

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 992/97

13.8.98  
Date of Decision:

Shri Briji Kishore Nigam Applicant.

Shri S.P.Kulkarni Advocate for Applicant.

Versus

Union of India and others. Respondent(s)

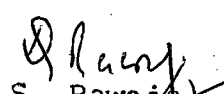
Shri R.K. Shetty. Advocate for Respondent(s)

CORAM:

Hon'ble Shri. D.S. Baweja, Member(A)

Hon'ble Shri.

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal? 7

  
(D.S. Baweja)  
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH 'GULESTAN' BUILDING NO:6  
PRESTOT ROAD, BOMBAY: 1

Original Application No. 992/97

*Presented* the 13th day of August 1998.

CORAM: Hon'ble Shri D.S. Baweja, Member(A)

Brij Kishore Nigam  
Residing at Type I,  
10/8, Ordnance  
Estate, O.E. Ambernath

... Applicant.

By Advocate Shri S.P. Kulkarni.

*V/s.*

Union of India through  
Chairman  
Ordnance Factory Board  
Indian Ordnance Factories,  
Department of Defence  
Production,  
Ministry of Defence  
10-A Auckland Road,  
Calcutta.

General Manager,  
Ordnance Factory,  
Ordnance Estate  
O.E. P.O. Ambernath

Estate Officer  
Ordnance Factory  
Ordnance Estate,  
P.O. Ambernath.

... Respondents.

By Advocate Shri R.K. Shetty.

ORDER

{ Per Shri D.S. Baweja, Member (A) }

The applicant while working as Rigger (skilled) Ordnance Factory, Ambernath became seriously sick in 1996. He was referred to Ashwini Hospital and the Medical Expert diagnosed the disease as Ischamic Heart Disease with the recommendations to declare the applicant invalid for service as per his report dated 27.5.96. Thereafter the Medical Board examined <sup>the applicant</sup> and confirmed the recommendation of the Medical Expert, declaring that the applicant is permanently incapacitated for further service of

any kind in the Defence Civilian Establishment. The findings of the Medical Board were communicated to the applicant on 7.8.96 giving an opportunity for making an appeal, if any, against the findings, within one month. It has also stipulated in this letter that in case no appeal is made then the name of the applicant will be struck off from the strength of the Factory and no appeal will be allowed after expiry of the period of one month. The applicant immediately gave his acceptance of the findings. The applicant was retired from service with effect from 6.9.96 on medical ground. In terms of <sup>the</sup> letter dated 14.12.96. The applicant made a request for compassionate appointment for his son on 12.12.96. This request was rejected vide letter dated 22.1.97 stating that since the applicant was over 57 years of age on the date of retirement, the compassionate appointment is not admissible as per the extant rules. The applicant there after represented to antedate his date of retirement from 6.9.96 to 25.6.96 i.e. on the date the medical expert had recommended his invalidation on medical grounds. However this request was rejected as per letter dated 4.9.97. Feeling aggrieved, the applicant has filed this O.A. on 29.10.97 praying for the following reliefs:-

- (A) to quash the orders dated 4.9.97, 22.1.97 and 14.12.96 at Annexure A-1, A-2 and A-3 of the O.A.
- (b) to direct the respondents to consider the ante-dating of medically boarded out date to 1st week of July 1996 instead of 6.9.96 so as to make the applicant eligible to seek compassionate appointment for his son.
- (c) to direct for re-allotment of the quarter in the name of his son,

(d) The respondents be directed not to evict the applicant from the quarter till the final outcome of the O.A.

2. The applicant <sup>has</sup> advanced the following grounds in support of <sup>his claim (a)</sup> the entire delay in retiring the applicant on medical ground after the applicant was recommended for invalidation by the Medical expert on 27.5.96, is on account of respondents. Therefore the action of the respondents in taking away his right of considering his son for compassionate appointment on the ground of having retired after the age of 57 years is arbitrary and not fair. <sup>(b)</sup> No option was given to the applicant in the order dated 7.8.96 for choosing the date of retirement on being medically incapacitated as per the guidelines issued by the Department vide letter dated 23.7.97.

3. The respondents have filed the written reply and have strongly opposed the application. While admitting the main facts with regard to the recommendations of the Medical expert, constitution of Medical Board and final retirement etc, the respondents have stated that they have <sup>not acted with</sup> malafide intention. It is further stated that the content <sup>on</sup> of the applicant that he should have been conveyed the decision of the Medical Board in the first week of July 1996 is not tenable. Normally administrative procedure are required to be followed after the receipt of the report of the Medical Board before notice was served on the applicant. It is further submitted that the applicant had accepted the findings of the Medical Board and did not make any request for antidating his date of retirement and the present

O.A. is based on an after thought. The respondents also submit that the <sup>issue of</sup> transfer of the quarter in the name of the son of the applicant <sup>and non eviction from the</sup> quarter are not relevant to the present OA.

