

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE ...CA 339... OF 1989

NAME OF THE PARTIES *Ronald Frey & another* Applicant

Versus

Union of India Respondent

Part A.

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CERTIFICATE

Certified that no further action is required to be taken and that the case is fit for consignment to the record room (decided)

Dated 21/6/2011

Counter Signed.....

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Section Officer/In charge

Signature of the
Dealing Assistant

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CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH, LUCKNOW.

O.A.No.339 of 1989

Ronald Frey & anotherApplicant.

Versus

Union of India & othersRespondents.

Hon'ble Mr.Justice U.C.Srivastava, V.C.

Hon'ble Mr.A.B.Gorthi,A.M.

(By Hon'ble Mr.U.C.Srivastava,VC)

Aggrieved with the order passed by the Divisional Manager, Northern Railway,Lucknow dated 4.5.89 rejecting the representation filed by the applicant on 13.7.87 in respect of which a direction was issued by this Tribunal vide order dated 13.4.89 in O.A.No.230 of 1988. Therefore, the applicant has again approached this Tribunal after rejection of his representation in respect of appointment of applicant's son on compassionate ground as the applicant retired from service in railway department having been declared medically unfit.

2. The applicant, who was Driver 'A' in the railway at the relevant point of time, stated that the applicant remained sick from 2.7.83 to 19.10.83 and he was kept under observation for three months and the disease which was discovered by the doctor was 'IHD' with recommendation for light duty. Thereafter, the applicant was called for medical examination 8.11.85 and 24.11.85 and the disease diagnosed was 'Ischemia' which is a heart disease. The applicant was admitted to the Cardiology Department from 7.12.85 to 13.12.85. The applicant thereafter developed some mental disease on 5.11.86 and was hospitalised for further evaluation on 14.1.87 and


(86)

a detailed assessment showed impairment of memory, intelligence and judgment, and also showed secondary depression and marked anxiety. On 31.1.87, the applicant moved an application before the Additional Chief Medical Officer, Northern Railway, Lucknow for making necessary arrangements for constituting a Medical Board for considering his case on the basis of medical report of the Lucknow Medical College. The Medical Board was not constituted for more than five months which was contrary to the Indian Railway Establishment Manual and Railway Establishment Code. Thereafter, it was decided in the PNM meeting that the Medical Board should finalise the cases for invalidation from service on medical grounds in not more than three months from the date of receipt of report from the medical department. The applicant was declared to be totally incapacitated for any job in the railways on 23.1.87 by the specialist of Lucknow Medical College.

3. The respondents have admitted previous ailment of applicant no.1 and his admission in King George College, Lucknow. The respondents have also admitted that after the receipt of letter dated 16.2.87 for constituting the Medical Board, the Chief Medical Officer made a query about date of birth and date of retirement of the applicant no.1 vide letter dated 23.3.87. Thereafter, the Medical Board recommended that the applicant may be invalidated out of service in all categories on medical grounds which was accepted by the Chief Medical Officer, Northern Railway, New Delhi vide letter dated 30.6.87 which indicates that the representation of the applicant was accepted. It has further been mentioned that the four persons were declared totally invalid and their wards have been

given appointment on the ground of medical incapacitation. The circular letter of the Rialway Board issued in this regard is a guide line which states that the cases of this type may normally be decided within three months but in the extra-ordinary circumstances the time may be more than three months. The case of applicant no.1 was referred to the Medical Board but due to unavoidable circumstances, the same could not be finalised before 30.6.87. The facts indicate that there are many candidates in the waiting list. Obviously, the applicant cannot get precedence in the waiting list though the case of the applicant stands on better footing. The respondents are directed to include the name of applicant no.2 in the waiting list and consider his case for appointment on compassionate ground. Accordingly, the application is disposed of with the above observations without any order as to cost.


MEMBER(A)


VICE CHAIRMAN.

Dated: March, 3, 1992

(ug)

Central Administrative Tribunal
 List of Documents

Cause Title: C.A. 339/1993 1993

Name of the Parties Rajni Kant & Co. Applicant
 Versus

Union of India Respondents.

Part A - P.C.

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B - File

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Exhibits of petition (1)

11-12-89

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Registration No. 339 of 1989 (C)

APPLICANT(S) Ronald Frey
RESPONDENT(S) U C & E O

Particulars to be examined

Endorsement as to result of examination

1. Is the appeal competent ?
2. a) Is the application in the prescribed form ?
b) Is the application in paper book form ?
c) Have six complete sets of the application been filed ?
3. a) Is the appeal in time ?
b) If not, by how many days it is beyond time ?
c) Has sufficient case for not making the application in time, been filed ?
4. Has the document of authorization Vakalatnama been filed ?
5. Is the application accompanied by B.D./Postal Order for Rs.50/-
6. Has the certified copy/copies of the order(s) against which the application is made been filed ?
7. a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?
c) Are the documents referred to in (a) above neatly typed in double space ?
8. Has the index of documents been filed and paging done properly ?
9. Have the chronological details of representation made and the outcome of such representation been indicated in the application ?
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal ?

Ys

Ys

Ys

Ys

Ys

Ys P.O. No. 002401719 Rs. 50/-

Ys

Ys

Ys

Ys

Ys

Ys

N

Particulars to be Examined

Endorsement as to result of examination

Are the application/duplicate
copy/spare copies signed ?

ys

12. Are extra copies of the application
with Annexures filed ?

ys

a) Identical with the Original ?

b) Defective ?

c) Wanting in Annexures

_____ ?

13. Have the file size envelopes
bearing full addresses of the
respondents been filed ?

ys

14. Are the given address the
registered address ?

ys

15. Do the names of the parties
stated in the copies tally with
those indicated in the appli-
cation ?

ys

16. Are the translations certified
to be true or supported by an
Affidavit affirming that they
are true ?

NA

17. Are the facts of the case
mentioned in item no. 6 of the
application ?

ys

a) Concise ?

b) Under distinct heads ?

c) Numbered consecutively ?

d) Typed in double space on one
side of the paper ?

18. Have the particulars for interim
order prayed for indicated with
reasons ?

NC

19. Whether all the remedies have
been exhausted.

ys

cinestv

(A2)

OA 339/59(L)

Ronald Ray is UOI.

Serial number of order and date	Brief Order, Mentioning Reference if necessary	How complied with and date of compliance
---------------------------------	--	--

27/90

Hon'ble Justice Kamleshwar Nath, U.C.
Hon'ble K. Chagga, U.M.

Heard the learned counsel for the applicant.

ADMIT

Issue notice to respondents to file counter within 4 weeks to which the applicant may file rejoinder within 2 weeks thereafter and list this case for orders on 27-2-90.

OR
Notice issued
2/11/90

27-2-90

U.M.

U.C.

Hon'ble Justice K. Nath, U.C.
Hon'ble K. S. Ramani, U.M.

OR
Notices were
served on 19.1.90

Sri B. K. Shukla files Vakalatnama on behalf of all the respondents. He prays for and is allowed four weeks' time to file a counter affidavit. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

Neither
reply nor
any unsent
repl. Coun.
has been return
since.
S.F.O.

List for further orders
on 10.4.90.

U.M.

U.C.

A.M.

U.C.

OR
No CA filed
S.F.O.

29/1

16.7.91. Mr. C.A. Bashir, counsel for applicant.

None present for the respondents.

In the M.P. a prayer has been made for ex-parte hearing. The respondents are given the last opportunity to file counter reply within four weeks failing which, the right to file counter will stand forfeited. Rejoinder, if any, may be filed within two weeks thereafter. May be listed for hearing on 30.9.91.

Deo
(D.K. Agrawal)
J.M.

K. Kumar
(Kaushal Kumar)
V.C.

30.9.91

No Siting adj to 14.10.91
2

14.10.91

No Siting adj to 18.10.91
2

18.10.91

Due to holidays on 18.10.91 Case
is adjourned to 19.12.91
2

19.12.91

No Siting adj to 24.2.92
8

Counter, Rejoinder have been
exchanged
SFH

24.2.92

No Siting of D.B adj to
2-3-92
2

27.2

In the Hon'ble Central Administrative Tribunal,
Additional Bench, Lucknow.

20

Date of ... 11-12-89
Date of ...

Deputy Registrar

Original Application No. 339 of 1989(L)

Between

Ronald Frey and another

---Applicants

And

Union of India and others

---Respondents

I N D E X

S.No.	Description of Papers	Page No.
1.	Application	1 - 25
2.	Copy of the impugned order	26
3.	Postal order No. 802401719	
4.	Power	

Filed today
4/12/89

C.A. Basir,

Counsel for the applicants

Dated: 8/12
Lucknow.

Noted to 2/1/90
C.A. Basir

In the Hon'ble Central Administrative Tribunal,
Additional Bench, Lucknow.

Central Administrative Tribunal

Date

Date

11-12-89

Original Application No. 339 of 1989(L) V Be Reg

Between

Ronald Frey and another

---Applicants

And

Union of India and Others

---Respondents

Application under Section 19 of the Central
Administrative Tribunal Act, 1985.

Particulars of the application:

Particulars of the applicants:

Name of the applicants:

1. Ronald Frey s/o of Late S.T. Frey,
R/o 120-31/5, Beldari Lane, Lalbagh, Lucknow.
2. Oswald Ronald Frey, s/o Shri Ronald
Frey, R/o 120-31/5, Beldari Lane, Lalbagh, Lucknow.

Designation and office in which employed:

1. Applicant No. 1 is Retired Driver 'A'
Special Headquarter, Lucknow Division, Northern
Railway, Lucknow.
2. Applicant No. 2 is son of Shri R. Frey,
who moved an application for appointment in
Class III post under respondents No. 3 on
compassionate grounds due to total invalidation
of applicant No. 1 for all categories while in

R. Frey

Oswald

13/1

17/6

service under the respondents. This application was rejected by the opposite parties.

Office address:

1. Retired driver 'A' Special, Northern Railway, 120-31/5, Beldari Lane, Lalbagh, Lucknow.

2. - Do -

Particulars of the respondents:

Name and address of the respondents:

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.

2. Divisional Railway Manager, Northern Railway, Lucknow Division, Hazratganj, Lucknow.

3. Chief Medical Officer, Northern Railway, Baroda House, New Delhi.

Office address of the respondents:

As above.

Address for serving of all notices:

As above.

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS BEING MADE:

This application is being filed against the order of opposite parties No.2 dated 4-5-89 disposing off representation of the applicants dated 13-7-87 ordering to be disposed off by the Hon'ble Central Administrative Tribunal, Lucknow vide their order

Annex A 1

Q. J. J. J.
J. J. J.

12/2

Annex A 2

Annex A 3

Annex A 4

in CAT Case No.230 of 1988(L) dated 13-4-89 for disposal, the opposite party No.3 rejecting the representation. This representation pertained to the appointment of Applicant No.2, son of Applicant No.1, on compassionate grounds on account of Applicant No.1's total invalidation for all categories while in service under respondents and his past serious ailments in last few years of service. x

2. JURISDICTION OF THE TRIBUNAL:

The matter relates to the appointment of Applicant No. 2 in Class III post under Respondent No. 2 on compassionate grounds due to total invalidation of Applicant No. 1 for all categories while in service under Respondent No. 2 on 23-1-87. Thus, the Lucknow Bench of the Central Administrative Tribunal has the jurisdiction to deal with the case.

