

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 350/99

Dated this Wednesday the 26th day of September, 2001.

K.K. Baraiya

Applicant

Mr.S.R. Atre

Avocate for the  
Applicant.

VERSUS

Union of India & Ors.

Respondent.

Mr.R.K. Shetty,

Respondents.

CORAM :

Hon'ble Shri Justice V. Rajagopala Reddy, Vice  
Chairman.  
Hon'ble Smt.Shanta Shastry, Member (A).

- (i) To be referred to the Reporter or not ? *ye*
- (ii) Whether it needs to be circulated to other Benches  
of the Tribunal ? *—*
- (iii) Library. *yes*

*(Signature)*  
(V.Rajagopala Reddy,  
Vice Chairman.

H.

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No.350/99

Dated this Wednesday the 26th Day of September, 2001.

Coram : Hon'ble Shri Justice V.Rajagopala Reddy, Vice Chairman  
Hon'ble Smt.Shanta Shastry, Member (A).

Krishna Kanji Baraiya,  
residing at,  
House No.180/3, Khir Khayana Wadama,  
Choro Mithabawa, At - Choghla,  
Diu-362 540, and then working as  
Meter Reader in the Electricity Department,  
Sub. Division No.II, Administration of  
Daman & Diu.

.. Applicant.

(Applicant by Shri S.R. Atre, Advocate)

Vs.

1. The Union of India, through  
the Administrator,  
Union Territory of Daman, Diu and  
Dadara and Nagar Haveli, Secretariat,  
Daman - 396 220.
2. The Development Commissioner and  
Appointing Authority,  
Administration of Daman & Diu,  
Secretariat, Daman-396 220.
3. The Executive Engineer (Electrical),  
Electricity Department,  
Power House Building, 2nd Floor,  
Nani Daman, Daman - 396 210.
4. The Collector,  
Office of the Collector,  
Daman - 396 220.
5. The Assistant Engineer (Electrical),  
Sub Division No.II, Diu-362 540.

.. Respondents.

(Respondents by Shri R.K. Shetty, Advocate).

ORDER (Oral)

[ Per : Justice V.Rajagopala Reddy, Vice Chairman ]

The applicant, Meter Reader in the Electricity  
Department at Daman, has been suffering from hyper

tension and mental depression. He was therefore given light work viz. Clerk in the office of the Assistant Electrical Engineer, Diu in 1990. A medical team was directed to examine the fitness of some of the Meter Readers of the department. The applicant along with few others had appeared before the Medical Board on 19.4.1990, but it is stated that the certificate issued by the said Board was not communicated to the applicant so far.

2. On 20.8.1996, he received a letter that he should appear before the Medical Board on 29.8.1996. Accordingly he appeared and the Medical Board issued certificate dated 17.10.1996 stating therein that he was not fit to perform the duty of a meter reader. Whereupon by notice dated 11.8.1997 issued under Rule 2(2) of the Central Civil Services (Medical Examination) Rules, 1957 i.e. it was intimated that he shall stand retired on invalid pension on expiry of a period of one month from the date of service of this notice/order. He was however, given an opportunity to make a request to be examined by Medical Review Board within a period of one month from the notice. He, therefore, preferred a representation on 26.8.1997 requesting that he should be allowed to be examined by the Medical Review Board. By letter dated 29.12.1997 the applicant was asked to appear before the Medical Superintendent, Government Hospital Marwad for review medical examination on 12.1.1998. It is the case of the applicant that he appeared accordingly before the Medical Review Board on 12.1.1998 and he was found fit for further service which he had been doing. But the applicant was

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however, not communicated with the said medical examination report. Surprisingly by letter dated 9.10.1998, he was directed to appear before the Medical Board on 20.10.1998. He therefore made a representation on 13.10.1998 stating that he was already examined by the Review Medical Board 12.1.1998 and there was no reason for repeating the same examination on his physical fitness. He therefore requested for the copy of the medical report of the Medical Board dated 12.1.1998 without which was stated that it was difficult for him to appear for the medical examination on 20.10.1998. The respondents however, held Review Medical Examination on 20.10.1998 to which the applicant did not attend. Whereupon the impugned order was passed on 2.2.1999 holding that the applicant should stand retired on Invalid Pension with effect from 11.8.1997 i.e. on expiry of a period of one month from the date of service of the Order/Notice, on the ground that the applicant did not attend before the Review Medical Board as directed. This order is under challenge in this O.A.

