

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW

ORIGINAL APPLICATION NO.335/92

this the 17th day of May, 2000

HON'BLE MR. D.C. VERMA, MEMBER (J)
HON'BLE MR. A.K. MISRA, MEMBER (A)

Chhotey Lal aged about 44 years s/o Sri Parsuti
r/o Village Bhagatpur Tanda, P.S. Bhagatpur Tanda,
District- Muradabad at present residing at Chota
Barha, Lucknow.

....Applicant

By Advocate: None

Versus

1. Union of India through Secretary, Ministry
of Railways, Rail Bhavan, New Delhi.
2. Chief Engineer construction, North East
Railway, Gorakhpur.
3. Chief Medical Superintendent, N.E. Railway,
Izzatnagar, Bareilly.
4. Deputy Chief Engineer (construction),
Lucknow.
5. Deputy Chief Engineer, Varanasi.


....Opp. Parties

By Advocate: SRi A. Srivastava

ORDER

A.K. MISRA, AM


Through this O.A., applicant seeks
quashing of the order dated 8th March, 1991 passed
by the Chief Medical Superintendent, N.E. Railway,
Bareilly (Respondent No.3). The applicant also prays^d
that directions for medical re-examination of the
applicant be issued by another Medical
Superintendent. Further prayer is for issue of
directions to quash the discharge order of the
applicant and for issue of suitable directions to



the effect that the applicant will be continuously deemed in service.


2. Pleadings on record have been perused and learned counsel for the respondents have been heard. The facts stated in the O.A. and Rejoinder on behalf of the applicants have also been considered.

3. Briefly stated the factual position is that the applicant was appointed on the post of TS Khalasi in North Eastern Railway and was working under the Works Inspector in Kashipur. The applicant was placed in the regular cadre of Khalasis w.e.f. 1.5.84. In December 1988, while on duty, the applicant sustained injury in his left eye because of which he had to undergo an eye operation in January 1989. According to the applicant, he was directed to appear before the Medical Board in December 1988 after sustaining an injury in the eye. As a result of the Medical Examination, the applicant is stated to have been declared as unfit. Result of this Medical examination, according to the applicant, was not communicated to him. After undergoing the operation in his left eye, the applicant made an application for medical re-examination on the ground that he has been declared fit by a doctor of Kashipur, dated 21st March, 1989, which states that on examination, the applicant's left vision was +9.0/1.0 CYL 180 degree (left eye 6/6). The applicant submits in the O.A. that he made several representations but nothing was heard from the respondents. Ultimately, on an application made by the applicant, the respondent No. 5 sent a letter dated 23.10.89 to the Chief Medical Officer, North Eastern Railway, Gorakhpur forwarding application of the applicant for



medical re-examination. In this letter, the respondent No. 5 stated that as per the request of the applicant, necessary action for fixation of the date of medical re-examination may be taken (Annexure 2 and 2 A to the OA). It has been submitted that no date for medical re-examination was fixed in spite of letter of respondent No. 5 addressed to the Chief Medical Officer, North Eastern Railway, Gorakhpur. Finally, all the relevant papers were sent to the Chief Medical Superintendent, North Eastern Railway.

The Chief Medical Superintendent rejected the appeal of the applicant by order dated 8.3.91 by quoting para 525 clauses 1 & II of the Medical Manual. According to para 525 of the medical manual ordinarily there is no right of appeal from the findings of an examining medical authority but if the Government is satisfied on the basis of the evidence produced by the candidate concerned of the possibility of an error of judgement in the decision of the examining medical authority, it will be open to them to allow re-examination. Such evidence, however, should be submitted within one month of the date ~~of communication~~ in which the decision of the first medical authority is communicated to the candidate. Thus on the basis of para 525 of the medical manual, the applicant's request for medical re-examination was rejected. The applicant's request for medical re-examination was rejected in the first place on the ground that there was no error of judgement in the decision of the first medical authority and secondly on the ground that ~~evidence showing the possibility of an error in~~ the judgement of the first examining authority was not challenged within one month of the date of communication of



the decision of the first medical authority. According to the applicant, the decision of the first medical authority was never communicated to him and as per the averment made in the OA, the applicant could know about the report of the first medical examination only after he received the discharge letter dated 13/14 June 1989 which states that the applicant has been declared unfit medically in all categories and therefore, he is being discharged from service. After receiving the discharge letter, the applicant represented for his medical re-examination and for recall of the discharge letter. Thereafter the applicant made repeated requests to the authorities for recalling the discharge letter and ^{for} medical re-examination but no action was taken on the applicant's representations/requests. The applicant ^{has} stated that rejection of request, for medical re-examination by the Chief Medical Superintendent, North Eastern Railway, Izzatnagar (Respondent No. 3) was arbitrary beyond jurisdiction and against the principles of natural justice. The last representation in this regard was made by the applicant on 4th April, 1992.

