

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 282/2011

This the 8th day of November, 2011

Hon'ble Sri Justice Alok Kumar Singh, Member (J)

Ajay Sinha aged about 36 years son of Sri Vinayak Prasad Sinha, residing at H.No. 13, Vaishnopusam, Para Road, Rajajipuram, Lucknow.

Applicant

By Advocate: Sri Praveen Kumar

Versus

Union of India through-

1. The General Manager, North Eastern railway, Gorakhpur.
2. The Divisional Railway manager, North Eastern Railway, Ashok Marg, Lucknow
3. The Senior Divisional Commercial Manager, North Eastern Railway, Ashok Marg, Lucknow.
4. The Divisional Commercial Manager, North Eastern Railway, Ashok Marg, Lucknow.
5. The Chief Medical Superintendent, North Eastern Railway, Gonda
6. The Chief Medical Superintendent, North Eastern Railway, Badshah Nagar, Lucknow.

Respondents

By Advocate: Sri B.B.Tripathi

ORDER (Dictated in Open Court)

BY HON'BLE SHRI JUSTICE ALOK KUMAR SINGH, MEMBER (J)

This O.A. has been filed for the following reliefs:-

- i) to assign duty to the applicant at a place as per advice given by the ENT Specialists at KGMC and LNM Railway Hospital, Gorakhpur and pay salary in accordance with law without any sort of interruption with all consequential benefits.
- ii) To pay salary for the period during which the applicant remained under medical examination /sick list owing to hearing defect.
- iii) Any other relief, which this Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
- iv) Cost of the present O.A.

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2. The case of the applicant is that he was appointed on compassionate ground on 14.1.1999 and posted on the post of Electrical Signal Maintainer III (ESM-III) vide order dated 24.10.2000. Due to hearing defect, he was feeling inconvenience in distributing the tickets. Therefore, he submitted a representation on 31.5.2010 (Annexure-5), upon which, vide order/letter dated 3.8.2010, the Station Superintendent, Shohratgarh was directed to send the applicant for hearing capacity examination. The respondent No.6 referred his matter to the Chief Medical Superintendent, Northern Railway Hospital, Lucknow on 23.8.2010, on which the applicant was advised to use the hearing aid. Again he was referred for re-examination of his hearing capacity vide letter dated 6.9.2010. But the matter was returned with certain remarks. Then on 21.9.2010, the respondent No. 6 issued another letter to Medical Director, LNM Railway Hospital, Gorakhpur seeking his opinion whether the applicant is fit for the post of Sr. Booking Clerk with hearing aid (Annexure A-8). After examination, the said authority gave its report with the specific advice on 20.10.2010 that the applicant is advised to work in a place like office or where relatively very less noise is present. On that basis, he was transferred from Shohratgarh to Kauwapur on administrative ground (Annexure A-10). Consequently, he joined there with the hope that the working condition may be better than that of the previous station. But he found that it was a busy station and noisy surroundings there was causing inconvenience to him. He was unable to hear the exact conversation of the passengers due to which the passengers were not getting the tickets of desired stations. The applicant therefore, raised his grievance by means of representation dated 22.11.2010 (Annexure A-11). But the respondents did not do anything. On 20.2.2011, due to hearing defect of applicant, one passenger namely Abdul Dui faced problem and lodged complaint against the applicant (Annexure A-12). On 4.3.2011, again when the wrong tickets were issued and the passengers faced

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problems, they started abusing the applicant and the passengers also created the scene. This fact was noted in the diary of Station Master (Annexure A-13). The applicant again submitted representation dated 25.3.2011, for redressal of his grievance. This representation was forwarded to respondent No.3 (Annexure A-14). But the respondents did not take any action. On the converse, he was issued a charge sheet on 5.4.2011 (Annexure A-15). However, on 13.4.2011, he was referred to the Head of Department, ENT, KGMC, Lucknow for expert opinion. After examination, ENT, KGMC submitted report directly to the Railways. Respondent No. 5 again referred the case of the applicant to the Medical Director, LNM Railway Hospital, Gorakhpur vide letter dated 25.4.2011 for opinion. On the basis of report given by KGMC, the said authority submitted its report on 29.4.2011 with the following facts:-

“Considering the above investigations and advice of KGMC, he should be posted at relatively peaceful surroundings like office clerk etc. Patient is referred back with all the reports for disposal at your end.”

3. Thereafter, the respondent No.5 wrote a letter to respondent No. 3 on 16.5.2011 asking him to inform the availability of work so that he may be posted on the post like office clerk as per advice given by ENT expert, KGMC as well as LNM Railway Hospital, Gorakhpur. When no response was received, respondent No. 5 again wrote a letter to respondent No.3 on 14/15.6.2011 but this letter was also not replied with. Consequently, the sick period of the applicant was extended from 8.4.2011 to 30.6.2011.

4. The O.A. has been contested by filing a counter reply but in fact the aforesaid main pleadings contained in the O.A. have not been controverted.

5. Thus it appears that despite of the aforesaid report of ENT expert, KGMC, Lucknow as well as LNM Railway Hospital, Gorakhpur, the posting of the applicant continues to be at Kauwapur. It has also

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not been disputed that despite several letters/ reminders from respondent No. 5 to respondent No.3, nothing has been intimated to respondent No.5 so that the applicant may be posted on a post like office clerk as per aforesaid medical advice.

