

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 341 of 2008

This, the 20th day of December, 2013.HON'BLE MR. NAVNEET KUMAR MEMBER (J)

H. N. Tiwari, aged about adult, S/o Late Shri Mathura Prasad Tiwari, resident of Tiwari-Ka-Purwa Post Darshan Nagar, District Faizabad.

Applicant**By Advocate Sri Praveen Kumar.****Versus**

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. The Chief Medical Officer, Northern Railway, Lucknow.

Respondents**By Advocate Sri S. Verma.**

**(Reserved on 6.12.2013)
ORDER**

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

1. To quash the impugned order dated 26.5.2008 contained as Annexure No. A-1A to this O.A.
2. To consider the case of the applicant in the light of Railway Board Circular dated 22.9.1995 and provide compassionate appointment to the son of the applicant Shri Arvind Kumar Tewari after treating the applicant to have been retired from service on the date of submission of the representation for voluntary retirement.
3. Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
4. Cost of the present case."

2. The brief facts of the case are that the applicant was initially appointed in the respondents organization and was promoted as Coach Attendant. Subsequently, in the year 1996, the applicant reported sick and after treatment, the authorities referred him for the medical board for examination of the applicant. In pursuance of the said, the applicant was also given the pass and when he approached the authorities but he claims that he was not examined. The learned counsel for the applicant also pointed out that he was harassed and was not examined, as such, again the respondent No. 3 issued a letter dated 30th November 1997 to the Medical Director for early examination of the applicant as he was going to superannuate at an early date, and after great persuasion and after several postponements, the Medical Board was ultimately conducted

on 3.9.1997 at Lucknow along with other employees. But the respondents have not submitted the report and subsequently the applicant applied for his retirement on medical ground in the light of report submitted by the Eye Specialist and further requested for grant of compassionate appointment to his son on a suitable post in the light of Circular available on the subject. But no decision was taken by the respondents, the applicant preferred Original Application No. 71 of 2007, the Tribunal disposed of the petition with a direction to the respondents to consider and dispose of the pending representation of the applicant. Subsequently, the applicant has also preferred execution application and in pursuance of the said direction issued by the Tribunal dated 18th September, 2007, the respondents have taken a decision on 26.5.2008 wherein, it is clearly mentioned that the case of the applicant is not covered under Rules of either medical decategorization or for grant of compassionate appointment to his son. As such, feeling aggrieved by the said order, the applicant preferred present O.A.

3. The learned counsel for the respondents filed their preliminary objections as well as the detailed counter reply. Through preliminary objection, it was alleged by the respondents that the applicant wants himself declared medically decategorized by the medical board for getting appointment of his son. Apart from this, the learned counsel for the respondents also taken a ground in their preliminary objection that the applicant has prayed for plural reliefs as such, present O.A. is not maintainable and the letter dated 23.12.1996 is the letter referring the applicant to the Chief Medical Superintendent, Northern Railway, Lucknow, for further advice stating that he had reported sick to the Divisional Medical Officer, Northern Railway, Faizabad for his complaints of defective vision and pneumonitis is concerned, it only shows that the applicant was referred to the Divisional Medical Officer and was taking treatment. Not only this, the learned counsel for the respondents has also pointed out that when the applicant was referred to the Chief Medical Superintendent, Northern Railway, Lucknow the applicant was about 59 years of age and it is not unusual to be cataract in both eyes which is most commonly due to biological aging and is conventionally treated with minor eye surgery and cannot be treated as permanent disability. It is also not disputed by the learned counsel for the respondents that the applicant was issued medical pass for his journey from Lucknow to New Delhi and back to get himself examined at the

Railway Central Hospital, New Delhi. The learned counsel for the respondents has also pointed out that the applicant did not cooperate with the Specialist. As the applicant was not cooperated with the Medical Board, New Delhi, as such, he could not be examined earlier and finally examined by the Medical Board on 3.9.1997 and keeping in view his acuity of vision, he was declared unfit in category B-1 and B-2, but was declared fit in C-1 with glasses and the proceedings were sent to the Chief Medical Director, Northern Railway, New Delhi for further disposal. The learned counsel for the respondents categorically pointed out that the applicant was more interested in getting himself medically unfit than to be diagnosed for his vision problem.

4. No rejoinder is filed by the applicant.
5. Heard the learned counsel for the parties, and perused the record.
6. Admittedly, the applicant was initially appointed in the respondents organization and was promoted subsequently to the post of Coach Attendant. He was reported sick on 27.7.1996 and he was referred to Lucknow by the Medical authority of Faizabad. As such, he was supposed to be examined at Lucknow before the Medical authorities. After perusal of the medical prescriptions report annexed along with the O.A. clearly shows that the applicant is "**having cataract in both eyes he is advised for cataract surgery.**" The bare reading of the impugned order also shows that as regard the medical examination in Central Hospital, NDLS, is concerned, It is noticed that in reference to the direction of Chief Medical Director/NDLS dated 31.10.1997, the CMS/LKO issued a letter to Medical Director/ NDLS through which, , the applicant was examined by a Medical Board at Central Hospital/ NDLS with Medical Director as its Chairman with a further request to conduct the same at an early date since the candidate is due to retire on 30th November, 1997. But the same could not be done due to his non co- operation as intimated by the CMD, N. Railway, NDLS, through his letter dated 31.10.1997. It is also to be mentioned that the recommendation of the Medical Board dated 3.9.1997, also clear that the applicant was declared unfit in B-1 and B-2 category but was declared fit in C-1 and below the glasses. Considering the directions of the Tribunal passed in O.A. No. 574 of 2002 and O.A. No. 575/2002, the representation of the applicant was also considered and in which it is categorically pointed out by the applicant that he is suffering from eye trouble since 27.7.1996. But as per the medical examination done on 3.9.1997

after giving treatment clearly shows and established that no delay was there on the part of the Railway and not only this, the medical board was duly constituted, but the applicant has not cooperated in the medical examination. The bare reading of the order dated 30th October, 1997 is also clear to the extent that the applicant did not cooperate with the eye specialist at Central Hospital, Northern Railway, he has to be examined by the Medical Board which is required to be conducted at an early date and it is also mentioned in the examination report that the patient refuses to see even fingers. The Medical Examination report is also clear that the applicant is having **cataract in both eyes and he advised for cataract surgery and it cannot be treated as permanent disability in regard to the applicant.** The bare perusal of the entire medical report shows that the applicant did not cooperate with the Medical Board and medical examination conducted also shows that it was only a cataract which is most commonly due to biological aging and is conventionally treated with minor eye surgery and cannot be treated as a permanent disability.

7. Considering the averments made by the learned counsel for the parties, I do not find any interference in the present O.A. Accordingly, the O.A. is dismissed. No order as to costs.

VR. Agarwal
(Navneet Kumar)
Member (J)

Vidya