

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, CAMP AT NAGPUR

Original Application No. 595/1996
Dated this ELEVENTH Day of JULY ~~July~~ 2000.

Coram: Hon'ble Shri B.N. Bahadur, Member (A)

11/7/00

Shri Bimlendu Vidyant,
Resident of Siddartha Hsg. Society
8th Mile, Nagpur 440023.
Es. Addl. General Manager,
H.A.P.P., Ministry of Defence,
Tiruchirapalli.(T.N.) Applicant

(Applicant represented by Shri U. Rudra, Advocate)

vs.

1. The Ministry of Defence,
through the Secretary,
South Block, New Delhi.
2. The Director General,
Ordnance Factories,
10-A, Aucland Road, Calcutta.1
3. The General Manager,
Ordnance Factory Ambernath. Respondents.

(Respondents represented by Shri R.G. Agarwal, Advocate)

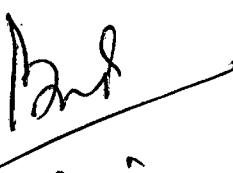
O R D E R

[Per B.N.Bahadur, Hon'ble Member (A):

The Applicant in this O.A., Shri Bimlendu Vidyant, was working as Additional General Manager (AGM), H.A.P.P. Thiruchirapally when he superannuated on 31.7.1995. He comes up to this Tribunal seeking the relief as follows:

- i. pleased to declare that the impugned order dtd. 5.8.93, 20.7.1994, 11.5.1994 and 22.7.1995 are illegal, ultraviers, malafide and null and void.
- ii. pleased to quash the medical report dated 5.8.1993.

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iii. pleased to issue directions and to command the respondents to grant special leave from 1.8.93 to 5.9.94 together with all consequential, financial benefits including the leave encashment available on superannuation as if he had not taken any leave during the period 1.8.1993 to 5.9.1994.

iv. be pleased to grant adequate damages for physical and mental harassment.

v. be pleased to direct the respondent No.1 to conduct through probe into the matter and to take necessary action against the officers responsible for the above episode.

vi. Any other order deemed fit and proper be given to the applicant.

2. The facts of the case, as put forth by the Applicant, are that while he was working as Jt. General Manager, he alleges that he had incurred the wrath of corrupt officials, since he had detected and reported a case of corrupt practice in the organisation. He claims that he was transferred because of this to Ambernath Ordnance Factory (OFA). The Applicant had already been suffering from heart problem, but despite that he was transferred in May, 1993 from a Ordnance Factory, Ambernath, to H.A.P.P Trichy, where he was placed under the General Manager against whom he had made the complaint, as described above at Ordnance Factory, Ambazari.

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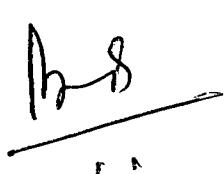
3. The Applicant describes how he had come up in O.A.418/93, against this transfer, and that he had been granted liberty to appeal against the findings of the Medical Board. The Appeal made was rejected by Respondents under letter dated 11.5.1994. The Applicant then goes on to describe the provisions of Medical Examination Rules (1957) and thus questions certain decisions taken.

4. The Applicant further states that he joined H.A.P.P. in July, 1994, during the pendency of the O.A. 418/93 and subsequently superannuated w.e.f. 31.7.1995. The Applicant has the grievance that he was wrongly restrained from resuming duties from 1.8.1993 till 5.9.1994, and ultimately resumed duty at H.A.P.P. Trichy on 5.9.1994.

5. The Respondents in the case have filed a reply. They state that this period has been regularised by grant of Half Pay leave (Annexure XIII).

