

CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J O D H P U R.

Date of Order : 21/01/1997

OA No. 482/1995

Laloo Ram Suthar S/O Shri Sumera Ram, Retired
 Power Electric Fitter (P.O.E.F.) Grd. II, Northern
 Railway, R/O Sutharon-Ka-Mohalla, Near Ghantel House,
 Old Ginani, Bikaner.

APPLICANT

Vs

1. Union of India through the General Manager
 Headquarters Office, Baroda House, New Delhi.
2. Chief Medical Director, Northern Rly. Baroda House,
 New Delhi.
3. Divisional Railway Manager, Northern Rly. Bikaner
 Division, Bikaner.
4. Divisional Personnel Officer, Northern Railway,
 Bikaner Division, Bikaner.
5. Chief Medical Superintendent, Northern Railway,
 Divisional Railway Hospital, Lalgarh. (Bikaner)

RESPONDENTS

CORAM :

The Hon'ble Mr. A.K. Misra, Member (Judicial)

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PRESENT :

Mr. Y.K. Sharma, Counsel for the Applicant.
 Mr. V.D. Vyas, Counsel for the Respondents.

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BY THE COURT :

Applicant, Laloo Ram Suthar, a retired Power Electric Fitter, Grade - II, Northern Railway, R/O Bikaner has filed this Original Application with the prayer that respondents be directed to appoint his son on compassionate ground to the post commensurate to his educational qualification.

2. The petitioner in his petition has stated that while he was working as P.O.E.F. under the Chief Electrical Foreman, Lalgarh, he informed the Chief Medical Superintendent, Northern Railway, Divisional Railway Hospital, Lalgarh (Respondent No.5) that his vision in both the eyes is gradually decreasing after the cataract operation. He further submitted that since he is feeling difficulty in discharging his duties, he may be got medically examined. This representation, Annex. A/2 (undated) was forwarded by the Chief Electrical Foreman, Lalgarh to respondent No.5. Thereafter, the applicant was examined by respondent No.5. Thereafter, he was directed to appear before the Medical Board in Central Hospital, at New Delhi for medical Examination. In spite of the applicant being examined by a duly constituted Medical Board on 10.5.1994, no finding was communicated to him. It is further alleged by the applicant that he at his own contacted respondent No.5, who informed him that the applicant was likely to be declared a malingering however, a copy of such finding was not passed on to him. It is further stated that the applicant immediately sent a representation dated 25.7.1994 (Annex. A/5) to the Chief Medical Director, Northern Railway, New Delhi requesting him to constitute a fresh Medical Board for his examination. In continuation to the above representation, the applicant also approached to the General Manager (Respondent No.1) vide his letter Annex. A/6, requesting him to review the case by reconstituting a fresh Medical Board. The applicant contends that vide order dated 30.8.1994 (Annex. A/1) passed by respondent No.4, retiring him w.e.f. 8.7.1994, he came to know that he had been retired treating him a malingering and further informing him that his ward cannot be appointed on compassionate ground. Thus, the applicant was deprived of his valuable right of going in appeal against the order retiring him on the ground of malingering. Hence, this petition.

3. The respondents have filed a detailed reply and stated that in spite of undergoing cataract operations, the employee was working in medical category B_{One} which was not permissible under the rules. When the applicant was examined by the Medical Board, his left eye vision was 6/18 and his right eye vision with glasses was found 6/60 and he was found malingering. Hence, the applicant was retired

and as per the relevant Rules and Railway Board's Circular dated 24.6.1987 a Railway servant, who is declared to be a malingerer by medical authorities, was not entitled to the benefit on compassionate ground in respect of appointment of his ward and was liable to be retired. It is further stated that the applicant himself had filed an appeal to the Chief Medical Director, Northern Railway and to the General Manager, Northern Railway, with a request to constitute a fresh Board for examination as he has been declared medically unfit with the remark of malingering. Therefore, the fact of malingering was well within the knowledge of the applicant and he cannot be heard to say that he was deprived of an opportunity of preferring an appeal against the order declaring him a malingerer. The application is baseless and deserves to be rejected.