3.....The Learned Counsel for the applicant raised the following points:-

(i) The Impugned Order retiring the applicant with effect from 11.8.1997 is opposed to Pare 6 of OM of 12.9.1963, issued under Central Civil Services (Medical Examination) Rules, 1957 (for short Rules),

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(ii) The Medical Certificate dated 17.10.1996 did not show that the applicant was permanently incapacitated to continue in the Government service, hence FR 38 and Para 5(1) of the above O.M. were not complied with, hence the action taken against him is invalid.

(iii) As the Review Medical Board has not confirmed the opinion of the examining authority, the applicant cannot be retired on medical invalidation under the rules.

4.....The respondents filed the reply and resisted the O.A. It is their stand that out of 4 Meter Readers who were medically examined in 1990 only one was found medically fit to work as a Meter Reader. The other 3 Meter Readers were found unfit, they were however, allowed to do some light work. Since the non performance of work by the applicant as Meter Reader has been creating administrative inconvenience and revenue losses, the respondents decided to get the applicant medically examined once again. The applicant was sent medical examination and he was found unfit to perform duty as Meter Reader. Accordingly, a show cause notice was issued in 1997 and at the request of the applicant the Review Medical Board was constituted. But the applicant deliberately failed to appear before the Review Medical Board. Hence the certificate dated 17.10.1996 of the duly constituted Medical Board became operational and was acted upon in issuing the impugned order.

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It is also averred that the Medical Board constituted on 1.1.1998 was not a Review Medical Board and hence the certificate of 1.1.1998 was not relied upon.

5..... We have carefully considered the pleadings advanced by the Learned Counsel on either side. FR 38 empowers the Government to retire Government servants on invalid pension it reads as under:-

"38(1) Invalid pension may be granted if a Government servant retires from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service".

Rule 2 of the CCS (Medical Examination) Rules, 1957 under which no impugned order was passed reads as under:-

"2(1) Where the competent authority has reason to believe that a Government servant to whom these rules apply is suffering from-

- (a) a contagious disease, or
- (b) a physical or mental disability which in its opinion interferes with the efficient discharge of his duties,

that authority may direct the Government servant to undergo a medical examination within such period not exceeding one month as may be specified by it and may, if it considers it essential to do so, also direct the Government servant to proceed on leave forthwith pending medical examination. Such leave shall not be debited to the leave account of the Government servant, if the examining medical authority subsequently expressed the opinion that it was unnecessary for the Government servant to have been required to proceed on leave.

(2) On the basis of the opinion expressed by the examining medical authority and subject to the provisions of sub-rule (3), the competent authority may require the Government servant to

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proceed on leave or, if he is already on leave to continue to remain on leave or may retire him from service if he is a permanent Government servant, or may terminate his services if he is a quasi-permanent Government servant.

(3) The procedure for a medical examination, grant of leave on retirement from service, or termination of service under this rule shall be such as the President may be order prescribe.

(4) For the purpose of this rule, competent authority in relation to a Government servant means the authority competent to dismiss him and includes such other authority as the President may by order specify in his behalf.

(5) For the avoidance of doubt, it is hereby declared that non-compliance with a direction given under sub-rule (1) or sub-rule (2), of this rule will be considered a good and sufficient reason for the imposition of a penalty in accordance with the rules governing discipline applicable to the Government servant concerned".