6. In the Rejoinder Reply, the pleadings contained in the OA. has been reiterated.

7. I have heard the learned counsel for parties and perused the material on record.

8. At the outset, it is submitted on behalf of the applicant that as mentioned in the Supplementary Affidavit dated 22.9.2011 that after remaining for quite some time on sick leave, applicant was forced to go back to work at Kauwapur. He reported his joining on 2.9.2011 (Annexure M-3). But on 11.9.2011, the matter was referred from Kauwapur to Sr. Divisional Commercial Manager, NER, Lucknow vide Annexure M-4 where the matter is still said to be pending. It is said that he is still waiting at the headquarter at Lucknow for further orders.

9. On the basis of the pleadings, it comes out that the applicant was appointed on compassionate ground and he was declared fit for C-1 and below category with hearing aid. According to the respondents, the applicant was posted as Commercial Clerk in the pay scale of Rs. 3200-4900 vide order dated 29.4.2004 and their counsel Sri B.B.Tripathi says that (though it is not clearly pleaded in the Counter reply) the work /post of booking clerk also comes within the purview of Commercial Clerk. There appears no quarrel on the point that on account of applicant being handicapped (hard of hearing) some practical difficulties arose in the working of the applicant as booking clerk and some complaints were also received. Ultimately, the respondents themselves sent him for medical examination to obtain expert advice. In that process, he was referred to HOD, ENT, KGMC vide Annexure A-16. That report was submitted by the HOD, ENT, KGMC. This pleading has not been denied. This report should be

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available with the respondents but they have not brought it on record. Be that as it may. But admittedly, the advice of the KGMC was considered by none other than the LNM Railway Hospital, Gorakhpur. Thereafter the following advice was given by Medical Superintendent, LNM hospital :-

"He can work in peaceful surroundings like office etc. After attaching all the reports, it was also considered above investigations and advice of the KGMC. He should be posted at relatively peaceful surroundings like office clerk etc. With this advice, the patient was referred back with all the reports for disposal at your end."

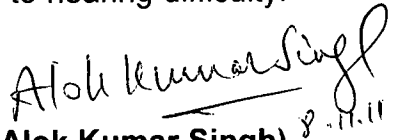
10. This opinion was given on 29.4.2011. On the basis of this report, the Chief Medical Superintendent, Gonda (respondent No.5), wrote to Regional Manager, NER, Gonda seeking availability of work in the light of the aforesaid advice (Annexure A-18). This letter was written on 3.5.2011 followed by reminders dated 16.5.2011 (Annexure A-20), dated 15.6.2011 (Annexure A-21). It appears that none of these letters/reminders were replied. Though, the Regional Manager, NER is not a party in this case but the next in the hierarchy is Sr. Divisional Commercial Manager, NER, Lucknow (respondent No.3). It also appears that after passing of an interim order dated 19.8.2011 for disposal of pending representation dated 31.5.2010, respondent No.3 has disposed it of vide order dated 24.8.2011 (Annexure M-1). But as rightly pointed out that this order speaks about referral of the applicant on 18.8.2010 to the Divisional Hospital, Badshahnagar and Medical fitness certificate dated November, 2010 issued by them declaring him to be fit for C-1 category and below with hearing aid. Similar pleadings have been taken in the C.A. also. But neither in the C.A. nor in this order, there is any whisper about the relevant last referral of the applicant by the Railway authorities themselves to HOD, ENT, KGMC, Lucknow which gave some report which has not been brought on record. Nevertheless, on the basis of that report, LNM Railway Hospital, Gorakhpur (which is on record) has given the aforesaid advice which clearly says that applicant can work in peaceful surroundings like office

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etc. Similarly, there is nothing on record from the side of the respondents as to why no report was made available in respect of availability of suitable post for the applicant despite repeated letters followed by two or three reminders as mentioned herein before. Being a model employer, the respondents ought to have redressed the grievance of the applicant in a convincing and suitable manner. Though the respondents sent the applicant for obtaining expert advice but after obtaining expert advice, no suitable action was taken in the matter. Rather, the applicant was forced to continue on sick leave for a considerable period and he is being treated like a shuttle cock. After some practical problems which arose in his working as booking clerk at Kauwapur, he was referred for the aforesaid expert advice and instead of making any solution, there was almost complete inaction on the part of the respondents which has not been specifically explained even till date. Not only this, after filing of this O.A. on 13.7.2011, he was hurriedly asked to go back to Kauwapur but within a week or so, the trouble again arose in respect of issuing passenger tickets and the matter was referred by the Station Superintendent, Kauwapur for making solution vide his letter dated 11.9.2011 (Annexure M-4). But the respondents are not paying any head.

11. In view of the above, this O.A. is allowed with direction to the respondents to take appropriate measures to assign duty to the applicant at a suitable place keeping in view the advice given by the HOD, ENT, KGMC, Lucknow as well as LNM Railway Hospital, Gorakhpur expeditiously within a period of two months from today and pay to the applicant the salary including for the period during which he remained under medical examination/ sick list owing to hearing difficulty.

No order as to costs.


(Justice Alok Kumar Singh) 8.11.11
Member (J)

HLS/-