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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

Original Application No. 138/2007

Date of order: 20th August 2007

CORAM:

HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER.

Nizamudeen Quadri S/o Shri Alladeen Quadri, by caste Mohammedon, aged 57 years, resident of Vivek Nagar, Behind Orphange, Near Ganjer Road, Bikaner and at present working as Material Chaser (Technician Gr. I) under the office of the Divisional Mechanical Engineer (Carriage & Waggon), North-Western Railway, Bikaner.

...Applicant.

Mr. Nitin Trivedi, counsel for applicant.

VERSUS

1. Union of India through General Manager, North-Western Railway, Headquarter Building, Jaipur.
2. The Divisional Railway Manager, North-Western Railway, DRM's office, Bikaner.
3. The Divisional Personnel Officer, North-Western Railway, DRM's office, Bikaner.
4. The Divisional Mechanical Engineer (Carriage & Wagon), North-Western Railway, Bikaner.
5. The Senior Section Engineer (Carriage & Wagon), North-Western Railway, Bikaner.
6. The Chief Medical Director, North-Western Railway, Headquarter Building, Jaipur.

...Respondents.

Mr. Manoj Bhandari, counsel for respondents.



ORDER

The applicant, Mr. Nizamudeen Quadri, has filed an Original Application No. 138/2007 explaining that he joined the service as Khalasi in the Carriage and Wagon Shop at Sadulpur on 7.8.1974. He was promoted on the post of Vacuum Ex-chester

10

Driver (V.E.D.) Grade III from October 1981, as Grade - II in 1986 and as Grade I in the year 1993 in the Carriage and Wagon Department at Lalgah, Bikaner.

2. In the year 1996, he sustained injury in his right ring and middle fingers on the right hand. He was medically examined by the medical board which recommended not to take work from applicant as V.E.D. Grade-I and he may be provided an alternative job. The applicant represented vide his application dated 24.6.1996 (Annexure A/4) requesting that he has been working as Material Chaser against a temporary post since 6.4.1987 and the medical board has also given him fit certificate in B-I category, therefore, he may be provided the permanent job of material chaser in the scale of Rs. 1,320-2040. On the recommendation of the adjustment committee and on the request of the applicant, one post of HCF Grade-I in the pay scale of Rs. 1400-2300 was down graded and the applicant was posted against a down graded post on 13.8.1996 (Annexure A/5) in the pay scale of Rs. 1300-2300. The above post has been classified as non safety category. Subsequently, the applicant was posted with the approval of the competent authority in the office of Senior Section Engineer (C&W), North Western Railway, Bikaner, on the same capacity as Technician Grade-I (Material Chaser) in the non safety category in the pay scale of Rs. 4500-7000 (Annex.A/7).

3. Thereafter, an eligibility test of the applicant was held by the Divisional Personnel Officer, North Western Railway, Bikaner



for promotion from Technician Grade I in the pay scale of Rs. 4500-7000 to the post of Senior Technician in the pay scale of Rs. 5000-8000. The applicant was declared failed in the above test (Annex.A/9). However, the applicant was provided the benefit of up gradation as a result of cadre re-structuring w.e.f. 1.11.2003 in the pay scale of Rs. 5000-8000 strictly in accordance with the seniority vide order dated 17.5.2004 (Annex.A/10).

4. On 28.10.2006, the applicant was sent before the Chief Medical Superintendent, North Western Railway, Ajmer for special medical re- examination. The medical board was held on 2.11.2006 and the medical board recommended that the applicant is fit in his original job as Senior Technician in C&W Department, Bikaner (Annex.A/3) which is supposed to be in safety category. The applicant made a representation vide Annex. A/11 contending that he was allowed to work in the capacity of Material Chaser in non safety category and he may not be allowed to work in the safety category which may be injurious and harmful to the public at large. Moreover, in the light of Para 523 of the Medical Manual, it is specifically and categorically stated that if employees remain in service for more than six years or the employee belong to the running staff can be sent for special medical examination but, in the present case, neither the applicant is the employee of running staff nor remaining the service more than six years in the department as applicant is going to superannuate on 31.7.2010. Therefore, the applicant may be allowed to work in



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the non safety category as Material Chaser without implementing the special medical examination process.

5. The Divisional Personnel Officer has issued an impugned order dated 11.4.2007 that the medical board has informed that the applicant is fit in his original job as Senior Technician in C&W department, Bikaner. He has directed that this may be got noted from the applicant. The applicant has explained that at this juncture, the working of the applicant is not required to be changed from the work involving non safety category to the work of safety category. As such, the action of the respondents is quite illegal, unjustified, arbitrary and violative of Articles 14 and 16 of the Indian Constitution. Aggrieved by the above orders, the applicant has filed this O.A. stating that the impugned orders passed by the respondents at Annexs. A/1 and A/3, may be quashed and set aside accordingly. The applicant may be allowed to work involving non safety category in the same capacity to the post of Technician Grade I ((Material Chaser) in the C&W Department at Bikaner with all consequential benefits.

6. On the contrary, the respondents have filed a detailed reply to the O.A. and stated that the applicant was appointed as substitute Safaiwala on 7.8.1974 at Sadulpur. He sustained injuries while travelling in Train No. 4007 Up (LKO-HRI) for returning back from LKO to Bikaner after completion of his official work. He was examined by the medical committee consisting of two Doctors of Bikaner Divisional Hospital which gave the following opinion.





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"The Committee is of the opinion that Shri N.D. Quadri S/o Shri Alladeen Quadri Ved-1, is not fit in category but is fit in category Original B-1, but should be given a job where involvement of Right Ring and Middle Finger is minimum".