3. LIMITATION:

That the application is within the limitation under Section 21 of the Central Administrative Tribunal Act, 1985 as the Applicant No. 1 was totally invalidated for all categories while in service and the applicants moved an application dated 13-7-87 for appointment of Applicant No. 2 in Class III post on compassionate grounds. The opposite parties failed to dispose off the applicants' representations and so the applicants filed

Q. J. J.
J. J. J.

AD

an application before the Hon'ble Central Administrative Tribunal, Lucknow who directed the opposite party No.

Annex A-2

2 to dispose off the same on ¹²~~11~~-4-89 within 30 days.

The representation for appointment of the applicant's was disposed off on the orders of the Hon'ble Court

Annex A-1

in Case No. A 230 of 1988(L) vide order dated 4-5-89

by opposite party No. 2 rejecting the request for

Annex A 1

appointment of Applicant No. 2 on compassionate

grounds, without assigning any reasons, by a non

speaking order against instructions issued from time

to time by the Railway Board.

4. FACTS OF THE CASE:

The facts of the case are given below:

4.1 That the applicant, ^{No 1} was appointed

as engine cleaner on 10-6-47 in the then E.I. Railway,

Lucknow. He was promoted as Second Fireman in June 1950

and thereafter he was promoted as ~~Second~~ First Fireman

in July 1954 and as Shunter in 1960 and thereafter

as Driver C on 15-12-62 and thereafter the applicant

was further promoted as Driver 'A' Special on 22-9-84.

4.2 That the applicant's work and

performance was always highly appreciated by the

Railway Officers which can be seen by the facts of

Annex A-5

quick promotions and the awards bestowed on the

applicant, having received award for 'Accident Free'

Q. Free
Q. Free

12

service from Railway authorities in 40 years of service, a great and rare honour for Railway employees.

6.3 That the applicant^{no 1} in his service career, always worked with sincerity, devotion and dedication, giving priority to duty above everything which required alertness on duty, in the arduous job of day and night work with extreme mental alertness by the applicant. This resulted in some ailments and sickness suffered by the applicant who remained ~~from~~ sick from 2-7-83 to 19-10-83, the disease being 'indigenous psychosis coronary insufficiency'. The Railway doctor kept the applicant under observation for 3 months and the disease, they discovered was, 'IHD' with recommendation for light duty. Thereafter, the applicant was called for medical examination on 8-11-85 and 24-12-85 and the disease diagnosed was 'ISCHEMIA' heart disease. The applicant was referred by the Railway doctor to the Medical College and was admitted to the cardiology department from 7-12-85 to 13-12-85.

6.4 That the applicant^{no 1} thereafter developed some mental disease on 5-11-86 and consulted the Railway doctor at Lucknow who referred the applicant to specialists Doctors at Lucknow Medical College vide CMO's (Lucknow) letter No. 99 MED/O/M dated 5-11-86 because there was no specialist of psychiatry

Applicant

Annex A 5

Annex A 6

Annex A-7
Annex A 8

Q. 1
A. 1

12/

A/V

Annex A 9

in the Railway Hospital. The Medical College specialist of the department of psychiatry in his letter to the Additional Chief Medical Officer dated 23-1-87 stated that " the Applicant No.1 attended the department on 3-12-1986 and was provisionally diagnosed as suffering from Pre-senile Dementia. On Psychometric evaluation there was evidence of organic involvement. The Applicant No.1 was hospitalised for further evaluation on 14-1-1987, and a detailed assesment showed impairment of memory, intelligence and judgement. He also showed secondary depression and marked anxiety. A report psychometric evaluation (Rorachach, WMS, BGT and I.Q. Test) showed impairment of memory, evidence of confabulations, impaired visiometer cordination and I.Q. of 65 to 70....." The Applicant No.1 discharged on 23-1-87 with the recommendations " was unfit for any job in the railway" on account of his illness.

Annex A 8

4.5 The applicant No.1 thereafter moved an application dated 31-1-1987, on the demand of DMO/LKO, before the Additional Chief Medical Officer, Northern Railway, Lucknow for making necessary arrangements for constituting a medical board for considering the case of applicant No.1 on the basis of the medical report of the Lucknow Medical College to whom the applicant No.1 was referred for opinion as expert. This was followed by

a reminder dated 4.6.87 by applicant - and
by letter Pq. Karam chand in union

Annex A 9

Annex A-10

A-17

Q.17

Q.17

Q.17

(P/S)

4.6 That the medical board was not constituted for considering the case of applicant No.1 for more than five months, which was contrary to the Indian Railway Establishment Manual and Railway Establishment Code and the decisions arrived at in PNM meetings (copy enclosed for ready reference) for reasons best known to the CMO, NR, NDLS.

It is also submitted that it was agreed between AIRF and railway board on 29-10-86 and 30-10-86 in the PNM meeting that the medical board should finalise the cases for 'invalidation' from service on medical grounds in not more than three months from the date the case is received in the medical department. In this connection, the order ~~fixes~~ issued by the railway board dated 19-2-87, may also kindly be perused.

Annex A //

4.7 That the applicant No.1 was declared to be totally incapacitated for any job in the railways, on 23-1-87, by specialist of Lucknow Medical College. There was thus neither any scope for treating applicant no.1 as 'deategorised' nor for service any more in the railways, and all that was required was to relieve applicant no.1 from duty forthwith.

4.8 That provision contained in I.R.E.M. in chapter XXVI provide in rule 2602 (as under) about railway servant declared incapacitated for further service for any post in the railway:

Q. 100
Ans.

100

11/6

"2602 - Railway servant declared medically unfit for further service are divisible into two groups:
(i) Those completely incapacitated for further service in any post on the railway, i.e. those who cannot be declared fit even in 'C' medical category.

"2603 - Railway servant in group (i) above cannot be retained in service and is not therefore eligible for alternative employment. If he is on duty, he shall be invalidated from service from the date of relief of his duty, which should be arranged without delay on receipt of report of medical authority. If however, he is granted leave, he shall be invalidated from service on the expiry of such leave or extension of leave."

Similar provision exists in the Railway Establishment Code Volume II, rule 2237 (SR-233) Rule II that the railway servant who is declared by a medical authority to be completely and permanently incapacitated for further service shall:

(a) If he is on duty, he be invalidated from service from that date of relief of his duty, which should be

Atty
Atty

62

arranged without delay on receipt of report of medical authority. If however, he is granted leave under sub-rule (i) above he should be invalidated from service on the expiry of such leave, and

- (b) If he is already on leave, be invalidated from service on the expiry of that leave or extension of leave if any granted to him under sub-rule (i).

4.9 That despite the above mentioned statutory provisions regarding relieving of an employee who was declared totally incapacitated for all jobs, no steps were taken for constituting the medical board for considering the case of applicant No.1 for declaring him totally incapacitated, which is contrary to the statutory rules mentioned above and also as contained in the decision taken in the PNM meetings. It may be relevant to mention here that it was agreed between the AIRF and the railway board in meetings on 29-10-86 and 30-10-86 that the medical board should finalise the cases for invalidation from service on medical grounds in not more than three months from the date the case is received in medical department. In this regard, the order was issued on 19-2-87 by the Director General (RHS) Railway Board, copy enclosed,

Annex A //

Q. 11
Q. 11

6/11

providing that it should normally not take more than three months for medical ~~an~~ examination from the date the case is received in the medical department for invalidation from service on medical grounds.

6.10 That the medical board was constituted in June 1987 for finalising the case of applicant No.1 and the applicant no.1 was medically examined by the medical board on 27-6-87 at the Divisional Hospital, Northern Railway, Lucknow. The medical report was submitted~~ix~~ by the the medical board to the Chief Medical Officer, Northern Railway, New Delhi. The Chief Medical Officer reported vide his letter dated 30-6-87 that the applicant no.1 should be invalidated out of service in all categories on medical grounds by the medical board on 27-6-87. The medical board agreed with the diagnosis of Lucknow Medical College specialist in toto, which was given on 23-1-87. A copy of a letter dated 30-6-87 is attached and all prescriptions and Medical papers were submitted to the Medical Board doctors during the medical examination.

Annex A 12

6.11 That the applicant no.1 was totally invalidated out of service for all categories on medical grounds while in service, with effect from 30-6-87 by the Senior DPO, Northern Railway, Lucknow by his letter dated 20-8-87 on the basis of the medical report dated 27-6-87 of the medical board.

Omey
Omey

497

Annex A 13

A photo copy of the letter dated 20-8-87 is enclosed.

6.12

That applicant no.1 had only

one son, i.e. applicant no.2. The family of applicant no.1 has no other source of income except that the son of applicant no.1 may become an employee under the railway administration in Class III on compassionate grounds, keeping in view that the railway board's

circular dated ²³ 7-4-83, ²² 18-1-84 and ²² 19-9-84. The

above mentioned circulars clearly provide that when a railway servant gets so crippled and cannot do any

work in the course of his duty, for example, Loco and

Traffic Running Staff, and develop serious diseases

like heart disease, cancer or otherwise, statutory rules

have been framed by the railway for dealing with

these cases. The rules also provide for priorities to

be observed, as mentioned in Rule VIII of circular of

1983 which provides that priority number ¹ is to be

given to the dependents of the employees who are

medically incapacitated for any job. The Board's letter

No.E(NG) II/84/RCI/51 dated ²² 19-9-84 speaks of the

priority in Para 3 (III). Dependents of employee who:

die in service or are totally incapacitated while in

service.

6.13

The Board, by their letter dated

18-1-84, further provides that cases of request for

appointment on compassionate grounds should be

viewed sympathetically and dealt within the framework

Annex A 14

A B C

Grey
Grey

Grey

of existing instructions.

6.14

(a)

That about 30 wards of

medically de-categorised railway employees were called for interview and appointed during July 87 to Nov.88 after the medical invalidation of applicant no.1

Annex A

(b)

60 wards were interviewed

and appointed, of medically unfit railway employees, on 6-12-88 by the DRM, Lucknow, on Class III posts.

Annex A

(c)

45 wards were again

interviewed and given appointment on 20-4-89, but the ward of applicant no.1 was not considered by DRM, Lucknow for the Class III posts.

(d)

The following employees

of Loco Shed, Lucknow, under DRM, Lucknow, who were declared medically decategorised (after total invalidation of the applicant) Their wards were considered and appointed on compassionate grounds by the DRM, Lucknow.

- | | | |
|----|---------------------|------------------------------|
| 1. | C.B. Singh | Driver 'A' Special, Lucknow. |
| 2. | Amar Singh | " " " |
| 3. | Harihar Nath Razdan | " " " |
| 4. | R.C. Saxena | " " " |
| 5. | Afzal-ur-Rahman | " " " |
| 6. | Inder Singh II | " " " |
| 7. | Khandiya Lal | " " " |
| 8. | R.L. Bajpai | " " " |
| 9. | Ram Kishan IV | " " " |

Dr. Jy
Dr. Jy

6/1

10.	Nand Lal	Shunter Lucknow
11.	Chotey Lal	" "
12.	P.K.Srivastava	Gd.Lucknow
13.	B.D.Bajpai	" "
14.	Ram Ujagar	" "
15.	J.P.Tewari	" "
16.	R.C.Saxena	Parcel Clerk BSB
17.	Ganga Ram	Gang man "
18.	Chedi Lal	Shed Porter, Lucknow.

(and many others from Traffic Department as far as in the knowledge of the applicant)

The g registration number of ~~my~~ the applicant no.1's son on the priority ~~x~~ register is 3215 for Class III post and the appointments have been made upto registration No.3463 and even more. This can be seen in the priority register of confidential Section in DRM Office.

