

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

O.A. No. 591 of 2005

Date of order : 6th January, 2011

C O R A M

Hon'ble Mrs. Justice Rekha Kumari, Member [Judicial]
Hon'ble Mr. A.K. Jain, Member [Administrative]

Ramdeo Paswan, S/o Jaldhar Paswan, r/o village – Hasanpur, P.O. Mitwarpur,
District – Samastipur.

.... Applicant

By Advocate : Shri M.P. Dixit

Vs.

1. The Union of India, through the General Manager, E.C. Railway, Hajipur.
2. The Chief Works Manager, E.C. Railway, Samastipur.
3. The Medical Superintendent, E.C. Railway, Samastipur.
4. The Chief Medical Director, E.C. Railway, Hajipur
5. The Chief Medical Superintendent, E.C. Railway, Samastipur.

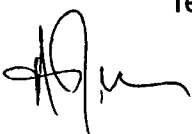
.... Respondents.

By Advocate : Shri B.B. Kumar

ORDER

A.K. Jain, Member [A] :- This application has been filed by the applicant against the order dated 06.05.2005 passed by the Chief Workshop Manager, E.C Railway, Samastipur, respondent No. 2, [Annexure A/13], rejecting the claim of the applicant for his employment in Railways.

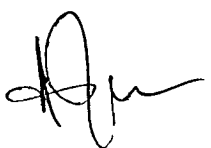
2. The applicant was initially engaged as substitute Khalasi on 22.03.1984 with posting at Railway Workshop , N.E. Railway, Samastipur. He was called for screening test in 1990 and on being successful in screening, he was sent for medical examination. He was declared unfit for C-1 medical category. On his representation, he was again examined by a Medical Board which found him "unfit for doing further service due to cardiac ailment". The applicant again took up the matter with the authorities , and on his request, he was sent for examination to the Medical Director, S.E. Railway, Headquarters Hospital, Perambur, Madras. It was observed in the report of the doctor at Perambur Hospital that the applicant is fit for railway service. Relying on the report of Perambur Hospital, the applicant again represented for his alternative



appointment, but he was informed vide letter dated 29.02.1996 that as per Medical Certificate No. 152 dated 31.01.1996 issued by Chief Medical Superintendent, Samastipur, he was declared unfit for appointment. The applicant filed OA No. 392 of 1996. All the facts stated above were examined in the OA. Taking note of Rule 523 of Indian Railway Medical Manual as also the judgment of Hon'ble Supreme Court of India in the matter of Indian Council of Agricultural Research and another Vs. Smt. Shashi Gupta [AIR 1994 SC page 1241], the Tribunal dismissed the said OA being devoid of merit vide order dated 08.05.2001. A Review Application bearing RA No. 29 of 2001 was filed by the applicant on the ground that the order passed in OA No. 392 of 1996 suffered from an error apparent on the face of record, and non-appreciation of some of the material documents. The two main issues raised by the applicant in the RA were that after the report of Perambur Medical Hospital, which was the highest medical authority, there was no medical examination of the applicant, and the respondents have acted in a discriminatory manner as in a similar case of another employee, Laloo, he was appointed after he was declared fit by Perambur Hospital.

3. Taking note of documents placed before it in the RA No. 29 of 2007, arising out of OA 392 of 1996, the Tribunal in para 12 of its order dated 10.09.2004 observed that "the applicant was further examined, and found unfit even for alternative in Class IV post. The said fact is evident from Annexure A-18, page 23 of Annexure filed by the applicant himself, which is a typed copy of letter dated 26.2.1996 sent by the applicant to Chief Works Manager, informing him with regard to his medical examination by Chief Medical Officer, Samastipur. As it appears, the impugned Annexure A-19 dated 29.2.1996 was a result of the said medical examination whereby the applicant was found " unfit for appointment" as per certificate No. 152". It was further observed by the Tribunal in the order that :-

" therefore, after careful consideration of the matter, it is found that while rejecting the prayer of the applicant, this Court has taken into consideration almost entire legal and factual position of the matter.



Particularly Sub-clause [iv] of sub rule [2] of Rule 523 of Indian Railway Medical Manual, which prescribes the prevalency of final report of Chief Medical Officer even on the judgment or opinion of expert on appeal."

