

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 262/1997
T.A./N.Y.

198 31.08.1998.

DATE OF DECISION 31.08.1998.

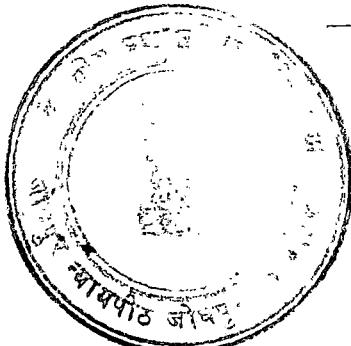
THE INDIAN RAILWAY LOCO RUNNING MEN Petitioner
ORGANISATION JODHPUR AND ANR.

MR. N.K.KHANDELWAL Advocate for the Petitioner(s)

Versus

UNION OF INDIA AND OTHERS Respondent

MR. R.K.SONI Advocate for the Respondent(s)



CORAM :

The Hon'ble Mr. A.K.MISRA, JUDICIAL MEMBER

The Hon'ble Mr. GOPAL SINGH, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Gopal Singh
(GOPAL SINGH)
ADMINISTRATIVE MEMBER

31
(A.K.MISRA
JUDICIAL MEMBER)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Date of order : 31.08.98.

O.A.NO. 262/1997

1. The Indian Railway Loco Running Men Organisation, Jodhpur Branch, Jodhpur, through its President, Mal Chand S/o Shri Jagan Nath Prasad, aged 48 years, working as Passenger Train Driver, Northern Railway, Jodhpur.
2. Chiranjee Lal S/o Shri Ganga Ram SPL 'A' Driver C/o Loco Foreman, Jodhpur.

..... Applicants.

VERSUS

1. Union of India through General Manager, Northern Railway, Headquarter Office, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur.
3. Senior Divisional Mechanical Engineer (Power), Northern Railway, Jodhpur.
4. Divisional Personnel Officer, Northern Railway, Jodhpur.

..... Respondents.

Mr. N.K.Khandelwal, Counsel for the applicants.

Mr. R.K.Soni, Counsel for the respondents.

CORAM :

HONOURABLE MR. A.K.MISRA, JUDICIAL MEMBER

HONOURABLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

PER HONOURABLE MR. A.K.MISRA :

This O.A. has been presented by Shri Mal Chand in the capacity of President, of applicant association and one Chiranjee Lal, seeking the relief that the respondents

be restrained by an appropriate order, writ or direction from sending the Engine Crew for special medical examination in each and every case of accident at the un-manned level crossing gate. The applicants have further sought the relief that the Crew Members be treated free to resume their duty after the completion of accident inquiry without being subjected to special medical examination. The applicants have also prayed that detention of Railway Crew for special medical examination after the completion of accident inquiry, should also be compensated in terms of kilometer allowance by the respondents.

2. Notice of the O.A. was given to the respondents who have filed the reply raising many points about the maintainability of the O.A. on the ground of limitation, mis-joinder of parties and mis-joinder of causes of action. It is alleged by the respondents that the applicants have challenged Annex.A/1 dated 10.11.1995 which relates to one Badri Prashad. They have also challenged another order dated 18.1.1996 which relates to applicant No.2 Chiranjit Lal but challenge of both these orders is hit by limitation. Badri Prashad had not been made party, therefore, the case suffers from non-joinder of necessary party. The cause of action as claimed as per Annex.A/2 which is a representation signed by 147 persons, arises to an individual only on his being subjected to special medical examination and not collectively to all of them. The respondents have also stated in their reply that the Railway crew are subjected to special medical examination as per Rule 427 (V) of the Northern Railway Accident Manual which relates to various types of accidents and step which are required to be taken on occurrence of an accident. This special medical examination is conducted for the purposes of knowing the real state of health, alertness and fitness of the Railway crew. There is no un-reasonableness in the provisions nor the provisions are illegal or contrary to any law, therefore, the applicants are not entitled to any relief whatsoever as claimed.

3. We have heard the learned counsel for the parties and gone through the record. Para 427 of Northern Railway Accident Manual enumerates the provision of maintenance of Relief Trains. This Para also contains the provisions relating to Drills which are undertaken to test the readiness and quick turn-out of Relief Train. The Drills include Mock Drills and Accident. In Sub Para (V) of Para 427 following ~~various~~ categories of accidents have been described :

"427 (V). As soon as there is an accident under any of the following categories

- (a) Collisions
- (b) Averted Collisions
- (c) Derailments
- (d) Passing signal at danger
- (e) Level Crossing Accidents,

and a driver is involved in the accident, the driver and other members of the engine crew should be invariably given special medical test by the DMO/ADMO concerned to check up their vision and a detailed physical and medical check up of each member of the engine crew.."