(e) The following employees were declared totally invalidated and their wards have been appointed by the DRM, Lucknow.

- | | |
|-----------------|-------------------------------------|
| 1. Sri Ram | Steno, DRM Lucknow's Office. |
| 2. R. S. Dubey | Porther Jaunpur, under DRM, Lucknow |
| 3. Prabhu Dayal | H/S Fitter, Loco Shop, CB/LKO. |
| 4. N. D. Sharma | Senior Clerk, DRM Lucknow Office. |

whose case was of a similar nature as that of applicant no.1, but the ward of the applicant no.1 was not considered by the Railway administration.

6.15 That the Lucknow Medical College authorities to whom the case of applicant no.1 was

Q.15
Key

A22

referred by ACO, Lucknow after applicant no.1's admission in Medical College and his examination diagnosed that he was unfit for service in any category on 23-1-87. It was mandatory on receipt of this report on the part of ACO, Lucknow to either relieve applicant no.1 from duty or to get the fact of applicant No.1's illness to be confirmed from CMO/NDLS withing three months in terms of instructions of Railway Board vide Annexure A-//. The belated action of the Medical Department, thus, in ignoring the instructions of the Railway Board, Establishment Code and Indian Railway ~~Establishment~~ Establishment Manual Code quoted in preceding para, resulted in grant of leave to the applicant no.1 being unfit, was prima facie incorrect, ~~malafide~~. Thus, the applicant no.1 suffered in two ways - delay in finalising of the case in confirmation of Lucknow Medical College's opinion of applicant No.1 unfitness in any job conformed on 27-6-87 only by the CMO/NR/HGR's office agreeing with the report of the Medical Board which dittoed opinion of Lucknow Medical College's doctor's report. The applicant No.1 got all his accumulated leave exhausted as he was granted leave and it's extension for over 6 months. Thus, the applicant no.1 was prevented from getting advantage of leave encashment. Further, the excuse of late medical report causing prejudice to the interest of the applicant No.1 in getting his ward appointed cannot be allowed to be raised for reasons set forth above.

Annexure A //

illegal and

Atty
Atty

12

~~Para~~ 6.16 That it was patently manifest that the applicant no.1 after getting the Lucknow Medical College Doctor's report of 23-1-87 of 'unfit for all jobs in railway' could neither work nor could be given duty nor could be decategorised as he was permanently incapacitated. The only alternative being under railways code to relieve him from duty which was not done by the railway authorities and for this, the applicant no.1 cannot be made to suffer.

6.17 That discrimination with regard to the appointment of the applicant no.1's son, i.e. applicant no.2, and Shri Shailendra Sharma s/o Shri M.D. Sharma who went on sick leave on 6-8-82, his case was referred to Central Hospital, New Delhi on 30-12-82 i.e. on the actual date of superannuation. While in the case of applicant no.1, he reported sick on 5-11-86 and after admission, treatment and examination by the Lucknow Medical College experts to whom the ACMO Lucknow referred the applicant no.1's ~~name~~ case, the applicant no.1 was declared incapable for any job in a railway and unfit for railway service for all categories on 23-1-87. Instead of getting the case of applicant no.1 finalized quickly in 3 months time in terms of Railway Board's instructions dated 11/19-2-87 - 'the Medical Officer concerned should finalise the case as expeditiously as possible - it'

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Q.17

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should normally not take more than 3 months for the Medical authorities concerned to finalise the proceedings of the medical examination from the date the case is received in the medical department for ~~the~~ the invalidation of service on medical ground.'

§.18 That despite submission of an

application by applicant no.1 dated 31-1-87 and

Annex A 9

received by Dealing Clerk of the office of ACMO, ~~ECMO~~ LKO on 2-2-87, the medical authorities failed to get the case finalised in terms of instructions of the Railway Board quoted above.

§.19 That the case of applicant no.1

regarding invalidation and appointment of applicant

Annex A 15

no.2 was discussed in the 78th PNM meeting held at

on 4/5 May, 88, page 78, item No.187/III and it was

stated that ~~the~~ a similar case has been referred to the

HQR's office - i.e. the case of the s/o N.D. Sharma and

it was decided to wait for the HQRS's decision. In

Sharma's case, decision was received and his son was

appointed and in the case of applicant no.1, the

decision was communicated by the Senior DPO vide his

letter dated 4-5-1989 which was against applicant

no.1. There cannot perhaps be a more naked display of

discrimination than this, which needs no proof. Legally,

the railway administration is 'Estoppel' to negative

the applicant no.1's claim for appointment of his son,

i.e. applicant no.2. As applicant no.1's case being

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5. GROUND FOR RELIEF WITH LEGAL PROVISIONS:

Annex A 14

5.1. Because the administrative instructions contained in Annexure A-14 to the ^{application} confer a right in their favour and the applicants are entitled to ask for an appointment in the department on it's basis. This view finds support in the case - Union of India Versus K.P. Joseph - AIR 1973 SC 203, the Hon'ble Court holding that even an administrative order confers a right and a mandamus can be issued to enforce the same.

5.2 Because it has been held in several decisions of the Hon'ble Supreme Court, one of which being in AIR 1976, SC, 1104 - That 'a principle of policy evolved by the state must be given effect to.

5.3 Because the applicants have been deprived illegally and arbitrarily of the benefit for which he is entitled keeping in view the various orders of the Railway Board, and the provisions of Railway Establishment Code, etc. quoted in preceding paras.

5.4 Because the applicants have been deprived arbitrarily of the appointment of the applicant no.2 in utter violation of Article 14 and 16 of the Constitution of India.

5.5 Because applicants have been penalised by delaying arbitrarily setting up of Medical Board/holding of Medical Board, refusing

Dr. Jey
Dr. Jey

1/2

(122)

appointment of applicant no.2 in utter violation of principles of natural justice.

5.6 Because the persons who are similarly situated have been given benefit by way of appointment of their wards, dependents on compassionate grounds which have been denied to the applicants arbitrarily.

5.7 Because persons who are on lower priority have been given benefit by way of appointment of their wards/dependents on compassionate grounds.

5.8 Because the order so far passed by the respondents while rejecting the applicant for appointment of applicant no.2 is a non speaking order, illegal, arbitrary and with malafide motive.

5.9 Because the principle of policy - various circulars quoted in preceding paras were ignored in the case of applicants who, without any reason, have been singled out for unfair and discriminatory treatment.

5.10 Because the ~~administrative~~ railway board are authorised by statutes to frame policies and issue rules and instructions for proper running of the administration and as such, the principle of policy must be given effect to and the applicants have full right to get the benefits provided therein.

Dr. Jey
Dr. Jey

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5.11 Because the applicant no.1 having being declared unfit for any job in railways by expert doctors of Medical College to whom Medical Superintendent, Northern Railway, had referred for expert opinion, which was given on 23-1-87, and the applicant no.1 was not on duty about 4 months before this date, the medical board should have been set up promptly, which was delayed malafide by the opposite parties. The omission on their part in not relieving him from the job and allowing him leave without asking was legally wrong and against the provisions of Railway Establishment Code and Railway Establishment Manual.

5.12 Because the blatant failure of the opposite parties in setting up of a medical board ~~in~~ within 3 months latest suo-moto, in terms of the instructions of the Railway Board and despite reminders of the applicant no.1 in this regard followed by written requests and ~~re~~ reminders dated 31-1-87 patently discloses the malafide design and the discrimination of the opposite parties to delay the applicant's medical examination by ^{Keeping} ~~cheating~~ him on medical leave, and as such, for the delayed setting up of the medical board, the applicant cannot be denied the right of getting appointment on compassionate ground for applicant no.2.

They
they

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6. DETAILS OF THE REMEDIES EXHAUSTED:

The applicants declare that they have availed of all the remedies available to them under the relevant service rules.

The applicants had sent a representation to the General Manager(P), Northern Railway, New Delhi, on 6th June, 1989 appealing against the order of DRM, Lucknow, copy to DRM, Lucknow for information. No reply, not even acknowledgement, of the letter was received. The postal receipt of the dispatch of the letter and its acknowledgement may kindly be seen at Annexure No.

Annex A

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT:

The applicants further declare that they had filed previously/an application regarding the matter in respect of which this application is being made in application no. 230 of 1988(L) in the Hon'ble Court, which was disposed off by the Hon'ble Court ordering the respondent no. 3 to take a decision on the application of applicant no. 2 dated 13-7-87 within 30 days from the date of receipt of the order. This ~~appx~~ order was conveyed to the opposite party No. 3 who vide his order dated 4-5-89 ordered that ~~xx~~ no benefit of compassionate appointment can be allowed to applicant no. 2. This may kindly be perused vide

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Annexures

8. RELIEF(S) SOUGHT:

In view of the facts mentioned in para 4 and the grounds with legal provisions as mentioned in para 5, it is prayed that the Hon'ble Tribunal:

(a) May be pleased to direct the respondents to appoint the applicant No.2 in class III under respondent no.2 on compassionate grounds due to total invalidation of applicant no.1 for all categories while in service under respondent No.2.

(b) That this Hon'ble Court may be pleased to quash the order of opposite party no.2 rejecting the application dated 13-7-87 containing Annexure to the application for appointment of applicant No.2 in Class III cadre on compassionate grounds due to total invalidation of applicant no.1 for all categories while in service under respondent No.2.

Annex A

(c) That the Hon'ble Tribunal may be pleased to grant relief as deemed fit and proper in the present case may be allowed in favour of the applicants along with cost of the application.

9. INTERIM ORDER(S), IF ANY, PRAYED FOR:

Nil.

10. Application is being presented by the applicants through their counsel in the Hon'ble Court.

11. PARTICULARS OF THE POSTAL ORDER: FILED IN
RESPECT OF THE APPLICATION FEE:

Postal order No.8 02 401719 dated 4-12-89
drawn in favour of the Registrar, Central Administrative
Tribunal, Allahabad, for Rs.50 only.

12. That the enclosures annexed in the application
are the true copies of the originals.

Applicants

1. *R Frey*
2. *O Frey*

V E R I F I C A T I O N
- - - - -

We, the applicants, Ronald Frey and Oswald
Noble Frey, residents of 120-31/5, Beldari Lane,
Lalbagh, Lucknow do hereby verify that the contents
of paras 1 to 4 and 6 to 12 are true to my personal
knowledge and contents of para 5 are believed to be
true on legal advice and that I have not suppressed
any material facts.

Date: 8/12

Place:

Signature of applicants

1. *R Frey*
2. *O Frey*

12/12

Annex A1

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Regd

NORTHERN RAILWAY

Confidential

Divisional Office,
Lucknow Dt. 4 May '89.

No.E/NB/ACC/LCS/3215

Sri R. Frey
Ex. Driver GP. 'A' - Spl.
& Sri Oswald Noble Frey
S/o. Sri R. Frey,
120/31/5, Beldari Lane,
Lalbagh Lucknow.

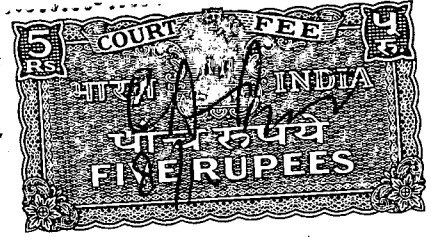
Sub:- Appointment of Sri Oswald Noble Frey
S/o. Sri R. Frey on Compassionate grounds

Ref:- Your representation dt. 13/4/89

In view of Hon'ble CAT's decision in case No. O.A.No.230 of 1988 (L) received under your representation dated 13.4.89, it is to inform you that your application dated 13.7.87 has been examined in detail and keeping in view the extant instructions on the subject it is regretted that no benefit of compassionate appointment can be allowed to your son viz. Sri Oswald Noble Frey

True Copy
Dy
Copy

(Raghoo Ram)
for Divl. Railway Manager,
N.Rly., Lucknow.