4. However, on the point of discrimination, noting that discrimination point as raised by the applicant in his OA has not been discussed or observed in the order under review and that it would not be appropriate to interfere with the medical opinion, the Tribunal modified the order in OA 392 of 1996 under review by adding para 6 A as under :-

" So far as discrimination point is concerned, the respondent concerned are hereby directed to look into that aspect, and thereafter, if the case of the applicant is found to be identical with those against whom he has raised this point of discrimination, the authorities concerned are directed to act accordingly after giving an opportunity of being heard to the applicant, while passing reasoned and speaking order within three months from the date of receipt / production of a copy of this order, while doing so, the concerned authorities are expected not to loose sight of the fact that applicant has worked in Railways for six years with temporary status and may not be now eligible for any other government job."

5. Para 7 of the order in OA 392 of 1996 was also modified as under :-

" In view of the facts and circumstances of the case, as noticed above and directions given in para 6/A, we have reached conclusion that this OA is devoid of merits and the same is accordingly dismissed and disposed of with no order as to costs."

6. In compliance with the direction of the Tribunal, the respondent No. 2 , Chief Works Manager, E.C. Railway, Samastipur, passed the impugned order dated 06.05.2005 as contained in Annexure A-13, after giving the applicant an opportunity of hearing on 13.04.2005.

7. In view of the foregoing facts, we are of the opinion that at this stage, the only issue for our consideration is whether the point of discrimination has been appropriately looked into by the authority while passing the order dated 06.05.2005. The other points raised in this OA have already been considered and decided by the Tribunal in the earlier OA No. 392 of 1996, and RA No. 29 of 2001 arising out of the said OA.

8. Heard learned counsel for both the sides.

9. The main contention of the learned counsel for the applicant is that



the case of the applicant has been rejected by the respondent No. 2 on totally baseless ground. The other employee, namely, Laloo was also sent for medical examination several times as evident from letter dated 27.12.1993 [Annexure A/14], and on the basis of medical report, he was disengaged. Lastly, he was sent to SER Headquarters Hospital, Perambur, Madras where he was declared fit , and on the basis of the said report, he was taken on duty. However, in case of the applicant, the opinion of the " highest medical category" for the purpose i.e., Perambur Hospital was not accepted by the authorities. This is a clear case of discrimination. It was added by the learned counsel for the applicant that even the Medical Board held at Gorakhpur did not find the applicant unfit for railway service, rather he was declared unfit for C-1 medical category. Furthermore, the G.M [Medical] Gorakhpur, vide letter dated 02.01.1996 [Annexure A/7] , directed the CMS, Samastipur to take action as per advice of the S.R. Hospital / Perambur, who had given a clear opinion. In spite of the same, CMS, Samastipur, declared the applicant unfit. It has further been alleged that the applicant was intentionally harassed and discriminated by the respondents as he comes from a weaker section and belongs to Scheduled Caste.

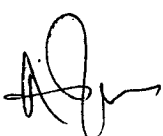
10. The learned counsel for the respondents submitted that the applicant was trying to confuse the issue by stating that he was declared unfit only for C-1 category and not for all. As mentioned in para 14 of the written statement filed by the respondents, C-1 is the lowest category of medical examination. Hence, the statement that the applicant was fit for other medical categories is not sustainable in the eyes of law and facts both. Again the view about fitness of the applicant expressed on the prescription by the doctor at Perambur is his personal view, and doctor has not clarified the medical category for which he was found fit. It is not a certificate after assessment by a team of doctors. The applicant was again examined by the concerned medical authorities after return from Perambur, who declared him ' unfit'. All these aspects were carefully considered by the Tribunal in OA 392 of 1996 and RA 29 of 2001, and the Tribunal has given clear findings on these issues. The applicant in this OA has again raised the same issue to confuse the Tribunal. In pursuance of the



order of the Tribunal in RA 29 of 2001, the respondent No. 2 has passed a detailed speaking order in which it is clearly stated that the case of Laloo is different from that of the applicant. While the applicant was declared unfit thrice, Laloo was not declared medically unfit. After screening test, during the course of medical examination, he was sent to SER Headquarters Hospital, Perambur, Madras for treatment. After return from there, he was found fit on medical examination. The learned counsel for respondents further submitted that the statement of the applicant that Laloo was also sent for medical examination several times on the basis of letter dated 27.12.2003 [Annexure A/14] , is also not correct. It is evident from the said letter that it was a case of first medical examination in Aye three category, and this case was referred to CHS , Gorakhpur for second opinion. This does not establish that Laloo was declared unfit by the medical board. The claim that Laloo was disengaged after declaring him unfit has also not been substantiated by the applicant. Hence, the case of Laloo and the applicant are not comparable.