As per the above rules which are made under the proviso to Article 309 of the Constitution, if the authority was of the opinion that a Government servant was suffering from an infirmity, affecting the efficient discharge of his duties, he can be retired from service. The procedure for medical examination and the termination of service was to be prescribed by the Government of India. Accordingly, in OM dated 12.9.1963, Government prescribed the procedure. Para 3, 5(1) and 6 of the above O.M. are to noted.

"3 (1) If the examining medical authority finds the Government servant to be in a bad state of health and consider that a period of absence from duty is necessary in his case for the recovery of his health, it may recommend the grant of leave to him for that period.

(2) If that authority considers that there is no reasonable prospect of the Government servant recovering his health and becoming fit to resume his duties, it shall record the opinion that the Government servant is permanently incapacitated for service and also give detailed reasons for that opinion.

5 (1) A Government servant declared by the examining medical authority to be permanently incapacitated for further service shall be retired from service, but before the Government

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is actually retired from service, the authority which directed him to undergo the medical examination shall inform him in writing of the action proposed to be taken in regard to him indicating briefly the grounds on which such action is proposed to be taken.

6. On receipt of an application for review, the competent authority shall take steps to constitute a Special Review Board in consultation with the administrative Medical Officer of the State. If the Review Board confirms the opinion of the examining authority, the retirement of the Government servant shall, subject to the provisions of SR 233 (1)(b) and (2), [cf. Rule 20 of CCS (Leave) Rules, 1972] be effective from the date on which the decision is communicated to the Government servant. If, on the other hand, the Review Board recommends grant of leave to the Government servant, action shall be taken as provided in paragraph 4".

From a careful perusal of the provisions of the OM it is clear that the following candidates should be satisfied before a Government servant is to be actual from service.

1. Medical authority should declare him to be permanently incapacitated for further service,
2. Notice of the proposed action and the grounds therefore should be given.
3. He should also be intimated that he may make a request for his examination by Medical Review Board.
4. If such request is made, a special Review Board shall be constituted.
5. The Review Board should should confirm the opinion of the examining authority.
6. The retirement should be effective from the date on which such decision to retire was communicated to him.

6..... The applicant was asked to appear before the Medical Board on 17.10.1996 which has issued Medical Fitness Certificate.

(R-3), wherein it was stated that he was 'not fit to perform the duty as Meter Reader'. At his request vide letter dated 22.12.1997 (R-4), he was asked to appear before the Special Review Medical Board on 12.1.1998. It is also seen from the record that the Medical Board, examined applicant on 12.1.1998 and "found him fit for further services which he has been doing". In spite of this certificate the same was not acted upon by the Respondents on the ground that it was not a special Review Medical Board which examined him on 12.1.1998. Thereupon another Review Medical Board was constituted which met on 20.10.1998, to which admittedly he did not attend. The case of the applicant is that as he was examined by Review Medical Board on 20.10.1998, there was no necessity to be examined once again by the Review Medical Board. Hence his representation dated 13.10.1998 asking the respondents to produce a copy of the medical report dated 12.1.1998 to enable him to attend Medical Board on 12.10.1998. It is the case of the applicant that the same has neither been communicated nor was responded to by the respondents. Hence he had not attended the Review Medical Examination.

7. From the above facts we are now faced with 2 medical certificates issued by a responsible Medical Board, one is on 17.10.1996 and the other on 12.1.1998. The first certificate declares that the applicant 'was not fit for Meter Reader' and the other, 'he was fit for doing the work, he was doing'. Thus the 2 medical certificates are conflicting with each other. The applicant had been said to be suffering from mental depression

and hyper-tension in 1996 and nearly 1 1/2 years have gone by thereafter by the date of second examination. It may be a safe guess to make that the applicant might have cured of his ailment meanwhile and was fit to discharge his functions. Human being would not rust like machines. They are full of vitality with inherent forces of healing. 18 months of time should cure a disease, mental or physical.