बादी
प्रतिवादी

का

बकालतनामा

on behalf of Ronald FREY and Oswald Ron
Frey

Ronald Frey पंजीकृत

बनाम

Union Ind. Co.

C. A. Basu

ऊपर लिखे मुकदसे में अपनी ओर से श्री ~~Advocate~~ Advocate

152, Ghasyari Mandi, LUCKNOW-226 001

Applicants Ronald Frey and Oswald Ronald Frey

महोदय,

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं
इस मुकदमें में वकील महोदय स्वयं अथवा अन्य पक्षील द्वारा जो कुछ पंरबी
व जवाब देही व प्रश्नोत्तर करें या कोई फागय दाखिल करें या लौटावें या
हमारी ओर डिगरी जारी करावें और रूपया पसूल करें या सुलहनामा या
इकबाल दाया तथा अपील व निगरानी हमारी ओर से हमारे या अपने
हस्ताक्षर से दाखिल करें और तस्दीक करें या मुजदमा उठावें या कोई रूपया
जमा करें या हमारी या विपक्षी (फरीकसानो) का दाखिल किया हुआ रूपया
अपने या अपने हस्ताक्षर युक्त (दस्तखती) रसीद से लेवें या पक्ष नियुक्त करें
पक्षील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है
और होगी इसलिये यह बकालत नामा लिख दिया कि प्रमाण रहे और उसमें
पर काम आवे।

हस्ताक्षर

R. Frey

Oswald Frey

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

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Accepted

Counsel For.....

Accepted
C. A. Basu

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

OA No. 339 of 1989 (L)

14.10.91

Ronald Frey & AnotherApplicants

Versus

Union of India & OthersRespondents

COUNTER REPLY ON BEHALF OF OPPOSITE PARTIES

I, ~~Sri C. P. Tripathi~~ ^{P. N. Tripathi s/o} SRI C. P. Tripathi

~~aged about~~ ^{aged about} 56 years, working as Assistant Personnel Officer, DRM Office, Northern Railway, Lucknow, duly authorised by Opposite Parties No. 1, 2 & 3, do hereby solemnly affirm and state as under:

1. That the contents of para 1 of the petition/ application need no comments except to state that applicant No. 1 applied for his medical to consider his invalidation, which was finally decided by the Medical Board and signed on 3rd July 1987.

2. That the contents of para 2 of the petition need no comments.

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3. That the contents of para 3 need no comments.

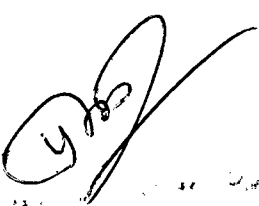
4. That the contents of para 4 of the application are being replied as under:

4.1 That the contents of para 4.1. of the application need no comments.

4.2 That the contents of para 4.2. of the application need no comments.

4.3 That in reply to para 4.3 of the application, it is stated that Sri Ronald Frey remained sick from 2-7-1983 to 19-10-1983, and took treatment in the Civil Hospital, Lucknow, as per Annexure No. A-5, as a case of Coronary Insufficiency Disease with Endogenous Psychosis (depression). He came for periodical medical examination in November 1985 to the Railway Hospital. It is admitted that Sri Ronald Frey remained under treatment with Cardiology Deptt. of King George Medical College, Lucknow from 7-12-1985 to 12-12-1985. He also remained under treatment with Divisional Medical Officer, Northern Railway, Lucknow, from 8-11-1985 to 24-12-1985 as per Annexure No. A-6.

4.4. That the contents of para 4.4 of the application are admitted. It is further stated that Sri Ronald Frey was referred to Medical College, Lucknow vide letter No. 99-Med/O/M, dated 5-11-1986 to


Northern Railway
Lucknow

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Psychiatrist as a case of Endogenous Psychosis for check up, where he was provisionally diagnosed to be suffering from Pre-Senile Dementia vide reference No. 103/Psy, Dated 23-1-1987 as per Annexure No. A-7

4.5 That the contents of para 4.5 of the application need no comments.


4.6 That the contents of para 4.6 of the application are confusing. It is further stated that the provisions to dispose off and finalise the matters of invalidation from service within 3 months are directory provisions, those are not mandatory. The provision of 3 months has been made with a view to decide the matters of invalidations expeditiously. It is further stated that Sri Ronald Frey was called on 11-2-1987, and a letter for constituting the Medical Board was written to Chief Medical Officer, Northern Railway, New Delhi, vide Chief Medical Officer's letter No. 101-Med/B/86-87, dated 16-2-1987. Thereupon the Chief Medical Officer, Northern Railway, New Delhi, made a query about his date of birth, age and date of retirement of the applicant No. 1 vide his letter No. 99-Med/5/339, dated 23-3-1987, without any loss of time from the Office of Chief Medical Officer. Thereafter the Chief Medical Officer, Northern Railway, New Delhi, constituted a Medical Board consisting of three doctors viz. Medical Superintendent,

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CHIEF MEDICAL OFFICER
NORTHERN RAILWAY
NEW DELHI

Lucknow, Divisional Medical Officer/P Lucknow and Divisional Medical Officer/Psy. Central Hospital, Northern Railway, New Delhi, vide his letter No. 99-Med/5/339, dated 16-4-1987. Further Dr. M.C. Nigam, D.M.O./Psy. Central Hospital, Northern Railway, New Delhi, was requested to fix a date for Medical Board at Lucknow. Subsequently C.M.O., Northern Railway, New Delhi, nominated Dr. Goswami, ADMO/Psy. Northern Railway Central Hospital, New Delhi, as a member of the Medical Board in place of Dr. M.C. Nigam, vide his letter No. 99-Med/5/339, dated 5-6-1987. A telegram No. 101-Med/B/ dated 17-6-1987 was sent to Chief Hospital Supdt., Central Hospital, Northern Railway, New Delhi, for directing Dr. Goswami, ADMO/Psy. on 22-6-1987 to attend the Medical Board at Lucknow, who attended the Medical Board to examine Sri Ronald Frey on 27-6-1987, and the proceedings of the Medical Board were delivered in the Office of the C.M.O. Northern Railway, Baroda House, New Delhi, on 29-6-1987.

4.7 That in reply to para 4.7, it is stated that the members of the Medical Board recommended that Sri Ronald Frey may be invalidated out of service in all categories on medical grounds, which has been accepted by the Chief Medical Officer, Northern Railway,



ADMO/Psy. Central Hospital,
Northern Railway,
Lucknow.

New Delhi, vide his letter No. 99-med/5/339, dated 30-6-87, addressed to the Divisional Railway Manager, Northern Railway, Lucknow, with copy to Chief Medical Superintendent, Northern Railway, Lucknow.

4.8 That the contents of para 4.8 of the application need no comments. They are admitted to the extent instructions contained in printed serial No. 9725. A true copy of the printed serial No. 9725 is being annexed as Annexure No. R-1 to this reply.

4.9 That the contents of para 4.9 need no comments except to state that guide lines for processing the case and finalising the time limit has been normally fixed. Those guide lines have got no statutory force.

4.10 That the contents of para 4.10 of the application need no comments, as the same has already been replied in the above paras of this counter reply.


Divisional Railway Manager
Northern Railway
Lucknow

4.11 That the contents of para 4.11 are admitted to the extent that the letter declaring him medically unfit was issued on 20.8.87, mentioning therein that he was found medically unfit on 30-6-87, whereas he retired from service on 30-6-87 in the afternoon. Any allegations contrary to it are denied.

4.12 That the contents of para 4.12 of the application need no comments.

A 4.13 That the contents of para 4.13 of the application need no comments.

4.14 That in reply to the contents of para 4.14 of the application, it is stated that the appointments made during July 87 to November 88 are of death cases and medically incapacitated employees well before their date of superannuation. The applicant's case does not fall within the frame-work of the aforesaid appointments, as the applicant No. 1 retired on 30-6-87, and he was declared medically unfit on 30-6-87. Any

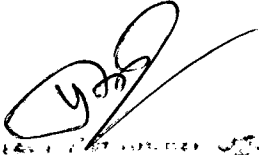
YDS

allegations contrary to it are denied.

4-15 That in reply to para 4.15, it is stated that the reply of this para has already been given in the preceding paras like paras 4.5, 4.6 and 4.7 in which the detailed information has been given. It is incorrect to say that there was delay in holding the Medical Board, which is evident from the correspondence. Any allegations contrary to it are denied.

4.16 That in reply to para 4.16, it is stated that when Sri Ronald Frey submitted an application dated 31-1-87 along with a copy of report from the K.G. Medical College, Lucknow, to the office on 2-2-87, action was immediately initiated for holding Medical Board, as per details given in para 4.6 of this counter reply, with no intention to delay it.

4.17 That the contents of para 4.17 are wrong, hence vehemently denied. It is further


Yours faithfully,
CLERK

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submitted that the word of Sri N.D. Sharma was not given appointment, as his case was rejected by the Railway Board. It is pertinent to mention

that the applicant has stated in para 4.14(e) that 4 persons were declared totally invalid, and their wards have been appointed, namely Sarvshri Shri Ram, R.S. Dubey, Prabhu Dayal and N.D. Sharma. In this regard it is submitted that the wards of these persons were not given any service on the ground of medical incapacitation. The circular of the Railway Board issued in this regard is a guide line, which says that the cases of this type may normally be decided within 3 months. But in the extra-ordinary circumstances the time may be more than 3 months. As such in the instant case, the Opposite Parties did not make any lapse on their part. The case of the applicant No. 1 was referred to the Medical Board, but due to unavoidable circumstances, the same could not be finalised before 30-6-87. Any allegations contrary to it are denied.

4.18

That the contents of para 4.18 are wrong

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hence denied, as the case of the applicant had been considered as early as possible, but due to certain unavoidable circumstances as stated in the above paras of this reply, could not be finalised prior to 30-6-87. Anything contrary to it are denied.

4.19 That in reply to para 4.19, it is submitted that the contents of the application are wrong, hence vehemently denied. The contents are misconceived and confused. It is stated that the case of Sri N.D. Sharma's son was also turned down by the Railway Board. The rest of the contents have already been replied in the above paras of this reply. Anything contrary to it is denied.

4.20 That in reply to para 4.20 of the application, it is stated that the applicant's case was also examined in view of the Railway Board's circulars issued from time to time, but the same was not found upto the mark. Hence the Head Quarter's office of the Railway Board have been pleased to turn down applicant No. 2's case for appointment.

4.21 That the contents of para 4.21 of the application are false, frivolous and fabricated, hence vehemently denied. The legal aspects raised in the para under reply are also baseless and not applicable in the instant case. Anything contrary to it is denied.

5. That in reply to para 5 of the application, it is stated that the grounds and the legal provisions for relief taken therein are false, frivolous, concocted and baseless. As such they are not sustainable in the eyes of law. The application deserves to be dismissed throughout.

6. That in reply to para 6 of the application, it is stated that the same cannot be replied in lieu of the knowledge.

7. That the contents of para 7 of the application need no comments except to state that in view of the Hon'ble Court's order, the applicant's application was scrutinized and decided accordingly.

