

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
XXX No.

451/ 198 89

DATE OF DECISION 6.6.1990

M.S Narayanan Applicant (s)

M/s. K.Ramakumar Advocate for the Applicant (s)
V.R Ramachandran Nair Versus

Union of India represented Respondent (s)
by the General Manager, Southern Railway,
Madras and 2 others

M/s. M.C Cherian, Saramma Cherian Advocate for the Respondent (s)
T.A Rajan

CORAM:

The Hon'ble Mr. S.P MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. N.DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

the
This case unfolds/unfortunate story of a low paid
Railway employee who happened to become unemployed with the
compulsion to approach this Tribunal for the second time
to secure justice and his lost job due to the illegal actions
of the respondents.

2. Originally when the applicant was unilaterally found
by the respondents ^{as} _^ medically unfit for all purposes, they
have taken the drastic action of termination of his services
even without giving a notice. Then the applicant filed O.A
757/86 which was heard and disposed of by the Tribunal on
17.2.89, after advertizing to two important decisions on the

.2.

question reported in S.K.Sisodia vs. Union of India and others, 1988(2) ATC 852 and P.G.Varghese vs. Union of India and others, 1988(2) SLJ CAT 697 with the finding and directions that in the circumstances of the case, the termination order is bad and illegal and that the respondents would take appropriate legal action on the basis of the medical report after giving the applicant due notice and hearing. The operative portion of the judgment reads as follows:-

"In the facts and circumstances discussed above we set aside the impugned order of termination and direct that the respondents should take such action as is warranted on the basis of medical report after giving due notice to the applicant and after hearing his objections in that regard".

3. Pursuant to the above judgment, Annexure-8 notice has been issued by the respondents which reads as follows:-

"Your services have already been terminated vide this office order No.12/CN/TCR/86 (No.P.407/CN/TCR/CL dated 19.9.86) being found medically unfit in all classes.

As per the order dated 17.2.1989 of Central Administrative Tribunal, Ernakulam Bench in Original Application No.757/86, you are hereby given one month's notice to show cause why your services should not be terminated with effect from 19.9.1986 as stated above on the following grounds:

1. You have been found medically unfit in all classes vide DMO/SRR Certificate No. 089266/45/C dated 9.9.1986/12.9.86 (copy enclosed)
2. You cannot be accommodated in any post at all on account of the medical unfitness in all classes 1 of para 2302 of the Indian Railway Establishment Manual.
3. Your reply should reach this office within 7 days from the date of receipt of this notice."

4. The applicant submitted his objection which is reproduced as Annexure R-3(a) along with the counter

affidavit in which the applicant has specifically stated that he is fit for works and prepared to undergo a re-medical examination to establish his fitness for engagement under the Railways. Without considering his request in the objection the respondents passed the self same order of confirming the original termination which is the impugned order at Annexure-C. The termination on the basis of the original medical certificate w.e.f 1986 has been confirmed.

5. The applicant has now approached this Tribunal for the second time challenging the termination. He has raised the following contentions:

- i) the respondents have not complied with the directions of the Tribunal
- ii) The notice issued to him after Annexure-A judgment is illegal and there is no consideration of the objection filed by him pursuant to the order of the Tribunal. The impugned order is illegal and void.

6. Though the respondents have filed counter affidavit and stated that there is compliance of the judgment at Annexure-A, the records speak otherwise and there is no indication that the respondents have understood and realised the legal position as ^{explained by} ~~expressed~~ by us in our earlier judgment and acted in pursuance ^{we} of the same. Originally when/ we felt that the action of the respondents is both in violation of the provisions of Railway Establishment Manual and the principles laid down by the Courts we thought of giving the Railway an opportunity to correct their mistake and take legal

actions and do justice. But our wish was in vain.

They had not done any thing in the manner as indicated in the judgment or in the light of the observation made in the body of the judgment.

7. After hearing the arguments of the learned counsel appearing in this case and perusing the records we are of the view that the respondents have only made an attempt to make others believe that they had complied with the directions in Annexure-A judgment. This is a case in which an employee was labelled to be unfit w.e.f 19.9.86 presumably on the basis of some medical certificate issued by the medical wing of the Railway. If actually this employee is not suffering from any ailment as indicated in the certificate, it would cause grave injustice. The case of the applicant is that he is not suffering from any sort of serious ailment warranting termination of service. Hence it is a fit case where in the interest of justice he should also be heard on that issue before taking any action on the basis of this unilateral action of examination of the applicant's health condition through the medical wing of the Railway and consequent termination of service.

8. There is no case for the respondents that the medical certificate was ever given by the Railway Deptt. to the applicant. He has also not been informed as to

what is his ailment or what is the incapacity which stands in the way of his continuation in service.

So much so he is not in a position to answer the same after knowing the real facts. Even in spite of the direction by this Tribunal in Annexure-A judgment, the respondents have not cared to give him such an opportunity.

As indicated above when a person is declared as unfit for the job unilaterally by the administrative authority it causes serious civil consequence for him and it is a matter to be informed to the concerned employee and his views should be obtained before any adverse action is taken against him on that account. At least the materials in this behalf should have been produced before this Tribunal in order to satisfy us that the concerned employee is unfit for the job. No such materials have been produced to satisfy us in the instant case.

9. The notice at Annexure-B issued to the applicant is very curious. It shows that they have already decided to terminate the service of the applicant with effect from the date of original termination order viz. 19.9.86, because he was found medically unfit from 9.9.86/12.9.86. This is no show cause notice at all as indicated in our judgment at Annexure-A. The objections of the applicant was also not considered. Even in spite of the fact that the applicant has shown his ^e readiness to appear before a

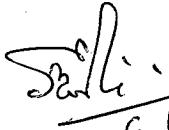
competent medical authority for being examined and satisfy the authorities that he is medically fit or not, the respondents did not take any action to examine the applicant and satisfy themselves as to whether the applicant is fit or not for the works. Hence we are of the opinion that in this case the action taken by the respondents is illegal and violative of the principles of natural justice and the impugned order is liable to be quashed and we do so.

10. The learned counsel for the applicant brought to our notice three decisions reported in A.Sankara Reddy vs. Chief Medical Officer, Southern Central Railway and others, 1989(5) SLR 612, Maharaja Sayajirao University of Baroda and others v. R.S Thakar, AIR 1988 SC 2112 and Pyare Lal Sharma vs. Managing Director & others, 1989(3) SCC 448 and contended that since he has been found to be medically unfit by the respondents without giving him opportunity of being heard, as indicated above and terminated his service, the orders are to be quashed and he should be reinstated in service with all back wages and other benefits. It is not necessary for us to go into these decisions in view of the settled legal position in the subject and in the conclusion we have already taken in this case. As the impugned order is found to be illegal and void, the necessary consequence which should follow is that the applicant should be reinstated

in service but with regard to the question of back wages, we direct the respondents that the applicant should be given the financial benefits which were already given by the respondents to his immediate junior in service, as if the applicant has continuous service from 1986 onwards. This will not stand in the way of the respondents from getting the applicant once again examined by the competent medical board of the Railway in accordance with law, after his reinstatement in service, to satisfy that he is fit enough at present to discharge his official duties. Accordingly we allow the application in the above manner. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

6.6.90


(S.P. MUKERJI)
VICE CHAIRMAN

6.6.90

n.j.j