8. Learned Counsel for the respondents however, submits that this medical board which was constituted on 12.1.1998 was not a validly constituted medical board, as the medical officers comprising of the said Board were the same Doctors which examined him on 17.10.1996 and that the review medical board should comprise of medical officers of a higher rank and higher responsibility. Hence the certificate issued on 12.1.1998 was ignored. Assuming that it was not special Review Board, its character as an examining body should not be ignored. It should be given its due weight. It is interesting to note that in the Review Medical Board met on 20.10.1998 though there were four medical officers and one Dy. Director, the Medical Board which issued certificate of 12.1.1998 comprised of a Director, Medical and Health Services, 1 Medical Officer and 1 Medical Superintendent. It is thus seen that the certificates issued it should carry more weight than the Review Medical Board.

9. Further, the notice was issued on the basis of the Medical Certificate dated 17.10.1996. No action can be taken on

the basis of the said certificate after the expiry of 2 years, particularly for the reason that the applicant was found fit, on 12.1.1998. In our view the certificate of 12.1.1998 having been issued by a responsible body should be given its due weight by which it was clear that the applicant became well and was fit for service.

10. Form a perusal of the medical certificate dated 17.10.1996 it does not show that the applicant was found to be permanently incapacitated. It has only stated that the applicant was not fit to perform the duty as Meter Reader. It is therefore not possible to say that the applicant was permanently incapacitated. As stated Supra, as per the OM dated 12.9.1963, a Government servant should be declared by the examining medical authority to be permanently incapacitated for further service, before he was retired from service. The Review Medical Board also could not examine him, in view of his absence and no material certificate has been issued holding that he was permanently incapacitated. In view of the above, we are unable to hold that the impugned order was validly passed under Rule 2 of CCS (Medical Examination), Rules, 1957.

11. Para 6 of Government of India OM as seen Supra, issued under the rules, 1957, provides that the confirmation of medical certificate of the medical authority was necessary. In the instant case no such confirmation was made by the Review Medical Board as the applicant did not attend the examination. In order

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to comply with the requirement under Para 6, the respondents ought to have given one more opportunity to the applicant to attend the Review Medical Board. Particularly for the reason that the applicant has been examined by the same Medical Board where he was found fit. In any event when 2 conflicting certificates were on record, it appears that the action taken by the respondents in retiring the applicant under Rule 2 of the Rules was opposed to the Rules as the procedure prescribed therein was only followed in its breach.

12. The contention of the learned Counsel for the applicant that the order retiring the applicant with effect from 11.8.1997 i.e. from the expiry of one month expiry period of the notice, appears to be also of some substance. Para 6 of the Government of India order (Supra) clearly states that if the Review Medical Board confirmed the examining authority's opinion the retirement of the Government servant shall take effect from the date the decision was communicated to the Government servant. In the instant case the impugned order was to take effect from the date of expiry of 1 month from the notice and not from the date of the order of the respondents. Thus the impugned order was not in conformity with the rules. The impugned order passed on the basis of Medical Examination dated 17.10.1996 is illegal, in view

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of its non-confirmation and in view of the Medical Examination dated 12.1.1998 finding him fit and the impugned order is quashed.

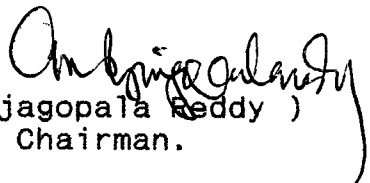
13. As a result, we find legal flaws and is therefore liable to be quashed and is accordingly quashed.

14. It is however open to the respondents to conduct Review Medical Examination within a period of 2 months from today. The applicant shall attend the Review Medical Board on the dates fixed by the respondents. The respondents shall thereafter take action in accordance with law in the light of our findings in our judgment. The applicant is not entitled to be reinstated now. He will continue on pension till further orders are passed by the respondents. If no action was taken within 2 months, then the applicant shall be reinstated immediately thereafter, with consequential benefits.

15. The O.A. is accordingly allowed with Rs.1000/- as costs.

16. Dasti service.

  
( Smt. Shanta Shastry )  
Member (A)

  
( V. Rajagopala Reddy )  
Vice Chairman.