8. That in reply to the contents of para 8 of the application, it is stated that the applicant does not deserve any relief as prayed in view of the facts and circumstances mentioned in the above paras of this reply. The application as such deserves to be dismissed throughout.


9. That the contents of para 9 of the application need no comments.

10. That the contents of para 10 of the application need no comments.

11. That the contents of para 11 of the application need no comments.

12. That the contents of para 12 of the application need no comments.

LUCKNOW: DATED 11/11 Jan 1980

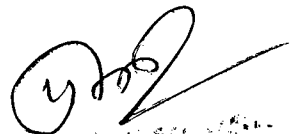

Northern Railway
LUCKNOW

VERIFICATION

P.N. Tripathi
I, ~~Shri Rajan Prasad~~, Assistant Personnel

Officer, D.R.M. Office, Northern Railway, Lucknow,

do hereby verify that the contents of ~~paras 1 to 12~~
~~are true to my personal knowledge, and those of~~
paras 1 to 12 are based on knowledge derived
from perusal of records relating to the instant
case kept in the official custody of the answering
respondents. Nothing has been concealed, and
nothing stated therein is false.

()
Northern & NW
UPK 107

Through



(B.K. SHUKLA)
Advocate

LUCKNOW: DATED

11/11 Jan 1991

Counsel for Respondents

AUG

In the Hon'ble Central Administrative Tribunal,
Circuit Bench,
Lucknow.

O.A. No. 339 of 1989(L)

Ronald Frey and another Applicants

Versus

Union of India and Others Respondents

Rejoinder in reply to the counter dated 11-1-91
made over to the applicant on 30-9-91.

In reply to the above mentioned counter, the applicants respectfully submit as under:

- 1) That in reply to para 1 of the counter, it is stated that as mentioned in paras 4.3 and 4.4 of the application, the applicant No. 1, due to hard work and his devotion to his duty, developed disease of coronary deficiency in 1983, resulting in his admission in the railway hospital for about 2 months and thereafter in 1985, the applicant suffered from ischemia and was admitted in Medical College

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from 7-12-85 to 13-12-85 and was advised rest for 1 1/2 months. Again in 1986, the applicant suffered from a mental disease for which the railway authorities referred the applicant to the Lucknow Medical College experts, who after the applicant's admission in Medical College and thereafter, after outdoor treatment, declared the applicant unfit for all categories on 23-1-87, vide Annexure A-7 of the application and also Annexure A-8 of the application. The applicant was thereafter, due to his crippled health, was not given duty and was ^{not} declared de-_{cl} categorised and thereafter, the applicant applied for his medical examination, which was considerably delayed and ultimately, the applicant was declared unfit for all categories after perusal of the certificate issued by Medical College and medical examination by railway doctors held on 27-6-87, which was signed by CMO on 3-7-87. It may be mentioned here that the applicant having been declared unfit for all jobs in railways on

Q. No. 1
Q. No. 2

Q. No. 3

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23-1-87 by the Medical College authorities to whom the applicant was referred by the railway authorities and as per the railway rules, he should have been invalidated and retired forthwith and if medical examination was still required by the railway medical authorities, it should have been done quickly and which should not have taken more than 3 months, as per directive of the Railway Board, vide Annexure A-11 of the application. The Opposite parties delayed abnormally the medical examination, for which the applicant was made to suffer and all his leave exhausted and ultimately, he dragged on on LMP.

2) That para 2 of the counter needs no reply.

3) That para 3 of the counter needs no reply. The Opposite parties have not denied that the application of the applicant for ~~transference~~ compassionate appointment was rejected without assigning any reason

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AS2

- 4 -

by a non speaking order.

4.1) That para 4.1 of the counter needs no reply.

4.2) That para 4.2 of the counter needs no reply in view of it's admission by the Opposite parties.

4.3) That para 4.3 of the counter needs no reply in view of the admission by the Opposite parties.

4.4) That para 4.4 of the counter needs no reply in view of the admission by the Opposite parties.

4.5) That para 4.5 of the counter needs no reply in view of it's admission by the Opposite parties.

4.6) That averments made in para 4.6 of the counter are not admitted as stated.

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J. rey

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The averments made by the applicants ~~made~~ in para 4.6 of the application are reiterated as correct. The directives of the Railway Board regarding finalisation of the medical examination quickly and not later than 3 months has statutory force as the rules are meant for implementation and not for breach. It is further stated that the directive referred to in this para was issued by the Railway Board and is thus binding on the medical department of the Indian Railways. The reason for the issue of this circular by the Railway Board to all the General Managers of Indian Railways was to expedite the action for finalising the cases of invalidated employees because of delays as is evident from the circular at 14 C, issued by the Railway Board emphasising the need for expiditing action. The number of circulars issued in this regard may kindly be seen vide Anneture A-9, A-11 and A-14 of the application. Dispite these instructions, the medical department took 5 months dispite

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Q. J. V. S.

Q. J. V. S.

AS4

reminders of the applicant for immediate medical examination, vide Annexure A-9 and A-10 of the application, and the directives of the Railway Board, as mentioned above, were ignored all along.

4.7) That averments made in para 4.7 of the counter are not admitted as stated AND those in para 4.7 of the application are reiterated as correct. It is patently manifest that the Opposite parties delayed the medical examination of the applicant No. 1 for 5 months, and for this delay, the applicant No. 1 cannot be made responsible. In fact, the applicant lost all his accumulated leave and had to remain on L/P due to administrative delays by extending his leave from time to time without asking.

Q. 1.1
Q. 1.2

4.8) That averments made in para 4.8 of the counter are not admitted as stated and those made by the applicant in para 4.8 of the application are reiterated as correct.

Q. 1.3

It is further stated that the Opposite parties are relying on the circular vide Annexure C-1 of the counter, which was issued after more than 14 months of the applicant's invalidation and retirement on invalidation i.e. on 30-6-87 and the circular (Annexure C-1) is dated 26-10-88. Thus, this circular can have no application in the case of the applicant because it cannot have retrospective effect the same having been issued on 26-10-88. This circular also reiterates that medical board's should be set up promptly. Further, this circular deviates from the Railway Board's circulars dated 19-9-84, vide Annexure A-14 B of the application.

4.9) That averments made in para 4.9 of the counter are not admitted as stated and the averments made in the application, para 4.9, are reiterated as correct.

4.10) That averments made in para 4.10

1756

of the counter need no comment as the applicant has already furnished details in para 4.10 of the application.

4.11) That averments made in para 4.11 of the counter need no comment except that the applicant was medically examined on ²⁷30-6-87 by the Railway Medical Board, who recommended that the applicant No.1 may be an invalidated out of service in all categories on medical grounds, confirming the same recommendations of the Lucknow Medical College made on 23-1-87. The communication of this on 20-8-87 to the applicant was made but as the applicant was declared medically incapacitated on 23-1-87 and confirmed by the Medical Board of 3 doctors on 27-6-87 and the applicant ~~was~~ before invalidation was neither decategorised nor given any duty, his date of invalidation shall be 23-1-87.

Q.11
gry

6

ASX

4.12) That the averments made in para 4.12 of the counter need no reply as the averments made by the applicants in para 4.12 of the application have been admitted by the Opposite parties.

4.13) That the averments made in para 4.13 need no reply as they have not been denied by the Opposite parties.

4.14) That the averments made in para 4.14 of the counter are not admitted as stated and they are false and wrong. The names given in the application by the applicants on page 12 of the application from 1 to 18 are madicallly de-categorised staff during July 1987 to Nov.1988 as they were drivers and guards of running department to which the applicant No.1 belonged. It is totally false that they were medically incapaciated staff. Thus, this is the case of discrimination and harrasment because while the applicant No.1 was declared medically unfit for all

Q.14
G.14

Q.14

ASS

categories on 23-1-87 by the Lucknow Medical College experts to whom the Chief Medical Supdnt. Lucknow had recommended the applicant's case and the directives of the Railway Board for the medical examination without delay and in any case, within 3 months from the date of medical unfitness was ignored and yet, the applicant's case for appointment of his ward was not only delayed but ignored without assigning any reasons. The information given by the Opposite parties in this para being totally false ~~simply~~ simply to mislead the Hon'ble Court, in the circumstances, the Opposite parties be called upon to produce the records in this regard and as the information submitted by the Opposite parties is totally false, their defence merits being struck out, being totally wrong on facts.

Q. 15

Q. 15

Q. 15

4.15) That the averments made in para 4.15 of the counter are not admitted as stated and those made in para 4.15 of the application are reiterated as correct.

AS9

- 11 -

4.16) That the averments made in para 4.16 of the counter are not admitted as stated and those of para 4.16 of the application are reiterated as correct. The action for medical examination of the applicant by the railway authorities was delayed abnormally in face of the applicant's request and despite circulars and orders of the Railway Board in this regard, and for this delay, the applicants cannot be held responsible in this regard.

4.17) That the averments made in para 4.17 of the counter being false, are denied and those by the applicants in para 4.17 of the application are reiterated as correct. Shri Shailendra Sharma, son of Shri W. D. Sharma, ex Senior Clerk, DTM Office, Lucknow, was given appointment on GM's letter No. E-33/7709 (CG) dated 10-2-89 in Computer Section of the DTM Office at Lucknow. Later, his appointment was cancelled on the orders of the Railway Board, vide Railway Board's letter No. E/IG/11/87 - RC/158 dated 3-3-89. It needs

Q. 17
Shy

Shy

mention that the Railway Board issued circulars dated 7-4-83 and 19-9-84, providing priority which applies fully in the case of the applicants, vide Annexure A-14 of the application, para 4 at page 47 and Annexure A-14 B at page 49 A of the application extending benefit of compassionate appointment to -

" Railway employees becoming crippled while in service or develops serious ailments and the 1984 circular providing for in para III(a) are totally incapacitated while in service, irrespective of the period of service left to reach the age of superannuation."

Thus, the applicant is fully covered and entitled to get the benefit of the above circulars of the Railway Board, vide Annexure 14 C of the application at page 50.

It is further stated that Shri Ram, ex steno of the DRW Office, Lucknow was medically invalidated and his son, Shri

Vijay Shanker was appointed on compassionate ground as skilled artisan and is under training. Similarly, son of Shri R. S. Dubey ex porter, Jaunpur, is working in Loco Shed, Varanasi. Shri Prabhu Dayal was invalidated in 1987 and his son is working in Loco Shop in Charbagh, he having been appointed on compassionate ground. The applicant No. 1 was declared unfit for all jobs by Lucknow Medical College experts on 21-1-87 to whom the applicants case was referred by the Medical Suptdnt. Lucknow and the applicant was ^{not} given duty since 5-11-86 and so, his ^{by} invalidation date is ~~XX~~ 23-1-87, when he was declared unfit for all categories by the Lucknow Medical College experts.

Q. 4.18) That averments made in para 4.18 of the counter are not admitted they being wrong and those made in ~~para~~ para 4.18 of the application are reiterated as correct.

Q. 4.19) That averments made in para

A62

4.19 of the counter are not admitted and those made in para 4.19 of the application are reiterated as correct. In view of the detailed submissions in para 4.17 of the rejoinder and the Railway Boards circulars mentioned therein, it is patently manifest that the applicants are fully entitled to get benefit of the circulars which have been illegally and arbitrarily denied to the applicants.