4. The applicant filed a rejoinder stating therein that the finding of the medical Board was never communicated to him and the order retiring him on that score is against the principles of natural justice.

5. I have heard both the learned Counsel for the parties in detail and have gone through the records.

6. On the date of hearing, the learned Counsel for the respondents was directed to produce the service record of the applicant which has been produced. From the service record, I find that the date of birth of the applicant is 1.11.1937. He entered in service on 18.7.1958. In the present OA, there is no mention as to when the applicant had under-gone cataract operation in respect of his eyes and when he started losing his vision. For the first time vide Annex. A/2 (undated), he requested for his medical examination. Soon thereafter in May, 1994, he was medically examined. By that time the applicant had completed almost 35 years of service and had attained the age of 56 and a half year. The Board of Doctors examined the applicant on 10.5.1994. On Dastoor malingering test, his left eye vision was found to be 6/18 and they opined that the applicant was malingering and should be dealt with accordingly. If thereafter the applicant had received only the order retiring him from service on this ground alone, he would have been

certainly right in saying that he has been deprived of a valuable right of going in appeal against the declaration as malingering but this is not the case here. Vide Annex A/5 and A/6, the applicant had gone in appeal to the Chief Medical Director and to the General Manager- specifically describing therein that he has been declared as malingering and, therefore for re-examination a fresh Medical Board be reconstituted. In my opinion, having taken these steps, the applicant cannot now say that he was not knowing earlier that he was being retired as a case of malingering. In this respect, dates of applicant's undergoing cataract operation are quite important. If soon after the operation the applicant had complained about loss of vision, he deserved all the sympathies that he needed. But at the age of 56 and a half year and having completed nearly 35 years of service, he for the first time complained about loss of his vision gradually and for medical examination. A Medical Board consisting of three doctors have after examining the applicant on Dastoor Malingering test opined that applicant was malingering and he should be dealt with accordingly. I do not see any reason to observe that this finding of the Medical Board is biased or baseless.

7. The respondents have produced a copy of Railway Board's letter dated 24.6.1987 which very specifically lays down that where malingering is established, the ward of such Railway employee cannot be given benefit of compassionate appointment in terms of para 5 (12) (ii) of the Medical Manual. Therefore, in my opinion, the ward of the applicant cannot be directed to be appointed on compassionate ground.

8. The ruling cited by the learned Counsel for the applicant are not applicable in the instant case, because facts of those cases are different. In both these cases the applicant till the date of retirement never knew about his being retired on the ground of malingering but in the instant case, the applicant knew much earlier than he received the order of retirement, that he was being retired on the ground of malingering. Filing of appeals by the applicant in this context also establishes this point. Thus, in my opinion, the applicant has not been able to make out a case of compassionate appointment of his ward. The Application deserves to be dismissed.

9. It was argued by the learned counsel for the applicant that the applicant was retired vide an Order dated 30.8.1994 with effect from 8.7.1994. The back dated retirement is bad in law and cannot be issued. This argument of the learned Advocate deserves consideration. In my opinion, back dated retirement cannot be sustained. Having found that the applicant was rightly retired it can be held that the applicant stood retired only on the date of order and not any date earlier to that. Therefore, the applicant is entitled to salary and all allowances for the period 7.7.1994 to 30.8.1994 excluding pension etc., Only to this extent the O.A. deserves to be accepted.

10. The Original Application is partly accepted. The applicant is entitled to salary and all allowances for the period starting from 7.7.1994 to 30.8.1994 as per rules ^{and the same be paid by} within a period of two months. However, his prayer for directing the respondents for giving compassionate appointment to his ward is rejected. Parties are left to bear their own costs.

SM
(A.K.MISRA)
Member (J)

Mehta