6. Recounting the facts of the case, the Respondents state that the Applicant was posted on promotion as Addl. General Manager, in Ordnance Factory, Ambernath vide transfer order dated 29.6.1988, but resumed duties only on 29.9.1988. About 4 1/2 years later, he was transferred to Trichy vide order dated 29.1.1993. This was received in the Ordnance Factory, Ambernath (OFA) on 9.2.1993 and Applicant was asked to convey his convenient date for release on 10.2.1993. The applicant's representation against the transfer was rejected vide letter dated 8.4.1993. The Applicant was struck off the strength of the OFA on 5.5.1993, and should have joined H.A.P.P., after availing normal J.T. on 17.5.1993. The Respondents then describe the

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recourse taken by Applicant to approach this Tribunal and, since Applicant has sought leave on medical grounds, relating to heart problems w.e.f. 14.5.1993, he was directed to appear before a medical board, vide orders dated 1.6.1993. He produced a certificate from J.J. Hospital only on 17.6.1993. The Respondents state that Applicant never presented himself before the Board but further represented for transfer to Calcutta or Nagpur in July, 1993. Later, he obtained the Certificate for Medical Fitness from J.J. Hospital w.e.f 30.7.1993, and directly reported for duty on Monday, 2nd August, 1993. The Applicant also obtained an opinion of the Ashwani Hospital, at Bombay which is the referral Hospital for O.F.A. Employees, which stated that pending CABG, he is fit for sedentary duties. The Applicant was officially referred to a Second Medical Board which held proceedings on 4.8.1993. This Board took note of the different medical opinions, and gave the opinion as recorded in detail on page 6 (para 8) of written statement of Respondents. In Short it arrived at the conclusion that the patient was still unfit for duty and that he should undergo bypass surgery at the earliest and that only after the bypass surgery could a decision be given regarding the fitness or otherwise of the Applicant.

7. Respondents further state in their written statement that Applicant has persistently disobeyed medical advises, and that these aspects are discussed at length in the order of this Bench dated 27.1.1994, in M.P. 722/93 in O.A.418/93. Respondents reiterate that the constitution of Medical Board was correct, and if any grievance was to be made against the finding of the Medical Board, it could only through an Appeal to another Medical

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Board, constituted by competent authority. They state that it could not have been the intention of the Bench, that Applicant should be allowed to continue as AGM without proper Medical Certificate for fitness.

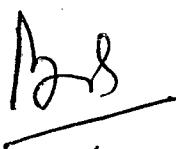
8. Further details are described in chronological manner. Importantly it is stated that the (Second) Medical Board further constituted vide order dated 20.7.1994, examined the patient and found him fit in its proceedings from 4th to 8th August, 1994 (EX. R-9). Respondents stated that the various periods as described below has been treated in the manner in the following table.

| From | To | Number of days and Nature of leave. |
|----------|----------|----------------------------------------|
| 01.08.93 | 31.10.94 | 92 days HPL |
| 01.11.93 | 26.06.94 | 238 days EL |
| 27.06.94 | 16.07.94 | 20 days HPL |
| 17.07.94 | 31.07.94 | 15 days EL |
| 01.08.94 | 05.09.94 | 36 days EOL (WP) |

On medical Grounds

In the further part of the Respondents statement, parawise replies have been furnished. Respondents asserts that none of the reliefs claimed by the Applicant is admissible and pray for the dismissal of the O.A.

9. We have heard learned Counsel from both sides and have perused all papers in the case.

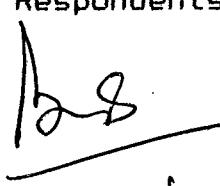


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10. Learned Counsel for the Applicant Shri U. Rudra made the point that a Govt. Hospital of eminence of J.J. Hospital had found and certified the Applicant to be fit for duty, w.e.f. 1.8.1993 and it was wrong for the Respondents not to have allowed him to resume duty. Insistence on Bypass Surgery was wrong.

11. Learned Counsel also made the point that as per CCS (Medical) Rules the Medical Board can be constituted only by the appointing authority, i.e. the President of India. He argued that the General Manager was not competent to order, the setting up of such a Board and took shelter behind Rule 2(4) of the CCS Medical Examination Rules. The Learned Counsel referred to the earlier proceedings before this Bench, which have been relied upon both the applicant and the Respondents in their pleadings and sought to justify relief sought by the Applicant.