4.20) That averments made in para 4.20 of the counter are not admitted and the averments made in para 4.20 of the application are reiterated as correct. It is vehemently denied that the Headquarters Office and the Railway Board's office mentioned in the counter being two different offices, and the Railway Board, to the best of the applicants knowledge, has not turned down the applicants case so far.

Q. 19
Q. 20

19

863

4.21) That the averments made in ~~para~~ para 4.21 of the counter are wrong and hence not admitted and those of para 4.21 of the application are reiterated as correct, the same being based on the railway circulars and the rulings of the Hon'ble Supreme Court and High Court.

5) That the avements made in ~~para~~ para 5 of the counter being false and wrong are not admitted and those averments made in para 5 of the application are reiterated as ~~to~~ correct being based on circulars of the Railway Board, and the rulings of the Hon'ble Supreme Court and Hon'ble High Court. The Opposite parties objections merit rejection outright.

Q. 1

Q. 2

6) That the averments made in para 6 of the counter are unintelligible and the reply furnished is meaningless and is hence denied.

Q. 3

7) That the averments made in para 7 of the counter are not admitted as stated, The applicants application was rejected without assigning any reasons by a non-speaking order against the instructions and circulars of the Railway Board issued from time to time and hence the same is a nullity.

8) That the averments made in para 8 of the counter are not admitted as stated and those made in para 8 of the application are reiterated as correct. The applicants are fully entitled to the reliefs claimed.

9) That the averments made in para 9 need no comment, of the counter.

10) That the averments made in paras 10, 11 and 12 of the counter need no comment.

Verification

We, the applicants of this case, do hereby verify that the contents of ~~para~~

A65

paras 1 to 10 are true to our personal knowledge based on information and records, which are believed to be true and that we have not suppressed any material facts.

Dated:7-10-91

at Lucknow.

Applicants

No.1 - *D. Frey*

No.2 - *Grey*

W

In the Hon'ble Central Administrative Tribunal,
Additional Bench, Lucknow.

Original Application No. of 1989(L)

Between

Ronald Frey and another ---Applicants

And

Union of India and Others ---Respondents

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Dated: 8/12
Lucknow.

C. A. Basir,
Counsel for applicants

Annex A2
27
168

~~CENTRAL ADMINISTRATIVE TRIBUNAL~~
CIRCUIT BENCH LUCKNOW

O.A. No.230 of 1983 (L)

Ronald Frey and another Applicants.
Versus
Union of India and others Respondents.

Hon'ble Mr. Ajay Johri, A.M.

Hon'ble Mr. D.K. Agrawal, J.M.

(By Hon'ble Mr. D.K. Agrawal, J.M.)

This is an application on behalf of Oswald Noble Frey (Applicant No. 2) and Ronald Frey (Applicant No. 1) who has sought an appointment on compassionate grounds, as the applicant No. 1 (i.e. Ronald Frey) was declared medically unfit to discharge duty as Driver 'A' Special. The grievance of the applicant is that, neither any reply has been given, nor the appointment, if permissible under the rule, has been offered to the applicant No. 2 (i.e. Oswald Noble Frey). The learned counsel for the applicants, Shri A.K. Chaturvedi submitted before us that the application be disposed off by giving a direction to the respondent No. 3 to dispose of the application of applicant No. 2 dated 13-7-87. We accordingly direct the respondent No. 3, to take a decision on the application of applicant No. 2 dated 13.7.87 referred to above, within 30 days from the date of the receipt of this order. This application is accordingly disposed off. We make no order as to cost.

Sd/-
J.M.

Sd/-
A.M.

True Copy
D.K. Agrawal
J.M.

//True Copy//

[Signature]
12/4/89
Deputy Registrar
Central Administrative Tribunal
Lucknow Bench
Lucknow

In the Hon'ble Central Administrative Tribunal, *869*
Additional Bench at Lucknow.

Original Application No. of 1988(L)

Ronald Frey and another ---Applicants

Versus

Union of India and Others ---Respondents

Annexure No. A 3

To,

The Divisional Railway Manager,
Northern Railway,
Lucknow Division,
Hazratganj,
Lucknow.

Sir,

Appointment of Shri Oswald Noble Frey s/o
Shri Ronald Frey on compassionate ground.

We have filed O.A.No.230 of 1988(L) (Ronald Frey and another Vs.Railway Board and Others) before the Central Administrative Tribunal Circuit Bench, Lucknow, for appointment of Shri Oswald Noble Frey s/o Shri Ronald Frey on compassionate ground. A true copy of the original application No.230 of 1988(L) as filed before the Hon'ble Tribunal is being enclosed for your pursual (in 1 - 22 pages).

*True copy
of the
copy*

W

170

The Hon'ble Tribunal has been pleased to deliver the judgement dated 11-4-89 in the aforesaid O.A.No.230 of 1988(L). A photocopy of the judgement dated 11-4-89 is being enclosed for your persual and necessary action.

The Hon'ble Tribunal has been pleased to direct you to take a decision on the application dated 13-7-87 which has been already delivered to you and also a true copy of the same has been enclosed with the O.A.No.230 ~~xxxxi~~ of 1988(L) as Annexure No.5 and 6 of the said case, within 30 days from the date of the receipt of the order dated 11-4-89.

Please take the decision and issue appointment order to Shri Oswald Noble Frey s/p Shri Ronald Frey within the time fixed by this Hon'ble Tribunal in the interest of justice.

Thanking you,

Encls: As above.

Sd/- (Ronald Frey)
s/o S.T.Frey
R/o 120/31/5, Beldari
Lane, Lalbagh, Lucknow.

Dated: 13-4-89

Yours faithfully,

Sd/- (Oswald Noble Frey)
s/o Shri Ronald Frey
R/o 120/31/5, Beldari
Lane, Lalbagh, Lucknow.

True copy
Sd/-
Chief

62

In the Hon'ble Central Administrative Tribunal, *At*
Additional Bench at Lucknow.

Original application No. of 1988(L)

Ronald Frey and another ---Applicants
Versus
Union of India and Others ---Respondents

Annexure No. A 4

Dated 13-7-87

To,

The Divisional Railway Manager,
Northern Railway,
Lucknow.

Sir,

Re: Appointment on compassionate ground to
a post of commercial clerk.

With due respect and humble submission, the
applicant begs to submit as follows:

That the applicant's father, Sri R. Frey, has
been medically incapacitated on 27-6-87 after a
protracted illness, and retired from service on
medical ground. That there is no bread winner for the
family after him.

It is therefore, humbly requested to please
consider the applicant's appointment to a post which
your honour ~~is~~ shall think suitable, according to the
applicants testimonials and ~~his~~ bio data given below.

*True Copy
@Frey
Frey*

That the applicant possesses the following certificates:

1. Educational Qualifications up to B.A. Part I and B.A. Part II (Two) exam; is given this year, results awaited.
2. Aged 22 years, birth dated 19-9-1964.
3. Trained in Hindi and English Typing.
4. Trained in Preliminary Computers course, with certificates.
5. Trained in Electrician course from Govt. Industrial Technical Institutes, Charbagh, Lucknow this year; certificate awaited.

That the photostat copies of item no. 1 to 4 above are attached herewith for your perusal please.

That the applicant is quite eligible for a post in the Railways please.

Thanking you,

Yours faithfully,

Sd/- Oswald Frey.

Add: 120/31/5 Beldari Lane,

Lalbagh, Lucknow.

Dated 13.7.87

Enclosures attached.

True copy

Copy

Copy

Copy

In the Hon'ble Administrative Tribunal,

Additional Bench at Lucknow.

Original Applcn.No. of 1988(L)

Ronald Frey and another

---Applicants

Versus

Union of India and others

---Respondents

Annexure No. A 4

Dated 13-6-87

To,

The Divisional Railway Manager,
Northern Railway,
Lucknow.

Sir,

Ref: Appointment on compassionate ground

With due respect and humble submission, the
applicant submits as follows:

That the applicant has been medically invalidated
on and from 27-6-87 after a long sickness.

That there is no bread winner for the family
after him.

It is therefore humbly requested to please
appoint one of his son as the bread winner for his
family, named Oswald Noble Frey.

That

True copy
Aditya
Ghosh
Gh

-2-

1. the applicant's son aged 22 years with an educational qualification up to BA Part I at present, from Lucknow University.
2. trained in English and Hindi typing.
3. trained in preliminary computer course, with certificate.
4. trained in Electrician course from G.I.T.I., Charbagh, Lucknow.

That he is quite eligible for a job in the Railways.

Kindly consider my appeal in the light of mercy.

Thanking you,

Yours faithfully,

Sd/- 13-7-87

(R. Frey)

Medically invalidated

Driver A/Spl-Lko

Add: 120 31/53, Beldari Lane,
Lalbagh, Lucknow.

Encls, attached Photo Stat Copies.

1. High School Marksheet.
2. Intermediate Marksheet.
3. B. A. Part I "
4. Computer certificates.
5. Hindi English Typing certificate.

True Copy
of R. Frey
copy
LW


185

NO 2

Confirmed that Sri R. FREY has
been suffering from Coronary insufficiency
associated with endogenous psychosis
since 1/1/63 as he was advised
rest along with treatment for about
4 weeks from 1/1/63

True copy
of Frey
copy
185

Read by LF/Luc
Office on 3/7/83
by Sri Mangal-Ram
O/S


20/12/83
Dr. L. F. LUCAS
LUCAS, W.

35

AK

11/2 (2)

LUCKNOW

10-11-1952

1948

10/1/54

१३

1428

Examined on
11 June 1977

Who has it? 86
Sue 2/2/53 p. 4

to resume his work

6-3-8

0 500 40 40 20

Examined by R. Frey
who has been with for 15 H.A.
Since 1/1/53 is now fit
to resume his work and
exertion.

Physician
Class: 1416/83
1-2 00 000-100 P

0 500 50 00-28 1944-45-6-381-12 00.000-1944-45

True copy
of
copy
by

NE (2)

(14)
बीमारी की घटनाएँ
INCIDENCE OF SICKNESS
(To be filled by Medical Officer on each occasion the staff reports sick)
(प्रत्येक बीमारी की घटना के अवसर पर चिकित्सा अधिकारी द्वारा पूरा किया जाना चाहिए)

रजिस्ट्रार का नाम नाम KMC/ PMC	से From	तक To	बीमारी Disease	टिप्पणी और विशिष्ट सलाह, यदि कोई हो Remarks & specific advice, if any	चिकित्सा अधिकारी की हस्ताक्षर Signature of M.O.
RM:	20/7/83	14/8/83			

RM:	24/7/83	24/7/83	Lubago	Relieved
4/8/83				
Prave K	1/8/83	6/8/83	Chondral • atrophy	Chond CNS mus/nerve Pu 114

(15)

True Copy
Copy
Copy
Copy

Annex A 6

A18 [37]

NO 3

Under Demo/Use
from 8/11/85 to 24/12/85

(6)

अवधिक डाक्टरों परीक्षा का विवरण
PARTICULARS OF PERIODICAL MEDICAL EXAMINATION

दिनांक Date	(i) छात्रों की एक्सरे रिपोर्ट Report of X-ray chest (ii) डाक्टरों परीक्षा के परिणाम Result of Medical Examination (iii) विशेष अनुदेश, यदि कोई हो Special Instructions, if any	चिकित्सा अधिकारी के हस्ताक्षर Signature of Medical Officer
24/12/85	X-ray R116dt 24/12/85 - OK Ear - OK Trade mill test for Ischaemic Heart disease was done at 10 Me. and was found negative. Dentist has advised to get in view of standing of vision a lot of Colour - OK Vision - 20/20 in Arcane with glasses for near distance	

(7)

24/12/85

अंतर रेलवे डाक्टरों का विवरण

True copy
of
copy
[Signature]

DISCHARGE SUMMARY

38

DEPARTMENT OF CARDIOLOGY

K G & MEDICAL COLLEGE LUCKNOW.