For all these various categories of accidents, the Driver and other members of Engine Crew are invariably required to be given special medical test by the DMO/ADMO to check up their vision and a detailed physical and medical check up of each member of engine crew. Thus, it cannot be said that this special medical check up is only related to level crossing accidents. There are five type of accidents and the clause of special medical check-up is related to ~~type accidents and~~ each of the Railway Crew involved in the accident. Looking to the special provision of medical check-up it cannot be said that special medical check-up is an un-necessary part of the drill. In our opinion, this special medical check-up is essential in order to find out whether the Driver was having perfect vision, mental alertness, physical orientation of limbs and physical fitness. No doubt, accidents on un-manned level crossings generally happen due to the negligence of the Driver of various vehicles or persons crossing

the Railway-line but this itself would not be a guarantee that at the time of accident, the Engine Driver was fit in all respects and was not at all at fault. If the Driver or the Engine Crew is not subjected to special medical check-up soon after the accident occurring on an un-manned level crossing, it would be difficult to find out at a subsequent stage as to what was the mental and physical state of the Engine Driver and the Crew. Medical Examination after accident inquiry may not give correct picture of the fitness of the Driver and the Engine crew. To elaborate the arguments we may site certain examples which may go to show the necessity of special medical examination. These examples may not be exhaustive.

Suppose, after boarding the Engine in an absolutely fit state, the Driver and the Engine Crew consume Alchol and thus may come under the spell of intoxication. If such crew is involved in an accident at unmanned level crossing then test of vision only would hardly be of any help to any one as claimed by the learned counsel for the applicant. Intoxication may affect the performance of the Driver to a great extent in respect of control and alertness etc. to avoid accident. Likewise, suppose some Drivers suffers some injury after boarding the train on duty in the fit condition then again his performance may be affected and that would again be a guiding factor in respect of accident at the un-manned level crossings. There may yet be another possibility that the Engine Driver may suffer stroke during journey and is not in a position to control the movement of engine, thus this would again be an important factor if the train is involved at an un-manned level examination. Such examples can be multiplied. Without special medical examination, the state of health of Driver or Engine crew cannot be found out, therefore, in our opinion special medical examination as contemplated in this paragraph is neither superflous nor against other provisions of Railway Manual in respect of Medical examination.

4. The learned counsel for the applicant argued that no such provision has been incorporated in an accident Manual of any other Zonal Railways and thus the provision of special medical test as incorporated in the Accident Manual of Northern Railway is discriminatory and violative of constitutional rights. We have considered this aspect. In our opinion this provision cannot be said to be discriminatory even if it is not incorporated in the Accident Manuals of other Zonal Railways. The applicants are serving in the Northern Railway, therefore, they shall have to be guided by the provisions of Accident Manual of Northern Railway. If the authorities discriminate the Railway crew of one Division of Northern Railway from Railway Crew of another Division of Northern Railway, in application of these rules, then it can be said to be a discriminatory treatment but not otherwise. Every zonal Railway is commanded by the respective General Managers and they have to regulate the operation and working of their charge in the best possible way they can. Therefore, if in their wisdom some Zonal Railways have not made such provision of special medical examination in respect of engine crew involved in un-manned level crossings accident then no fault can be found with them neither it can be said that in the instant case, the engine crew are discriminated as against their own class in different Railways. We may also mention that the learned counsel for the applicant has not been able to place before us parallel provisions of each Railways in respect of drills to be undertaken on various types of accidents including that of un-manned level crossing accident. Hence, it cannot be said with certainty that no other Railway has such similar provisions of special medical examination of engine crew in respect of unmanned level crossing accidents. The applicant is, therefore, not entitled to any relief as claimed.

5. The applicant is an Organisation of Indian Railway Loco Running Men but there is nothing on record to show whether this is a registered society recognised by the various Railways or the Railway Board or for that reason Northern Railway. There is also nothing on record to show that Mal Chand is its President. No Election information has been placed on record. There is also nothing on record to show that Mal Chand has been authorised to institute the present OA in the capacity of President on behalf of all the Members of the Organisation, therefore, in our opinion, the present OA cannot be treated to be a representative OA on behalf of the Organisation and its Members. Chiranjit Lal who is applicant No. 2 may have a grievance but letter dated 18.1.1996 does not show that he is being subjected to special medical examination due to some un-manned level crossing accidents. This letter Annex.A/1/1 can at the most be interpreted as direction to the applicant for special eye-sight test. No representation against this letter seems to have been made by Chiranjit Lal. Moreover, the Engine Driver is expected to have a perfect vision and if some Driver is subjected to Special Medical Examination relating to vision of eyes then it cannot be said that he is being un-necessarily harassed or unreasonably detained from running duty.

6. From the foregoing discussion, we come to the conclusion that the applicants have not been able to make out a case for grant of relief as claimed in the O.A. The Provisions of Special Medical Examination in respect of accidents, more specially, un-manned level crossings, are not discriminatory, un-reasonable and against the provisions of law. The Original Application is, devoid of any force and is, therefore, dismissed with no order as to costs.

Gopal Singh

(GOPAL SINGH)
Administrative Member

3/8/96
(A.K.MISRA)
Judicial Member

AFG
Rajesh
89/9

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Lars

Part II and III destroyed
in my presence on ~~30/3/98~~
under the supervision of
Section Officer (1) as per
order dated ~~28/2/98~~

Section Officer (Record)

File freed
from photocopier
on 21/9/98
Lars