4. The applicant has filed rejoinder. The applicant while controverting the submissions of the respondents has reiterated his grounds made in the original application.

5. Heard Shri S.P. Kulkarni and Shri R.K. Shetty , counsel for the applicant and respondents respectively.

6. The main facts involved in the controversy are not in dispute. The applicant was recommended for invalidation on medical grounds by the Medical Expert as per the letter dated 27.5.96. The Medical Board was held on 28.6.96. The findings of the Medical Board were conveyed on 7.8.96, giving one month period for making an appeal <sup>was</sup> if any. The retirement on medical ground <sup>made</sup> affective from 6.9.96, after expiry of one month. The applicant has filed this O.A. for antdating his date of retirement as the respondents rejected his request for considering the case for compassionate appointment of his son on the ground that the applicant was over 57 years of age on the date of retirement and therefore compassionate appointment is not admissible as per rules. Therefore the short question involved for deliberation is whether the calim of the applicant for antdating the date of retirement to first week of July 1996 instead of 6.9.96 is sustainable or not.

7. The applicant has placed reliance on the instructions laid down with regard to invalidation on medical grounds as per letter dated 23.7.95<sup>7</sup> at Annexure A6 on two counts. Firstly, the findings of the Medical Board should have been conveyed by the General Manager immediately. Secondly, the notice dated 6.8.96 does not carry any stipulation with regard to the option for choosing the date of retirement as admissible as per item (d) of the letter under reference.

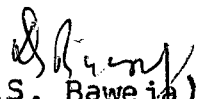
8. The respondents on the other hand have contested that the claim of the applicant stating that these instructions are not applicable to the case of the applicant and he <sup>is</sup> governed by <sup>the</sup> earlier instructions dated 25.5.89 (Annexure R2). I have carefully considered these two letters and noted the instructions as per letter dated 23.7.97 have been issued after the retirement of the applicant in modification of the earlier instructions in order to stream line the procedure. The letter does not indicate that these instructions will apply retrospectively. Therefore the applicant cannot get the benefit of the instructions as per the letter dated 23.7.97 and his case has to be governed by the letter dated 25.5.89. In this view of the matter, these two grounds lack substance and force.

9. On the facts, it is noticed that the applicant has completed 57 years of age. The Medical Board <sup>was</sup> held on 28.6.1996. The applicant has contended that the notice should have been issued in the first week of July 1996 i.e. within a week of the meeting of the Medical Board on 28.6.1996. Even if this contention of the applicant is accepted, as per the instructions dated 25.5.89 one month notice was required to be given to the applicant subject to the approval of the findings of the Medical Board by Director Health Services. With notice period of

one month, the applicant would have crossed the age of 57 years when the notice period of one month would have been over. Therefore any delay in conveying the findings of the Medical Board held on 28.6.96 <sup>(consequence)</sup> is no material to the claim of the applicant. The applicant has also alleged the delay in constitution of the Medical board after the recommendations of the Medical Expert dated 27.5.96. It is noted that only the period of one month <sup>has been taken</sup> for constitution of the Medical Board and holding of the Medical Board. This delay is not considered abnormal and I agree with the contention of the respondents that the time taken is as per normal administrative requirements <sup>where</sup> dealing with the cases of large establishment of the Ordnance Factory. The applicant has not alleged that the delay had been caused by the respondents in constitution and ~~of~~ holding of the Medical Board on account of malafide intention. The applicant has <sup>also</sup> not made any averments that he has made representation for early consideration of his case of retirement am therefore inclined to on Medical grounds. I agree with the submission of the respondents that the issue of antedating of the date of retirement is prayed by the applicant only after the request for compassionate appointment was rejected by the respondents. If the applicant was concerned with <sup>regard to</sup> this aspect, he could have represented to the concerned authority for expediting the matter with regard to constitution of the Medical Board and <sup>report of the</sup> for taking the final decision of the Medical Board. In any case there is no abnormal delay in dealing with the matter by the administration and in fact the process has

been completed within a short period of about three months. In view of these facts I do not find that case has been <sup>out</sup> made by the applicant meriting antedating his date of retirement on <sup>to first week of July</sup> medical grounds. As regards to re-allotment of quarter in the name of his son and not evicting the applicant from the quarter, I find that there are no averments in support of these contentions. Further these issues are irrelevant to the main controversy and as such these reliefs do not merit consideration in the present OA.

10. In the result of the above, the O.A. deserves to be dismissed and is accordingly dismissed.  
No order as to costs.

  
(D.S. Baweja)  
Member (A)

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