29

12.12.85

NAME: Ronald Foey

AGE: 66y

SEX: M

ADDRESS: 310 Dole S.T. Foey
120/31-5, Baidanpur
G.S. D.M. Lucknow

ADMISSION: 7.12.85

DISCHARGE: 12.12.85

PHYSICIAN IN CHARGE: Dr. V.K. Puri DMARDP

DIAGNOSIS: CHRONIC OBSTRUCTIVE LUNG DISEASE
WITH ATRIAL ECTOPICS - BENIGN

Clinical History: This pt referred from Railway Hospital
is having RBBB in EKG, to exclude CAD. At present
he is asymptomatic.

PHYSICAL EXAMINATION FINDINGS:

Pulse 80/min - Regular
PRP 130/80 mmHg
CRS. wide splitting of 2nd sound but
variable.
Rx. emphysema +ve

INVESTIGATION:

Blood urea, 20mg/l

Plasma & body fluid CPAs
Emphysema +ve

Blood Sugar (F) = 100mg%

E

True copy
of
copy

Dr. Khan
M. S. Puri
D.M.

ECG: RBBB (complete) & RVH. INTERPRETED BY DR. K. S. K.

ADD

ECMO (m. mode) = WNL

TST = Normal.

Heart monitoring = few atrial ectopic int.

TREATMENT GIVEN:

Tab. Bismuth
Tab. Vit C

REMARKS:

ADVICE ON DISCHARGE: = Tab. Bismuth 1 PMD

= Steam inhalation twice a day;

= Pectone Syrup 2 TSP twice a day after meal.

= to attend Card. OPD if any problem arises.

[Signature]

CHIEF RESIDENT

[Signature]

CONSULTANT

True copy
D. S. K.
G. S. K.



Annex A-7

Phone : 82415

DEPARTMENT OF PSYCHIATRY

KING GEORGE'S MEDICAL COLLEGE - G. M. AND A. HOSPITALS
LUCKNOW - 226 003
(INDIA)

40
A01

Ref. No. 123/Psy.

Dated 23.1.1987.

The Sr. Medical Superintendent,
G.M. & Associated Hospitals,
Lucknow.

Sir,

Kindly refer to your letter No. 453/XV-I dated Jan. 22, 1978 regarding Mr. R. Fray referred by A.C.M.O., Northern Railway, Lucknow vide his letter No. 99/Med/O/M dated 5.11.1986.

Mr. R. Fray first attend out-patient of this department on December 3, 1986 (out-patient No. 3922/86) and was provisionally diagnosed to be suffering from Pre-senile Dementia. On Psychometric evaluation there was evidence of organic involvement. The patient was hospitalized for further evaluation on 14.1.1987, and a detailed assessment showed impairment of memory, intelligence and judgement. He also showed secondary depression and marked anxiety. A repeat psychometric evaluation (Rorschach, WMS, BGT & I.Q. test) showed impairment of memory, evidence of confabulations, impaired visiomotor coordination and I.Q. of 65 to 70. The diagnosis of presenile dementia was confirmed. I would therefore, declare Mr. R. Fray unfit for all categories in the Railway on account of his illness.

Thanking you,

Yours faithfully,

J. K. Trivedi

(J.K. Trivedi)
Lecturer.

True copy
J.K. Trivedi
for

In the Central Administrative Tribunal
Additional Bench at Allahabad
Circuit Bench Lucknow.

(16)
41
482

Registration Case No

of 1988
Applicant

Ronald Frey & another
Versus

Railway Board & others

Respondents

Annexure No 2

171
SN
47

Sl. No. 4582

G. M. ASSOCIATED HOSPITALS, LUCKNOW.

Medical Certificate

Mr. R. FRAEY

This is to certify that..... whose signatures/
thumb impression is affixed below, is suffering from.....
..... disease (Provisional).....
..... and was admitted in the hospital on 14/1/87

- and
- *(a) his / her stay in the hospital is considered absolutely essential for.....
..... days from..... is unfit
 - *(b) was discharged on 23-1-1987 and is fit to join his/her duty
 - *(c) was discharged on..... and is/was recommended
convalescent leave for..... days from the date of
discharge, and would be fit for duty now from.....

R Frey

Signature/Thumb
Impression of Patient
Attested J. K. Singh
Date 23/1/87

J. K. Singh
PHYSICIAN/SURGEON
G. M. Associated Hospitals
LUCKNOW

ISSUED
23/1/87
Senior Medical Superintendent,
G. M. & Associated Hospitals
LUCKNOW

NOTE :-Certificate without Signatures of Senior Medical Superintendent
are invalid. *Score out if not applicable.

True Copy
R Frey
R Frey
R Frey

Annex

A-9 42
A92

To,

The Addl; C.M.O.
N. Rly-Lucknow.

DATE 31-1-87

Sir,

With due respect, I beg to submit as follows:
That I am suffering from Mental trouble from last three months and was referred to K.G.M.C. on 5.11.86, where I was given treatment and was admitted in the hospital but could not be cured, for which K.G.M.C. authorities have given a certificate of my sickness declaring me unfit for any job.

I am still not well and unable to perform any work due to this illness.

It is therefore requested to please arrange a medical board to take necessary action and to need full.

Thanking You,

Yours faithfully

R. Frey

(R. Frey)

Dr. A/Spl/L.K.O.

A.K.
2/2/87

D/A-Three + Retirement
date Certificate

Add: 120/31/5 Beldari Lane
Lal Bagh. Lucknow.

True Copy
R. Frey
A. K.

To

The Chief Medical Officer,
Northern Railway,
Baroda House,
New Delhi.

REMINDER - 1.2/4.6/87

Sir,

Reg: Delay in setting up a Medical Board for
invalidation of Shri R.Frey, Driver "A"/Spl.
of Lko. Division, a case of Psychiatry.

The abovenamed employee is sick from 5/11/86.
His case was referred to the Supdt. K.G.M.C. Lucknow
by ACMO/NR/LKO. where he was admitted and given
necessary testing and treatments.

Latter he was declared unfit for any job in the
Railways by the Senior Supdt. K.G. Medical College,
Lucknow, on 23/1/87, vide his Ref.No.103/Psy of
23/1/87. This report was submitted to ACMO/LKOs'
office with a necessary application on 2/2/87. That
further ACMO/LKOs' office asked for a permission
from your office to arrange a medical Board. The
said permission was granted by your office in the
end of April '87.

But no doctor is being released to conduct
the necessary proceedings of setting up a Medical Board

This process has almost taken 4 months and the
case has not been finalised. That the employee is
on leave without pay and starving alongwith his
family for want of pay.

It is, therefore, requested to please release
a doctor, specialised in that line, to enable ACMO/LKO.
to conduct the proceedings of setting up a Medical
Board.

Thanking you,

Yours faithfully

R. Frey 16/5/87

(R. Frey)

Driver "A"/Spl. LKO.

120-31/5, Beldari Lane, Lalbagh,
Lucknow.

Under Postal Certificate
on 16/5/87

16/5/87.

True Copy
Frey
Frey

Govt. of India
Ministry of Railway
Railway Board

No. 85/H/5/10

Dated: 11/19-2-87

The Genl. Managers (Medical)
Indian Railways,
including Production Units,
CLW, DLW, ICF.

Sub: PNM Meeting between AIRP and the
Rly Board held on 29.10.86 and 30.10.86

Department of Railways have decided that for those cases who have to be examined by a Medical Board, it will be desirable to form a standing Medical Board in each Division for this purpose.

The Medical Officers concerned should finalise those cases as expeditiously as possible taking into account the merits of each case. It should normally not taken more than 3 months for the medical authorities concerned to finalise the proceedings of the medical examinations from the date the case is received in the Medical Department through proper channel for invalidation from service on medical grounds.

True Copy
Atty
Gfry

(M.C.Khorwal)
Director General (RHS)
Railway Board
New Delhi.

Annex 7-12/67
145

उत्तर रेलवे

प्रधान कार्यालय,
बड़ौदा हाउस,
नई दिल्ली।

206

सं. 99-med/5/339

Dated 30-6-87 87

मण्डल रेल प्रबन्धक. (D.R.M./N.Rly.)

उत्तर-रेलवे

Lucknow

सं. 29/न 37

विषय:- श्री R. Frey, Driver-A/Spl. LKO

का-मेडिकल बोर्ड।

उपरोक्त व्यक्ति की डाक्टर परीक्षा मेडिकल बोर्ड द्वारा दिनांक 27-6-87

को उत्तर रेलवे

Divl. Hospital/Lucknow

में की गयी थी।

मेडिकल बोर्ड की विवरण रिपोर्ट की एक प्रति अग्रे की कार्रवाई के लिये
बिना उद्धृत की जाती है। इसे मुख्य चिकित्सा अधिकारी की सीकुरिटी प्राप्त है।

रिपोर्ट: (Recommendation)

With the findings it is concluded that Mr. R. Frey, Driver-A/Spl Lucknow is suffering from "presenile dementia" and his chances of recovery from this illness are very poor. He has already received enough treatment from Psychiatrist KGMU/Lucknow but without improvement.

The members of the Medical Board recommend that he (Sh. R. Frey) may be invalidated out of service in all categories on medical grounds.

sd/-Raj Kumar
DMO/P/LKO

sd/-NK. Goswami
ADMO/Psy/CH

sd/-RN Saxena
MS/LKO

for Chief Medical Officer

Copy forwarded for information to The Chief Medical Supdt./LKO
in ref. to his letter No. 10-med/3/1 dt. 27-6-87 dt.

True copy
Dy

Copy for

Annex A-13

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NORTHERN RAILWAY.

No. 54 E-I/1/68.

Divisional Office,
Lucknow, Dt/- 20/8/87.

Shri R. Frey,
Driver 'A' Spl,
Lucknow.

Through : LF/Lucknow.

Reg : Your medical unfitness.

.....

You have been invalidated out of service on medical grounds vide CMQ/NLS letter No. 99-Med/5/339 dated 30.6.87 and accordingly you are retired from service with effect from 30.6.87 A.M.

You are required to hand over all Railway property to LF/Lucknow and also vacate Railway Quarter if any occupied by you immediately failing which you will be treated as trespasser and will be liable to pay the damages for such un-authorised and unlawful occupation of the same.

Sr. Divl. Personnel Officer,
Northern Railway,
Lucknow.

Copy for information and necessary
action to :-

- 1) LF/Lucknow.
- 2) Sr. DAO/Lucknow.
- 3) SIQ/Lucknow.
- 4) Dy. Secy. Lucknow.

True Copy
Dy. Secy
Dy. Secy

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* KSU *

Annex-A14
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NORTHERN RAILWAYMEN'S UNION
CENTRAL OFFICE

No. NRMU/61/83

Dated 3rd April '83

All Branch/Divisional Secretaries
Central Office Bearers/NRMU

Sub: Appointment on compassionate grounds.

A copy of Railway Board's letter No.E(NG)III/78/RC1/1 dated 07.4.1983 is reproduced below for your information please.

M/Soni

for General Secretary

Instructions regarding appointment on compassionate grounds have been issued from time to time. The instructions currently in force are those contained in Board's letter No.E(NG)III-78/RC1/1 dated 30.4.1979 as modified from time to time thereafter. These have now been consolidated and are reproduced below for the information and guidance of all concerned.