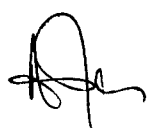
11. We have perused the records and considered submissions made by the parties. As has been mentioned earlier, the only issue for our consideration is whether the point of discrimination has been appropriately considered by the authority while passing the impugned order dated 06.05.2005 [Annexure A/13] in pursuance of the order passed by the Tribunal in RA 29 of 2001. Admittedly, as per Rules, the competent medical authority to declare an employee fit or unfit is Chief Medical Officer. The "prevalency of the final report of Chief Medical Officer even on the judgment or opinion of expert on appeal" was also taken note of by the Tribunal in para 13 of its order passed on 10.09.2004 in RA 29 of 2001, arising out of OA 392 of 1996.

12. As regards the case of Laloo, it appears from Annexure A-14 of the OA, that on being detected a case of heart problem, Laloo was referred by the Medical Superintendent, NER, Garhara to Chief Hospital Superintendent, NER, Gorakhpur for a second opinion. His was a case of 1st medical examination. No document has been produced to show that he was declared medically unfit by a medical board. It also appears from para [xi] of the order passed by the



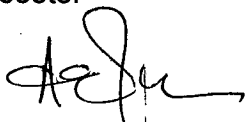
respondent No. 2 that he was sent to SER Headquarters Hospital, Perambur for treatment , and after return from there, he was medically examined and found fit. However, in the case of the applicant, it is noted that he was first declared unfit on the basis of medical examination held on 16.3.1990 after screening. He filed an appeal for re-examination to CMO, NER, Gorakhpur [Annexure A/1]. The medical board at Gorakhpur found him unfit in C-1 category. The CMO observed, " according to opinion of Medical Board, he is unfit for doing further service due to cardiac ailment." This was informed to CMS, Samastipur vide letter dated 14.1.1991 of the office of GM [Medical], Gorakhpur [Annexure A/4]. Thereafter, CMS, Samastipur, informed the Workshop Manager accordingly [Annexure A/3]. Again on request of the applicant, he was referred to SR Headquarter Hospital, Perambur [Annexure A/5]. The doctor at Perambur declared the applicant fit for railway service [Annexure A/6]. After return from Perambur, the applicant was again examined , and was declared unfit [Annexure A/9]. This is also clear from the finding in para 12 of the order of the Tribunal dated 10.09.2004 passed in RA No. 29 of 2001 [Annexure A/11], and the order passed by respondent No. 2 [Annexure A/13].

13. From the above facts, we note in both the case, some heart related problems were noticed in initial medical examination. In case of Laloo, there is no document produced before us that he was declared unfit by any medical board earlier though the applicant has claimed that. In case of applicant , he was declared unfit by two medical boards prior to referring his case to Perambur on his appeal. It is also noted that in case of Laloo, after the report of Perambur Hospital, there was another medical examination in which he was declared fit [para XI of the order dated 06.05.2005]. However, in case of the applicant, after his return from Perambur, he was further examined medically and declared unfit vide letter No. 152 dated 31.1.1996. The Tribunal cannot interfere with the medical opinion of the competent medical authority. As mentioned earlier, the Tribunal in its order dated 10.09.2004, has accepted the prevalency of the final report of the chief Medical Officer even on the judgment or opinion of expert on appeal as stipulated in Sub Clause [iv] of Sub Rule [2] of Rule 523 of Indian

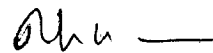


Railway Establishment Manual. It is, therefore, quite clear that the case of Laloo and the applicant rests on different footings, and the same cannot be treated as similar. The issue of discrimination has also been appropriately considered by the authority, taking all the relevant facts into account, in its order dated 06.05.2005 passed in pursuance of the order of this Tribunal in RA 29 of 2001, arising out of OA 392 of 1996. We do not think that this order needs any interference by us in view of foregoing discussions. Hence, the argument of discrimination or violation of Article 14 of the Constitution is not tenable in this case.

14. In result, the OA is dismissed as being devoid of merit. No order as to costs.



[A.K. Jain] M [A]



[Rekha Kumari] M [J]

/cbs/