

(13)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 448/87

~~T.A. No.~~

198

DATE OF DECISION 30.4.1991

Qamaruddin Bashiruddin Basit Petitioner

Mr. S.B. Kasar Advocate for the Petitioner (s)

Versus

The General Manager, Central Rly., Respondent

Bombay V.T.


Mr. P.R. Pai Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. P.S. Chaudhuri, Member (A)

The Hon'ble Mr. T.S. Oberoi, Member (J)

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


(P.S. CHAUDHURI)
Member (A)

(14)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.448/87

Qamaruddin Bashiruddin Basit,
Basit Mansion,
Near Main Post Office,
Bhusaval.

.. Applicant

vs.

1. The General Manager,
Central Railway,
Bombay V.T.
2. The Divisional Railway Manager,
Central Railway,
Bhusaval.
3. The General Manager,
South Central Railway,
Secunderabad.

.. Respondents

Coram: Hon'ble Member(A) Shri P.S.Chaudhuri

Hon'ble Member(J) Shri T.S.Oberoi

Appearances:

1. Mr.S.B.Kasar
Advocate for the
Applicant.
2. Mr.P.R.Pai
Advocate for the
Respondents.

JUDGMENT:
(Per P.S.Chaudhuri, Member(A))

Date: 30-4-1991

This application under Section 19 of the
Administrative Tribunals Act, 1985 was filed on 26-6-1987.

In it the applicant who is working as Assistant Loco
Foreman on Central Railway at Bhusaval, is seeking a
declaration that he is fit to work as Driver Grade 'A'
Special on and from 25-1-1983 and connected and consequential
reliefs.

2. It is the applicant's case that he was
working at Akola as Driver Grade 'A' Special from 1980.
At that time the section Khandwa to Purna on which Akola
stood was a part of Central Railway. It was transferred
to South Central Railway in 1981 but the staff working
on this section were given an option as to whether they

wanted to remain on Central Railway or desired to be transferred to South Central Railway. The applicant opted for Central Railway. On 20-1-1983 the applicant was sent for periodical medical examination to Divisional Medical Officer, Purna who, in ~~turn~~^{turn}, directed him to Lallaguda Hospital. By certificate dated 25-1-1983 the Divisional Medical Officer, Purna, declared the applicant "FIT AI(Aye one) but not to be utilised on footplate - except for shunting duties on Engines". It is the applicant's case that this endorsement was made only on that part of the certificate that was given to the applicant but was not made on the office copy thereof. Thereafter the applicant was relieved from Akola on 13-3-1983 and reported to Central Railway/^{at} Bhusaval on 15-3-1983. On 25-3-1983 he was posted as Assistant Loco Foreman. Thereafter he was put to officiate as Crew Controller (for short, CCOR) and subsequently to his present post. On joining duty at Bhusaval the applicant narrated the whole episode to his immediate superior and asked for special medical examination. He was accordingly ordered to be sent for such medical examination in April, 1986 but was actually sent only on 8-7-1986. On 9-7-1986 the Divisional Medical Officer certified him as "Fit Aye one with Glasses for NV". It is the applicant's case that he was thereafter waiting for the posting orders as Driver 'A' grade when on 21-7-1986 he was

given a letter for special medical examination at the Railway Hospital, Bhusaval. This medical examination was conducted from 16~~th~~ to 29-12-1986. At the end of this examination he was declared to be unfit, for Driver's duty but fit for non-foot plate duties. Being aggrieved the applicant filed the present application.

3. The respondents have opposed the application by filing their written statement. We have also heard Mr. S. B. Kasar, learned counsel for the applicant and Mr. P. R. Pai, learned counsel for the respondents.

4. Mr. Kasar's first submission on behalf of the applicant was that in 1983 the applicant was not aware of the reasons why he was considered unfit for foot plate duties and that, in any case, no such endorsement had been made in the office copy of the medical certificate. We are quite unable to go along with ^{these} ~~this~~ submissions. The respondents showed us the original record and it is quite clear that the office copy of the medical certificate has the endorsement mentioned earlier. It is obvious that the applicant knew that he had been found unfit as otherwise he would not have gone quietly to Bhusaval and started performing stationary duties. Besides there is no mention of the applicant having made any representation to the effect that even though he was fit, he was being made to perform stationary duties. Mr. Kasar made an

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attempt to get over this difficulty by submitting that the applicant had made a ~~representati~~on through the Union on 25-1-1983. We are unconvinced ^{by} ~~with~~ this submission because ~~even~~ if the applicant had made such a submission nothing has been shown to us that would lead us to believe that he ^{pursued} ~~pursued~~ the matter.