4. On behalf of the respondents, it has been submitted in the CA that though the applicant was appointed on 1st August, 1976, he was never regularised as Khalasi but was only given temporary status w.e.f. 1.5.84. It has been submitted that the applicant was directed to undergo the first medical examination on 21.12.88 and he remained under medical treatment from 31.12.88 to 7.3.89. The applicant, after the completion of his treatment was medically examined on 15.3.89 by the Divisional Medical Officer, North Eastern Railway, Izzatnagar, Bareilly, who declared ^{him} medically unfit for all



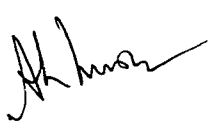
categories. The application of the applicant dated 18th June 1989 requesting for medical re-examination was only forwarded by the competent authority to the CMO, Gorakhpur and no recommendations or directions were given ~~for~~ on the re-examination of the applicant. It, therefore, cannot be said that a decision for medical re-examination had been taken in the case of the applicant in pursuance of his application dated 18.6.89. The appeal filed by the applicant before the Chief Medical Superintendent, Izzatnagar, Bareilly was stated by respondent to be barred by limitation in terms of para 525 of the medical manual. Further ~~it has been submitted that~~ the contention of the applicant to the effect that result of the medical examination conducted by the Divisional Medical Officer, Izzatnagar on 15.3.84 was not communicated to him in time to enable him to file the appeal within prescribed period of one month as provided in para 525 of the medical manual has been controverted by the respondent who have stated that the result of the medical examination conducted on 15.3.84 by the Divisional Medical officer, NER, Izzatnagar was duly communicated to the applicant in time as would be evident from the thumb impression of the applicant on the medical certificate dated 15.3.89. Accordingly, it has been submitted that the applicant had sufficient time to file the appeal before the Chief Medical Superintendent, NER within the prescribed period of one month. Further the respondent have submitted that since the applicant was declared medically unfit ~~for~~ all the categories, the only alternative was to discharge him from service and the said letter of discharge was duly served on the applicant



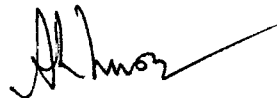
well in time on 15th June 1989 as acknowledged by the applicant by putting his thumb impression on the discharge letter.

5. In the RA filed by the applicant, the submissions made in the OA have been reiterated.

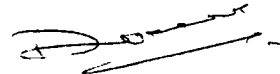
6. In view of the factual position discussed in detail in the preceedings paragraphs, we are of the opinion that no interference is called for in the order dated 8th March, 1991 passed by the Chief Medical Superintendent, NER, Izzatnagar, Bareilly. This is because the appeal against the medical examination conducted by the Divisional Medical Officer, Izzatnagar should have been filed within the prescribed period of one month as laid down in Clause I of para 525 of the medical manual. It is not in dispute that the said appeal was filed much beyond the prescribed period of one month and no valid reason has been given to explain the ~~delay~~^{per} in filing the appeal. Secondly, the appeal before the Chief Medical Superintendent as ^{per} para 525 of the Medical Manual can be entertained only if an error of judgement exists in the decision of the examining medical authority. Since no such error in the medical examination existed, there was no question to allow medical re-examination of the applicant. The order dated 8.3.91 of the Chief Medical Superintendent, NER, Izzatnagar does not therefore, called for any interference. Since the applicant had been medically decategorised for all categories, the applicant was discharged from the railway service. Accordingly, ~~no~~, no interference is called for even in the discharged order.



7. In view of the foregoing discussions, the
OA is dismissed with no order as to costs.



MEMBER(A)



MEMBER (J)

Lucknow: Dated 17th May 2000
HLS/-