

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

Original Application No.60 of 2000

Monday this the 16th day of April, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (J)  
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

Ganesh R. Chavan  
Staff Car Driver  
Office of the Director of Census  
Operations,  
Government of India,  
Min. of Home Affairs, Maharashtra,  
Exchange Building, 2nd Floor,  
Sir Shivsagar Ramgulam Marg,  
Ballard Estate, Mumbai-400 001.

Residing at

Palamji Ratanshi Chawl No.9,  
Room No.15, Sussex Road, Byculla,  
Mumbai-400 027.

..Applicant

By Advocate: Shri R. Ramamurthy.

Versus

1. Union of India  
through the Secretary,  
Ministry of Home Affairs,  
Government of India,  
North Block,  
New Delhi-110 001.
2. Registrar General of India  
2A, Mansing Road, Kota,  
House Annex,  
New Delhi-110 001.
3. Director of Census Operations,  
Government of India,  
Ministry of Home Affairs,  
Maharashtra, Exchange Building,  
2nd Floor,  
Sir Shivsagar Ramgulam Marg,  
Ballard Estate, Mumbai-400 001.

*for*

4. Shri G.C. Naik  
Assistant Director of Census Operations,  
Office of Director of Census Operations,  
Exchange Building, 2nd Floor,  
Sir Shivsagar Ramgulam Marg,  
Ballard Estate, Mumbai-400 001.
5. Shri A.S. Kulkarni  
Assistant Director of Census Operations,  
Office of Director of Census Operations,  
Ministry of Home Affairs, Government of India,  
Maharashtra Exchange Building,  
2nd Floor,  
Sir Shivsagar Ramgulam Marg,  
Ballard Estate,  
Mumbai-400 001.

..Respondents

By Advocate Shri M.I. Sethna.

ORDER (ORAL)

Hon'ble Mr. Kuldip Singh, Member (J)

The applicant had been appointed as a Staff Car Driver by the respondents but during his service he had suffered a paralytic attack though it was referred to medical examination but finding him unsuitable to continue him in job, the respondents terminated the services of the applicant.

2. By the present OA, the applicant seeks that the respondents be directed to have the case of the applicant re-examined by the proper <sup>medical</sup> authority from the point of view of his suitability for continuance in service in any post carrying lighter duties as compared to that of staff car driver and if such medical opinion is received ~~for~~<sup>for</sup> continuing him on lighter charge, take steps to continue the applicant in service accordingly.

3. The respondents are contesting the OA. The respondents pleaded that the case of the applicant was referred to the Medical Board and the Medical Board had found him (the applicant) to be completely and permanently incapacitated and he is not

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suitable to perform any job. The respondents have also taken a plea that since the applicant had suffered a paralytic attack and is not in a position to walk and speak, so the OA should be dismissed.

4. We have heard the learned counsel for the parties and have gone through the records of the case.

5. As far the medical examination of the applicant is concerned, the documents on the record suggest that the applicant had been examined properly with a view to see to it that he is able to perform duties on the post on which he was working though Rule 38(4) of the CCS (Pension) Rules does require that "where the medical authority referred to in sub-rule (2) has declared a Government servant fit for further service of less laborious character than that which he had been doing, he should, provided he is willing to be so employed, be employed on lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension". So it was incumbent upon the department to refer the case of the applicant for obtaining opinion of the medical authorities to find out whether the applicant is fit for further service of less laborious character or not and if the medical authorities declare him fit for service of less laborious character, then the applicant should be asked whether he is willing to be employed and if so, then he should have been provided a job with less laborious character and the department should have explored the possibility of giving him employment of a less laborious character even on a lower

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post.


6. In this background of the legal position we have also asked the respondents to explore the possibilities to provide the applicant with a less laborious job even on a lower post. The applicant was also present in the court and we could observe that he was in a position to walk and speak. He has only difficulty with one of his hands which probably prevented him from driving a car. So in these circumstances, we allow the OA and direct the respondents as under:-

(i) That the respondents shall refer the case of the applicant to the medical authorities as per rules and instructions on the subject for seeking opinion whether the applicant is able to perform any of the Group 'D' job.

(ii) In case the medical authorities opined that the applicant can work in some of the Group 'D' jobs, then on the receipt of the report from the medical authorities, the respondents shall provide suitable Group 'D' job to the applicant within a period of 3 months thereafter.

No costs.

  
(MRS. SHANTIA SHASTRY)  
MEMBER (A)

  
(KULDIP SINGH)  
MEMBER (J)

Rakesh