5. Mr.Kasar's second contention on behalf of the applicant was that he had been declared fit in medical category Aye one on 9-7-1986 ^{and} ~~as~~ so he should have been put out on foot plate duties immediately thereafter. The respondents have attempted to counter this by submitting that he was sent for medical examination erroneously for the post of "PCOR" for which he was declared fit. The respondents have shown us the complete record in this regard. This record shows that the applicant was sent for medical examination on his own account as "CCOR" and was certified as Fit. The fitness that was so certified was only for the post of Crew Controller. The applicant was not sent for medical examination for fitness as a Driver and was not certified fit as a Driver. We are thus unable to go along with Mr.Kasar that the medical certificate dated 9-7-1986 required the respondents to let the applicant resume his foot plate duties. There was no ^{obligation} ~~such applications~~ on the respondents because the applicant had not been certified fit for foot plate duties but only fit for CCOR. It is true that the respondents should not have sent the applicant for

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medical examination as CCOR but the fact that they *did make this*
~~does the~~ mistake does not bestow any right on the
applicant to be sent out as a Driver.

6. The third submission of Mr. Kasar on behalf of the applicant was that the applicant did not know what transpired as a result of the special medical examination between July and December, 1986. The record that has been made available to us shows that the Divisional Medical Officer, Bhusaval who had issued the fit certificate dtd. 9-7-1986 asked for the details of the earlier medical examination of 1983 from the Divisional Medical Officer, Purna. Thereafter the applicant was admitted as an indoor patient at the Railway Hospital at Bhusaval and given a thorough medical examination. The result of this medical examination was that the applicant was considered to be a case of Diabetes and declared as "Unfit A I as Driver, Fit A I for non footplate duty with Glasses for D and NV". In view of the protracted medical examination which led to this ultimate finding, we are unable to go along with Mr. Kasar that the applicant is not aware of the results of this examination.

7. Coming now to the rules in this regard, Para 523 of the Indian Railway Medical Manual makes a provision for reconsideration of adverse reports. This reads as follows:

"523. Provision for reconsideration of adverse reports. - The following provisions shall apply in regard to the reconsideration of adverse reports of physical examination:-

(1) does not concern us

(2) Railway employees-

(i) The Railway employee may himself, on receiving notice of the failure to pass the examination lodge an appeal within seven days from the date of adverse report, for reconsideration by the Chief Medical Officer. The appeal will be directed through the divisional or district officer of the employing branch or department concerned and the Divisional Medical Officer who will respectively attach thereto (1) a statement of any special circumstances that appear worthy of consideration and (2) a report of the examination.

(ii) A principal divisional or district officer of the branch or department concerned may submit a requisition for reconsideration by the Chief Medical Officer of the case of a Railway employee concerning whom an adverse certificate has been issued by an examiner authorised to do so. The requisition will include a statement of any special circumstances that appear worthy of consideration, and will be sent through the Divisional Medical Officer who in forwarding it to the Chief Medical Officer, will attach a report of the examination.

(iii) On receipt of an appeal under para(i) above, or a requisition under para (ii) above, the Chief Medical Officer will, after perusal of the papers, either issue summary orders thereon or arrange at his discretion for such further special examination of the Railway employee as the circumstances of the case may require. The decision of the Chief Medical Officer will be final.

(iv) does not concern us."

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The record that has been ^{shown} ~~made~~ to us shows that neither after 25-1-83 nor after 31-12-86 did the applicant make any appeal for reconsideration by the Chief Medical Officer. No explanation was forthcoming to show why he did not avail of the opportunity so provided. Such being the case, the applicant has only

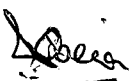
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himself to blame for the consequences - all the more so because, we were told across the Bar, that he is due to superannuate on 30-4-1991.

8. Based on this discussion and analysis the only conclusion that we can come to is that the applicant was medically examined by the appropriate medical authority for his fitness to work as a Driver and that authority found him unfit for such duties. Against this background we are unable to give the applicant the reliefs that he has prayed for. He could have appealed to a higher medical authority but chose not to do so.

9. In this view of the matter we see no merit in the application and are of the view that it deserves to be dismissed.

10. The application is accordingly dismissed. In the circumstances of the case there will be no order as to costs.


(T.S. OBEROI)
Member(J)


(P.S. CHAUDHURI)
Member(A)

30-4-1991