1. Circumstances in which compassionate appointments may be made.

Appointments on compassionate grounds relate to those appointments which can be made of dependents of Railway servants who lose their lives in the course of duty or die in harness otherwise while in service or are medically incapacitated. The circumstances in which appointments on compassionate grounds may be made are as below:

- (i) When Railway servants lose their lives in the course of duty or get so crippled that they cannot do any work (this also in the course of duty - for example, loco and traffic running staff in charge of trains involved in accidents.
- (ii) When Railway employees die in harness while in service before retirement.
- (iii) Where an employee's whereabouts are not known for a period of 7 years and the settlement dues of the employee are paid to the family on this account. This limit of 7 years may be relaxed to 3 years on the merits of each case with the approval of General Manager, subject to the condition that the services of the person appointed on compassionate grounds would be terminated in case the missing employee is traced subsequently.
- (iv) When Railway employees become crippled while in service or develop serious ailments like heart diseases, cancer etc. or otherwise medically

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IV. Qualifications and conditions to be fulfilled.

Normally the persons seeking appointment on compassionate grounds should fulfil the conditions of eligibility regarding age and educational qualifications prescribed for appointment to the post or grade concerned. However, the upper age limit may be freely relaxed on the merits of the cases. The lower age limit of 18 years normally required for appointment in Government may also be relaxed upto one year with the personal approval of the General Manager. Relaxation of the lower age limit beyond one year will require the approval of the Ministry of Railways.

The educational qualification prescribed for the post to be offered should not in any case be relaxed. However, if on the merits of an individual case the General Manager, feels that such a relaxation of the minimum educational qualification is absolutely necessary, then such cases may be referred to the Ministry of Railways.

V. Grades in which appointments can be made on compassionate grounds.

All appointments on compassionate grounds should be made only in the recruitment grades like Office Clerks, Commercial Clerks, Assistant Station Masters, etc. No appointment should be made on compassionate grounds in an intermediate grade i.e. one which is filled purely by promotion. Appointments on compassionate grounds are also not permissible in the category of Traffic Apprentices/ Commercial Apprentices(grade Rs.455-700) and Engineering graduate apprentices(grade Rs.550-750) because direct recruitment in these grades is proportionately very limited.

VI. Procedure to be allowed before making compassionate appointments

The candidates applying for appointments on compassionate grounds should be subjected to a suitability test by a committee of three Senior Scale Officers, one of whom should be a Personnel Officer. The test need not be very rigid. It has only to be ensured that the person concerned would be in a position to discharge the duties of the post being offered to him. The test is also meant to assess the aptitude of the person for the particular job proposed to be assigned to him. It should be conducted keeping compassion in view which is the basis for such appointments.

The candidates who are to be offered appointments on compassionate grounds may also be required to submit a character certificate from two Gazetted officers.

VII. Authority competent to make appointments on compassionate grounds.

The power to make compassionate appointments is vested in the General Manager. The General Manager may, however, redelegate this power to the Divisional Railway Manager and also to Heads of the extra Divl. Units who are in Level I or Level II subject to such control as he may like to impose on the exercise of such power by these authorities. Proposal for appointment on compassionate grounds of dependents of gazetted officers should, however, be referred to the Ministry of Railways for approval.

True Copy
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Shy. br.

Northern Railwaymen's Union,
Central office - New Delhi.

No. NRMU/61/84

Dated 22/9/84.

All Branch/Divl. Secretaries/Presidents/NRMU
&
All Central Office Bearers/NRMU.

Sub:- Appointment on compassionate grounds.

A copy of Rly. Board/New Delhi letter No. E(NG)II/84/RC1/351 dated 19/9/84 to all concerned is reproduced below for your information please:-

"Attention is invited to para VIII of this Ministry's letter No. E(NG)III-78/RC1/1 dated 7/4/83 in which the order of priority for making appointments on compassionate grounds has been indicated.

2. The Ministry of Railways have had occasion to review this order of priority in the light of suggestions that consideration of appointment on compassionate grounds in cases where a person is medically decategorised at the fag end of his service and/or a person who has earned the full retirement benefits at the time of medical decategorisation should not be on the same footing as compassionate appointments in cases of death while still in service, particularly when a railway servant dies suddenly.

3. The Ministry has now decided that the order of priority, as laid down in the aforesaid letter dated 7/4/83 shall be revised as under:-

- i) Dependents of employees who die or are permanently crippled in the course of duty.
- ii) Dependents of employees who die in harness as a result of Railway or other accidents when off duty.
- iii) Dependents of employees who:-
 - a) die in service or are totally incapacitated while in service irrespective of the period of service left to reach the age of superannuation or of earning retirement benefits in full, or
 - b) are medically decategorised with less than 30 years of qualifying service for pensionary benefits/30 years of service for SC to PF.

True copy
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Azad/ @file

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Annex 14. C

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GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

E(NG)II-83/RC-1/73

New Delhi, dated:- 18 -1-1984.

The General Managers,
All Indian Railways
C.L.W., D.L.W. & I.C.F.

Sub:- Appointment on compassionate grounds.

** ** *

In the PM meeting held in September, 1983 with the National Federation of Indian Railwaymen it was pointed out by the Federation that appointment on compassionate grounds to the wards of deceased and medically incapacitated/decategorised Railwaymen is not being offered by Zonal Railways etc. even in cases where such appointments are permissible as per extant instructions on the subject. In this connection, the following difficulties and hardships faced by the families of the Railwaymen were mentioned by the Federation:

- (i) Cases of wards of the railway employees who are medically incapacitated and are nearing retirement, are rejected.
- (ii) Requests from wards of the deceased employees are rejected on some Railways on the plea that the cases are over five years old inspite of the fact that the children of the deceased employees were under aged at the time of demise of the employee and hence they could not seek appointment within the time limit of five years.
- (iii) The applications from the wards are not considered in the case of medically decategorised employees on the plea that they are at the rag end of their service at the time of their medical decategorisation.

2. In the light of discussions on the aforesaid aspects, the Board desire that cases of request for appointment on compassionate grounds should be viewed sympathetically and dealt with within the frame work of extant instructions. In case a request falling within the purview of the current instructions on the subject had been rejected and a fresh application is now made, there is no objection to the

.....2/-

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(42)

Minutes of the 78th P.M. meeting held on 4/5 May 88

:78:

28. Ite No. 187(iii) Contd....

REPLY

- Shri R. Frey, ex Driver Gr. 'A' spl was on sick list (RMC) from 4.11.86 to 30.6.87 under DMO/LKO. His date of normal retirement was 30.6.87 AN. According to letter of Medical Board recommendation he was examined and made medically unfit in all categories on 27.6.87. The letter is dated 30.6.87 but has been signed by CMD on 3.7.87.

He approached the administration for compassionate appointment of his son Shri Oswald Noble Frey against a class III post on 13.7.87.

Under item 16 of GM(P)'s confidential letter No. F33/O-IV (CG) dated 30.4.82 it is stated that no general prescription of any specific period is contemplated for consideration of the case of appointment of wards in cases where the employee is medically invalidated a few months or days before superannuation. Further GM(P)'s confidential letter dated 30.4.82, clarifies that no time limit has been prescribed in such cases by the Rly. Board.

The case of Shri R. Frey would normally have been covered under rules had the communication of medical invalidation been received in this office prior to the actual date of retirement.

A similar case of this nature has been referred to Head Qrs. office for directive. In that case, the Hd. Qrs. has advised that the matter has been referred to Rly Board for their decision. The decision is still awaited. This similar case in that of Shri Shialendra Sharma son of Shri N.D. Sharma, ex Sr. Clerk, CR Section, DRM's office, LKO, and is available on file No. E/WB/ACG/2189. D/25/8/86

The case of considering compassionate grounds appointment of Sri O.N. Frey s/o Shri R. Frey was put up to DRM for referring to HQ for a directive but he did not agree and decided to wait Board's clarification in case of Shri N.D. Sharma.

On receipt of Board's clarification, the case will be put up for a decision on merits.

True copy
Q. Frey
O. Frey

Final

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प्राप्ति स्वीकृति (रसीद) ACKNOWLEDGMENT

एक रजिस्ट्री पत्र/पोस्टकार्ड/पैकेट/पार्सल प्राप्त हुआ
 *Received a Registered Letter/Postcard/Packet/Parcel
 Insured

क्रमांक No.

पाने वाले का नाम
 Addressed to (name)

बीमे का मूल्य (रुपयों में)
 Insured for Rupees

वितरण की तारीख
 Date of delivery

मंडल ग्राम पंचायत/हस्ताक्षर/Signature of addressee
 *Score on A.D. matter not required.
 केवल बीमा वस्तुओं के लिए
 (For insured articles only.)

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The Chief Personnel Officer
 Western Railway
 Baroda House
 New Delhi

True copy
 Retd.

Officer

Br

Annex A-17

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उद्योगों का श्रमिकीकरण

॥ श्रमिकों का राष्ट्रीकरण ॥

राष्ट्र का स्वामीकरण



उत्तर रेलवे कर्मचारी यूनियन (रजि०)

Uttar Railway Karmachari Union (Regd.)

सम्बद्ध-भारतीय रेलवे मजदूर संघ एवं भारतीय मजदूर संघ

B. D. Tewari

Zonal Working President

96/96 Roshan Bajaj Lane

Ganeshganj, Lucknow

No. URKU/Lko/Central/89/LCM

दिनांक 4th June 1987.

The Chief Medical Officer,
N. Railway,
Baroda House,
New Delhi.

Subject :- Examination of Shri R. Fray Driver
Grade A (Spl.) Locoshed Lucknow by
a Medical Board.

Enclosed herewith, please find a representation of the workman aforementioned together with an extract of PNM decision No. 85/H/5/10 dated 19.2.87 for your kind perusal and early decision. The workman is due superannuation on 30.6.1987 whereas question of his complete Medical unfitness has not yet been decided by your kind office and the ACO - NR. Lucknow, with the result that the workman has been facing trouble due to non-payment of leave salary and his settlement dues have also been subject a ~~case~~ of introgation.

Delay in such matter to this extent in face of enclosed PNM decision is deplorable. It is, therefore earnestly requested that the matter may kindly be given your first priority attention and examination of the workman by a Medical Board may kindly be expedited.

Yours faithfully,

Sd/-
(B. D. Tewari)
Zonal Working President.

Copy to :-

The ACO,
N.R. Lucknow - for information and necessary
action please.

Regt AD on 4/6/87

True copy

AD

AD

AD

(B. D. Tewari)

B. D. Tewari

Zonal Working President

Uttar Railway Karmachari Union
LUCKNOW.

743

In the Hon'ble Central Administrative Tribunal,
Circuit Bench, Lucknow.

O.A.No.339 of 1989.(L)

Misc- Application no - 287 of 1991 (L, L)

Ronald Frey and anotherApplicant

Versus

Union of India and Others.....Opposite
Parties.

In the above noted case, it is
respectfully submitted as under;

That this application was filed
in 1989 and more than ten(10) adjournments
have been taken so far for filing counter
but the same has not yet been filed.

It is respectfully prayed that the
Hon'ble Court may be pleased to order for
ex-parte hearing and order for final
disposal early.

The case is fixed on 16-5-
orders.


(C.A. Basir)

Counsel for applicants.

Dated: 6-5-

Filed today
OR
10/5/91