

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH: PATNA

Registration No.OA-165 of 1996

(Date of decision) 3.12.1996

Ram Narayan Lal Applicant

By Shri B.Pandey, Advocate

Versus

1. General Manager,

Eastern Railway, Fairlie Place,

Calcutta.

2. Divisional Railway Manager,

Eastern Railway, Dhanbad.

3. Divisional Commercial Manager,

Eastern Railway, Dhanbad.

4. Chief Medical Officer/Director,

3, Koilghat, 12th floor, Eastern Railway,

Calcutta.

5. Medical Superintendent,

Eastern Railway, Dhanbad.

6. Senior Divisional Personnel Officer,

Eastern Railway, Dhanbad.

..... Respondents

By Shri A.K.Tripathy, Advocate

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Hon'ble Mr. Justice V.N.Mehrotra, V.C.

This OA has been filed by applicant Ram Narayan Lal with a prayer that the order dated 18.2.1994 and 23.9.1994 passed by the Chief Medical Officer, Eastern Railway, Calcutta be quashed. The applicant has also prayed that his pension be fixed from 11.10.1993 the date on which the Medical Board found him completely and permanently incapacitated for further railway service in all medical categories. Prayer for absorption of the dependants of the applicant in service on compassionate ground has also been made.

2. The applicant has alleged that he was appointed as a Clerk in the office of the D.M.E, Alipurduar Jn. N.E.F. Railway on 13.2.1959. In July, 1961 he was transferred to the office of the Divisional Superintendent Eastern Railway, Dhanbad on the post of Clerk. He was posted as Ticket Collector in the year 1969. Later on, he was promoted as TTE in the Grade of 1200-2040. He was further promoted as Head TTE in the scale of Rs.1400-2300 in the year 1987. The applicant fell ill with effect from 24.10.1991 and was kept under treatment of Medical Superintendent, Eastern Railway, Dhanbad. The illness of the applicant continued for a long time. The Chief Medical Officer, Eastern Railway by his letter dated 30.9.1993 communicated to the Medical Superintendent, Eastern Railway, Dhanbad, directed that a Medical Board be constituted to examine the applicant and to consider his fitness or otherwise and the proceedings of the Board be submitted to him for his approval. In pursuance

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of this letter a Medical Board was constituted consisting of Dr. N.K.Singh, Dr. J.C.Nistandra and Dr. M.Sharma. They examined the applicant on 11.10.1993 and gave its finding that "the Medical Board is of opinion that Shri R.N.Lal is likely to be considered for completely and permanently incapable for further railway service in all medical categories." The Board submitted the proceedings to the Chief Medical Officer, Eastern Railway, Calcutta for approval. The Chief Medical Officer, however, by his letter dated 18.2.1994 communicated to the Medical Superintendent, Eastern Railway, Dhanbad that the "recommendation of the Medical Board is not accepted and the Medical Superintendent may consider the case of the applicant for decategorisation if he thinks so." The Divisional Medical Superintendent, Eastern Railway, Dhanbad had no alternative but to examine the applicant and to find him fit for any job other than the job of Head FTE. He found fit the applicant for Class C II for sedantry job which he communicated to the applicant by his letter dated 11/22.4.1994. The applicant was given option to file appeal against this order. He accordingly filed the same but was rejected by the Chief Medical Officer, Eastern Railway, Calcutta. Subsequently the applicant filed appeal before the General Manager, Eastern Railway, Calcutta but no decision has been taken with regard to that.

3. The contention by the applicant is that the order by the Chief Medical Officer, Eastern Railway, Calcutta rejecting the recommendation of the Board without giving any reason was arbitrary and illegal. It is asserted that the recommendation by the Board was binding and should have been accepted. It is further contended that in view of the recommendation by the Medical Board, it

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should be deemed that the applicant had retired on 11.10.1993 on being declared completely and permanently incapacitated for further railway service in all medical categories. The applicant asserts that subsequently in the year 1995, a notice was served on him informing him that he will be retiring on 31.7.1995 on his attaining the age of superannuation. It is contended that the applicant should be deemed to have retired after the finding by the Medical Board; The notice served in the year 1995 was superfluous.