H.

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

REVIEW PETITION NO.75/2001  
IN O.A. NO.350/1999

Dated: 19/7/2002

CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J)  
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

Shri Krishna Kanji Baraiya,  
Residing at House No.180/3,  
Khir Khayana Wadama, Choro Mithabawa,  
At-Ghoghia, Diu - 382 540 and  
Then working as Meter Reader  
in the Electricity Department  
Sub Division No.11,  
Administration of Daman & Diu

... Review Petitioner

By Advocate Shri S.R.Atre

V/s.

1. The Union of India, through  
The Administrator,  
Union Territory of Daman, Diu and  
Dadara and Nagar Haveli, Secretariat,  
Daman - 396 220.
2. The Development Commissioner and  
Appointing Authority,  
Administration of Daman & Diu,  
Secretariat, Daman - 396 220
3. The Executive Engineer(Electrical)  
Electricity Department,  
Power House Building, 2nd Floor,  
Nani Daman, Daman-396 210.
4. The Collector,  
Office of the Collector,  
Daman - 396 220
5. The Assistant Engineer(Electrical),  
Sub Division No.11, Diu - 362 540. ... Respondents

By Advocate Shri R.K.Shetty

(ORDER)

Per Smt.Shanta Shastri, Member(A)

The applicant in OA No.350/99 has filed the present  
review petition against the order dated 26/9/2001 in the  
aforesaid OA.

2. The petitioner submits that there is an error apparent

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on the face of the record in that when the Tribunal had come to the conclusion that the petitioner had not been permanently incapacitated for Government service, the petitioner could not have been directed to appear for the review medical examination. When the order retiring the petitioner on invalid pension has itself been found to be illegal and bad in law, the question of any further review medical examination would not arise. Therefore the applicant has prayed for review of the order dated 26/9/2001.

3. Further, according to the petitioner, the main contention raised by him in the OA was that when none of the medical boards had ever found him permanently incapacitated, there was no question of retiring the petitioner on invalid pension and there was no necessity for directing him to appear before the review medical board. It was in the alternative that the petitioner had prayed that even otherwise also the petitioner should be allowed to appear before review medical board. According to the petitioner, when in the body of the judgement, the tribunal had held that it was wrong to have retired the petitioner on invalid pension being not permanently incapacitated as per the rules, the actual decision of the tribunal has been contrary to the same.

4. The Petitioner has also filed MP No.992/2001 for condonation of delay in filing the review petition. The reason given is that the applicant received the certified copy of the order dated 26/9/2001 around 5/10/2001. Thereafter, he was down with Malaria and therefore he could not come down immediately to Mumbai to sign the Review Petition prepared by his counsel and there was delay in preferring the Review Petition.

5. We are satisfied that it was beyond the control of the applicant, to have approached within a period of one month from the date of receipt of the order. Accordingly, we condone the delay in the matter.

6. We have heard the learned counsel for the applicant and the respondents in this matter and have carefully perused the grounds taken. The judgement was dictated in Open Court in the presence of both the parties. The Tribunal had noted that the applicant himself had asked for a review of the report of the Medical Board declaring him not fit for the post of Meter Reader and a review medical examination was held. However, since the <sup>Medical</sup> ~~new~~ board was not constituted properly and the applicant was asked to appear for a further review medical examination, keeping this background in mind, the tribunal consciously directed the petitioner to appear for a review medical examination. It cannot therefore be said that there is any error apparent on the face of the record. Even if the decision were wrong according to the applicant, it cannot be a ground for a review.

7. In our considered view, therefore there is no need for review in the present matter. Accordingly, the review petition is dismissed. No costs.

*Shanta S.*  
(SMT. SHANTA SHASTRY)  
MEMBER(A)

*S.L. Jain*  
(S.L. JAIN)  
MEMBER(J)

ABP  
abp

dt: 19.7.02.  
order/Judgement despatched  
to Applicant/Respondent (s)  
20.7.02

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