7. The medical committee consisting of two Doctors, has given their opinion that the applicant is fit in original B-1 category but, should be given a job where involvement of right and middle fingers may not be there. Accordingly, he was posted as Senior Technician - I, in the pay scale of Rs. 1320-2040 in the material chasing gang which was basically in safety category. The above information was given by the medical committee consisting of two Doctors in the year 1996 whereas, the medical board nominated by the CME, North Western Railway, Jaipur, was consisting of 3 Doctors and has given the opinion that the applicant is fit in his original job as Senior Technician C&W Department vide letter dated 23.11.2006 (Annex.R/3). The respondents have stated that the case of the applicant is not covered under Para 523 of the Medical Manual as stated by him. The said para is relating to relaxation in standard medical examination. These standards of re-examination are applicable to those employees who have completed 6 years of service. Therefore, the case of applicant is not covered under para 523.



8. The representation dated 21.11.2006 made by the applicant has not been received by the respondents. The SSE, Bikaner, has advised vide order dated 23.11.2006 (Annex.R/3) that there was no restriction upon the applicant to take up any type of work as per his post. The applicant was working as

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Technician - I / Senior Technician since long and still working as Senior Technician which is originally in safety category. The nature of the work depends upon the working place, therefore, the applicant cannot say that he was working out of safety category. The applicant is working in the category of Senior Technician - I (C&W), in the grade of Rs. 5000-8000 (RPS) w.e.f. 1.11.2003, hence, there is no reason to say that he is ineligible to do the work involving safety category related to his post. The respondents has explained that the action taken by them vide their orders dated 11.4.2007 and 28.10.2006 is perfectly legal and justified and there is no violation of Railway Rules. Hence, the O.A. may be dismissed with exemplary cost.

9. The learned counsel for both the parties have been heard. The learned counsel for the applicant reiterated his arguments given in the O.A. and emphasised that the applicant should not have been subjected to special medical examination which is not allowed. Secondly, since the applicant has been working in the safety category as Material Chaser since 1997 in the non-safety category, therefore, his category, to safety, may not be changed at this stage.

10. The learned counsel for the respondents also reiterated the arguments given in his reply to the O.A. and pointed out that the medical opinion cannot be changed by the Courts. He also pointed out that there is no bar under the Rules for medical re-examination and the applicant has gone through the same willingly. He did not raise any grievance at the time of giving



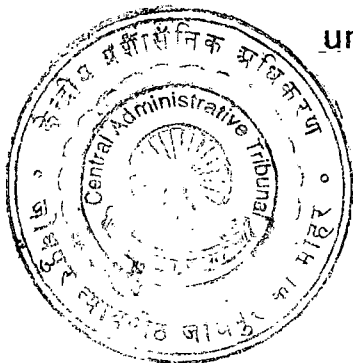
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the medical test.

11. The learned counsel for the respondents relied on the case of **Dental Council of India Vs. Subharti K.K.B. Charitable Trust and Another** and a batch reported in (2001) 5 SCC 486. In the above case the Hon'ble Supreme Court has held that normally the Court's should not interfere in the functioning of the educational institutions particularly with the decision of the expert bodies like MCI or DCI.

12. The learned counsel for the respondents further relied on the case of **Medical Council of India Vs. Sarang and Others** reported in (2001) 8 SCC 427 wherein, Hon'ble the Supreme Court held that in academic matters, the Courts should not normally interfere with or interpret the rules and should instead leave the matters to the experts in the field.

13. This case has been carefully considered and records perused. It is seen that when the applicant received certain injuries, his case was examined by a medical committee consisting of 2 Doctors on 25.3.1996 (Annex.R/1) which gave its opinion as under :-



"The committee is of the opinion that Shri Nizamudeen Quadri S/o Shri Aladdin Quadri, VED-I is not fit in category - but is fit in category original bee one, but should be given a job where involvement of Right Ring & Middle Finger is minimum.

He may be given sedentary job/alternative job. The findings of the committee is duly approved by the CMS/Bikaner."

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The applicant has again been examined by a Medical Board consisting of 3 doctors which have given their advice as under:-

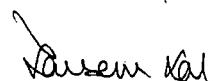
"The patient Nizamuddin Quadri, 56 years Male, Sr. Technician, C&W, BKN is fit in his original medical category Bee One. He is having traumatic amputation of distal Phalanx of Right middle and ring finger. All the function of Right hand like grip, key pinch and hooking is normal. The function of hand require good function of thumb and index finger which is normal.

Therefore the Medical Board is of the opinion that the above employee is fit in his original job as a Sr. Technician in C&W/BKN."

14. It is rather surprising, the applicant was working on medical grounds in the gang of Material Chaser while he was in the pay scale of Rs. 1400-2300 (RP). He still wants to continue to work in the gang of Material Chaser while he has been placed in the higher pay scale of Rs. 5000-8000 and has been declared fit by the Medical Board for doing his original job. Moreover, it was upto the employer to decide the job on which a particular employee may be posted according to his qualification, training and experience etc. It may not be appropriate for the Courts to interfere in the same.

15. In view of the above discussions, it is clear that the impugned order dated 11.4.2007 (Annex.A/1), has been passed by the respondents on the advice of the Medical Board. This Tribunal would, therefore, not like to interfere with the orders passed by the respondents. The above O.A. is, therefore, dismissed. No orders as to costs.




(Tarsem Lal)
Admv. Member

R/C
Ding Chapa
21.08.07
For Mr. Manoj Bhandari

Recd. CMA
for Mr. Bhandari
JA
MISA
21/8/07

Part II and III destroyed
in my presence on 04-8-14
under the supervision of
section officer (I) at per
order dated 26-7-14

Section officer (Records)