4. On behalf of the respondents it has been contended that the recommendation by the Medical Board was neither final nor binding on the superior authorities. It is asserted that after the recommendation of the Medical Board, the applicant was admitted in the B.R.Singh Hospital, Sealdah. He was put through Medical test and observation under the supervision of the Chief Medical Director, Calcutta. The Medical Team after necessary evaluation of the inputs on the applicant, acquired during hospitalisation, came to a decision that the applicant was a case of average I.H.D. In view of this finding the Chief Medical Director did not accept the recommendation of the Medical Board headed by the Chief Medical Superintendent, Dhanbad. The authorities at Dhanbad were directed to consider the case of the applicant of decategorisation instead of invalidation on the ground of permanent incapacitation from railway service in all medical categories. In the light of the same, the applicant was offered on decategorisation, category C-2 with a reduced burden of work which he was capable of handling due to physical condition. However, the applicant chose not to join and accept the C-2 category and therefore, the authority cannot be faulted for their action. The applicant is himself to be blamed for the inconvenience caused to him. Since the applicant did not

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join his new responsibilities, he was granted leave available to him under various Heads and when the same got exhausted, he was treated on leave without pay till he retired. It is asserted that the applicant cannot be granted retirement from 11.10.1993 nor he is entitled to pension from that date.

5. I have heard the learned counsel for the parties and examined the material which has been placed on behalf of the parties. In this case it is not disputed that under the direction of the Chief Medical Officer, Eastern Railway, Calcutta, the applicant was examined by the Medical Board on 11.10.1993. The Medical Board was of the opinion that the employee was likely to be considered for completely and permanently incapacitated for further railway service in all medical categories. The recommendation by the Medical Board was submitted to the superior authority, i.e. Chief Medical Officer, Eastern Railway, Calcutta. The Chief Medical Officer did not accept the recommendation and directed the Medical Superintendent, Dhanbad to consider the case of the employee for decategorisation, if he thinks so. Subsequently, the employee was again examined by the Divisional Medical Officer at Dhanbad and he, by his order, dated 19/22.4.1994 recommended that the employee was unfit in Class B-2 to C-1 but fit for Class C-2 for sedantry job. The applicant then filed appeal against this order before the Chief Medical Officer, Eastern Railway, Calcutta. That appeal was rejected by order dated 23.9.1994, Annexure-7. In this order it is specifically mentioned that the Chief Medical Director has examined the case at B.R.Singh Hospital, Sealdah and that he opined as follows: "He is a case of average I.H.D. and he can do sedantry job. He also decided that the decision already communicated under this office letter No.M.D 56/DHN dated 18.2.1994 holds good."

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6. On behalf of the applicant it has been asserted that the applicant was not examined by the Chief Medical Director or by any other Doctor at B.R. Singh Hospital ^{as} ~~nor came to the view~~ mentioned in the letter dated 23.9.1994. On behalf of the respondents, however, this has been denied and with a reference to this letter it has specifically been asserted that the applicant was actually examined at B.R. Singh Hospital, Sealdah. It is difficult to accept the contention raised on behalf of the applicant that the Chief Medical Director has made observation in the letter dated 23.9.1994 even though the applicant was never examined at B.R. Singh Hospital, Sealdah. I do not find that there is any reason for the Chief Medical Director to make a false assertion in the matter. It has not even been alleged that he was in any way biased against the applicant or had any mala fide intention in the matter.

7. The recommendation by the Medical Board was to be submitted before the higher authority who, after considering the same did not accept it. It cannot be said that the order by the Chief Medical Officer, Calcutte was illegal or otherwise invalid. As mentioned earlier the applicant was again examined and was found fit to be placed in C-2 category, suitable for performing sedantry job. In the circumstances the contention by the applicant that the recommendation by the Medical Board was binding, cannot be accepted.

8. During the arguments learned counsel for the applicant stated that though it was subsequently decided that the applicant was fit for sedantry job in C-2 category, the job was never offered to him. This contention was however, not made in the original application. Further, there is nothing to indicate that the applicant was

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willing to accept the job in C-2 category or he was not offered any such post. The case of the applicant throughout has been that due to the recommendation of the Medical Board, he should be deemed to have retired on 11.10.1993, the date on which the Medical Board submitted its report.

9. The applicant in this case has failed to establish that he should be deemed to have retired from the date of recommendation by the Medical Board and was entitled to get the pension from that date. The OA is accordingly dismissed. No order as to costs.

V.N. Mehrotra
13.12.96
(V.N. MEHROTRA)
VICE-CHAIRMAN