of being heard before his removal from service.

3. The respondents in their reply have enclosed a certificate (Annexure R/5) dated 19.4.1995 / 13.7.1995 issued by the Railway Hospital, Jodhpur, stating that the applicant is unfit for categories B-1 and below. It is for this reason, according to the respondents, that the services of the applicant have been terminated. There is no question of giving an opportunity of being heard to the applicant before terminating his services in the facts and circumstances of the case. With regard to the opinion expressed by the Railway Doctors at Perambur hospital, they have stated that inspite of the said opinion, the Senior Medical Officer, Northern Railway, declared the applicant as unfit for categories B-1 and below and, therefore, the applicant is not entitled to

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continue in service.

4. During the arguments, the learned counsel for the applicant has stated that in view of the opinion expressed by the Specialists in Cardiology at Railway Hospital, Perambur, the applicant can be considered for grant of an alternate employment. The learned counsel for the respondents stated during his oral arguments that inspite of what has been stated by the Doctors at Railway Hospital, Perambur, the applicant cannot be offered any employment in the Railways in view of the fact that he has been found to be unfit for medical categories B-1 and below. The rules do not permit grant of alternate employment to persons who have been declared unfit in all categories. Therfore, the question of taking the applicant back in service does not arise.

5. We have heard the learned counsel for the parties and have perused the records.

6. Although the applicant has contended that he was declared medically fit after he was reexamined in pursuance of the Tribunal's order dated 17.8.1993 (Annexure A/3), yet no order has been placed on record showing that the applicant has been declared medically fit pursuant to any such medical examination. It is true that vide Annexure R/5, the Senior Divisional Medical Officer of the Railway Hospital, Jodhpur, has categorised the applicant as unfit in categories B-1 and below. However, the respondents have not clarified why they have totally ignored the opinion expressed by the Specialists

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in Cardiology at Railway Hospital, Perambur. According to the doctors there, the applicant inspite of his medical handicap, can be given alternate light duties. If the Specialists in Cardiology and that too at Railway Hospital, Perambur, are of the view that the applicant can be considered for light alternate job, it is not proper on the part of the respondents to have totally ignored that view. In the circumstances of the present case, we, therefore, direct the respondents to consider the case of the applicant for re-engagement on some alternate job or duties in accordance with the opinion expressed by the doctors at Railway Hospital, Perambur. The respondents should consider the matter within a period of 3 months of the receipt of a copy of this order.

7. The O.A. is disposed of accordingly with no order as to costs.

(O.P. SHARMA)  
Member (A)

Gopal  
(GOPAL KRISHNA)  
Vice Chairman

cvr.

1. ~~Signature~~ 27/3  
S.S.M.Y.A.D.W.S
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3. Lib.

Part II and III destroyed  
in my presence on 27/3  
under the supervision of  
section officer ( ) as per  
order dated 4/3/83

Section officer (Record)