12. Arguing the case on behalf of the Respondents, their learned Counsel, also took us to the facts of the case, describing how a stay was given on 27.7.1993 and how the applicant joined duty, at H.A.P.P. Trichy only in July 1994. It was argued that the stay was granted only for the express purpose of enabling the Applicant to undergo bypass surgery which the Applicant did not undergo. Learned Counsel for Respondent defended the competence of the General Manager for referring the Applicant for the (first) Medical Board. He said that if the Applicant had a grievance he should have challenged his reference at that stage only. He cannot do so once an opinion is obtained and that opinion does not come out in his favour. Counsel for Respondents sought to draw attention to para 3 of the Order of

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the Tribunal, dated 27.1.1994 and stated that if any relief can still be given, the Tribunal could allow him to make another appeal to Respondents, and the Respondents could be directed to decide this appeal in a time frame.

13. To recapitulate the substance of the relief/s sought by the Applicant -- these can be stated, in gist, as below:

(a) Applicant seeks directions to Respondents to grant Special Leave for the period from 1.8.1993 to 5.9.1994 and consequential benefits.

(b) The Applicant seeks quashing of the Medical Report dated 5.8.1993 which had opined that patient was still unfit for duty and that he should undergo bypass surgery at the earliest and further that fitness for duty would be considered only thereafter.

(c) Damages for physical and mental harassment and direction to Respondent No.1 to conduct a probe into the entire matter for necessary action against responsible officers.

14. I have first gone through the Order passed on MP/722/93 in O.A.418/93 which has been referred to by both sides. In the M.P. the Division Bench has gone into the facts then before it in considerable detail, and have recorded an 11 page order. It has been stated that the stay was granted mainly to enable the

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Applicant to undergo bypass surgery in Mumbai. The fact that applicant had come with revised M.P. before the Tribunal on 19.7.1993 for being continued as AGM at Ambarnath has also been mentioned. It is however, stated that while continuation was directed by the Tribunal, it could not be said that Respondents could allow him to resume duty without getting a proper Medical Certificate of Fitness by a Competent Authority. The order of the Tribunal then goes on to discuss the provisions of Medical Rules relevant to the case in detail. The order observes that the Medical Board was legally and rightly constituted and the Applicant has himself participated in the same. If the Medical Board has given a verdict, that he is unfit it cannot be on the malafide intention." In the same paragraph (para 5) the order states as under:

"It could not have been the intention of the Bench on 27.7.1993 that the applicant shall be allowed to continue as Additional General Manager without a proper medical certificate of fitness for resuming on duty. If he found to be unfit, this Tribunal cannot strike down the verdict of Medical Board. The action of the respondents therefore, cannot be faulted in convening a Medical Board and insisting upon the applicant to undergo a bypass surgery unless another Medical Board examines him and gives him clearance about his being medically fit for resuming duty."

In the operational portion of the order in Paragraph 6 the Division Bench records as under:

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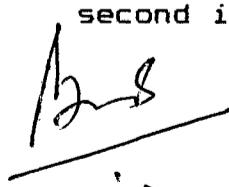
"6. In view of this, we find it very difficult to resist the prayer of the respondents to vacate the stay in regard to continuance of the applicant as Additional General Manager and of the stay order dated 27.7.1993. If the applicant is really not well, he should apply for leave due and admissible and respondents should ensure that he is paid salary and other benefits and he is allowed to take whatever medical treatment necessitated by his illness."

15. Now I will go into the main conclusion of the Medical Board that was held between 4-8 August 1993. I will not go into the full report which is recorded, but the operative portion of the report which is titled as Opinion of the Board.

"Opinion of the Board.

The Ordnance Factories are industrial establishment. For such a senior grade Officer, there is no work/job which is of sedentary type in such factories. The Officer has to move here there and being a production unit his job is always full of stress/strain. Also he being second in command, he has to take over the cargo of

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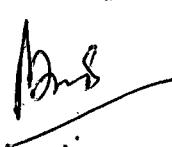
factory in absence of General Manager. Naturally there is no limit of stress/strain, he will have to undergo if he joins duty.

Being diagnosed as Triple vessel disease, he has lot of potential risk of getting further my-infection. In that case no facility for managing cardio emergence are available in OF Hospital Ambarnath.

So taking into consideration, the opinion of various cardiologists and the amount of stress/strain he has to undergo as mentioned above, we opine that the patient is still UNFIT for duty. In our view he should undergo bypass surgery at the earliest. Shri Vidyant will, therefore, be considered for fitness or otherwise only after he undergoes CABG and post operative opinion of cardiologists."

The above comments of the Division Bench are very important and relate to facts that have remained unchanged. It is importantly been discussed as to how the purpose for which the stay was granted was negated by the decision of the Applicant in not undergoing bypass surgery. Certainly it is not my effort here to record whether he should have undergone the surgery or not but the fact that he continued without joining at the new place of posting would certainly negate his claim, for entitlement to any

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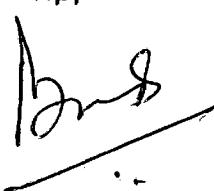


kind of special leave. No special considerations can be said to exist whereby this benefit can be provided to the Applicant through judicial determination. I note that this period is covered by half pay leave.

16. I must note here that learned counsel for the Applicant had made the assertion that a Fitness Certificate and opinion of the renowned J.J.Hospital is being questioned as also the opinion obtained, from another hospital in Bombay as stated. There is no question of the opinion of these Hospitals being doubted. These are Govt. Hospitals and in fact it is nowhere being said that these are doubted. The point made out by Respondents, is that there is no such job in Ordnance Factories like a sedentary job, and that an officer has to move about in the production unit, and that this job entails stress and strain. It is also stated that the Officer being in second in Command, has to take over the work of General Manager (GM), in case of GM's absence, and that there is no doubt that the fitness of the applicant has to be decided upon in this background. The illness is there and that taking into consideration the opinion of all cardiologists, as also the stress and strain involved in Applicant's job, the conclusion of applicant being unfit has been recorded.

17. The fact is that the Committee consists of 3 specialits. In this background, there is no reason to doubt the justification of the opinion of the Medical Board in the background of the requirements of the work, and nature of duties entailed, in the Respondents' factory/establishments.

18. In fact assertions by the two Hospitals of Mumbai that Applicant was fit only for sedentary work did not overrule the



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right to the Respondents to check up whether the Applicant was fit for duties as required by them. They have come to the conclusion of his being unfit, till he has bypass surgery done. No arbitrariness, malafide or perversity can seen in this decision which is arrived by a Medical Board and which is being supported by the Administration. Beyond this, it would not be the function of the Tribunal to go into the opinion of a Medical Board, or to sit in Appeal over it and assess its correctness.

19. Once it is clear that the Medical Board opinion cannot be quashed, and considering the basic comments made by this Tribunal in its order, in MP/722/93 dated 27.1.1994 it would follow that no directions can be given in the treatment of the period between 1.8.1993 and 5.9.1994, for being treated as "Special Leave". This period has already been treated as half pay leave and I do not think any interference is called for.

20. Now once the main point has been decided as above it is clear that the other reliefs sought are ancillary and would need to be decided in the above light. Consequently, it would be obvious from the above discussions that other relief sought cannot be granted. In view of this there is no ground made out for any interference by the Tribunal.

21. In consequence this Application is hereby dismissed with no orders as to costs.

B.N.Bahadur

11/07/2000
(B.N.Bahadur)

Member (A)

sj*