

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.1501/93

Date of Order: 12.12.96

BETWEEN:

M.Prabhakar Rao

.. Applicant.

AND

1. General Manager,
S.C.Rly., Rail Nilayam,
Secunderabad.
2. Chief Medical Officer,
S.C.Rly., Secunderabad.
3. Divisional Railway Manager,
(Personnel), S.C.Rly.,
Hubli Division, Hubli.
4. Station Suptd., (Gaz),
S.C.Rly., Hubli Division,
Hubli.

.. Respondents.

Counsel for the Applicant

.. Mr.V.Jogayya Sarma

Counsel for the Respondents.

.. Mr.K.Siva Reddy

CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (JUDL.)

JUDGEMENT

{ Oral order as per Hon'ble Shri R.kangarajan, Member (Admn.) }

None for the applicant. Mr.K.Siva Reddy, learned standing counsel for the respondents.

2. The applicant in this OA submits that he was appointed as Banglow Peon to Senior Divisional Personnel Officer, S.C.Rly., Hubli. He was later posted as Substitute L.R.Porter vide memo dt. 5.5.83 under the Station Superintendent, S.C.Railway, Hubli. Then his services were utilised in the parcel office Hubli instead of utilising him in the operating department

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where the applicant was originally posted as per the submission of the applicant. It is the further submission of the applicant that he was appointed as a regular employee by letter dated 13/17-7-89. While he was working as a regular employee he was sanctioned leave from 21.7.89 to 26.7.89 and he proceeded during the said period to attend to ^{his} wife who was reported to be ill. Because of the prolonged illness of his wife he extended his leave by sending telegram to Supervisor, Hubli under whom he was working. No reply was reported to have been received to his telegrams. He reported for duty on 16.9.89. He submits that instead of extending his leave for the period he was away from duty he was treated as absent and he was sent for medical check up by railway doctor when he reported for duty. In obedience to that order the applicant attended ~~to~~ the medical checkup at the railway hospital, Hubli, who gave him M 15 B duty certificate endorsing that the applicant is fit for C-1 medical category if he had put in 15 years of service. With that certificate he reported to the Chief Parcel Supervisor on 18.9.89. The Chief Parcel Supervisor is reported to have directed him to the Station Superintendent Hubli for getting necessary orders. The Station Superintendent, Hubli further directed him to approach the Railway Hospital, Hubli for further medical examination. He obeyed that orders also. The medical authorities at Hubli thereafter directed him to approach the medical superintendent railway hospital, Lalaguda, Secunderabad for further examination. That dictates of the medical authorities were also obeyed by him submits the applicant. He further states that he is not aware of the reasons for shuttling him between the medical authorities by the department. He submits that he was given to understand that he was made unfit for all categories on the ground that he was having defective eye vision. He submitted a representation to Chief Medical Officer, Secunderabad for reconsideration by a higher authority. The Chief Medical Officer also examined him on 25.6.90. The applicant in his

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application submits that he had perfect vision as certified by eminent ophthalmologist. Inspite of ^{that} ~~which~~ the railways had made him unfit for all categories due to vindictive attitude. His representation to the various authorities failed to elicit any relief. He was informed by the ~~impugned~~ ^{impugned} letter dt. 29.12.92 (p-1) that he resorted to malingering at the time of conducting medical examination by medical authority and hence he was declared medically unfit for all categories.

3. This OA is filed praying for a ~~direction to set~~ ^{setting} aside the impugned order dt. 29.12.92 and for a further declaration that he is entitled to be continued in service in A-2 category with all emoluments and benefits and to reinstate him in service.

4. A reply has been filed in this connection. It has been admitted in the reply that the applicant was engaged as a Banglow Peon to Senior Divisional Personnel Officer, Hubli and was certified fit in A-2 medical category and hence he was posted as Substitute Porter under Station Superintendent Hubli by order dt. 5.5.83. It is also admitted that he was appointed as a temporary porter by office order dt. 13-7/7/89. But the respondents denied of having received any application for ~~extension of leave from 21.7.89 for his unauthorized absence~~ from duty and they are also unaware of the illness of the applicant's wife. It is further stated in the reply that the applicant was posted against the vacancy of a Gateman under the Station Superintendent (Gazetted) as he was found fit in A-2 medical category on being empanelled as a temporary ~~porter~~. But it is stated that the applicant wanted to be posted as luggage porter and he made a representation to that effect on 10.8.99. As the administration did not fulfil his request it is stated that he voluntarily resorted to malingering and was unauthorisedly absented himself without intimating the

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concerned authority. As he was absent unauthorisedly for a long period he was subjected to periodical medical examination for his fitness in category A-2. R-4 issued a letter to him to present himself to the divisional medical authorities for checking his vision and colour. The divisional medical authorities found him fit for the category A-2. But observed that the applicant was intentionally and deliberately identifying the things wrongly, maliciously and misguiding the doctors with ulterior intention to get himself medically unfit in order to change his category. As he was malingering he was sent for medical examination to the medical superintendent Ophthalmology, Lalaguda. The said medical superintendent also confirmed that the reports of the medical superintendent, Hubli is in order and that the applicant is wilfully and purposely suppressing his vision and

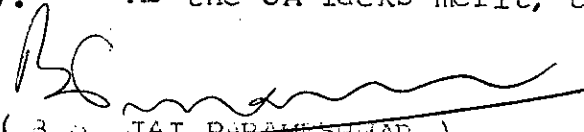
✓ ^{mentioned in page 3 of report. the railway authorities having been satisfied} been ~~satisfied~~ that the applicant is malingering to get his request fulfilled for being posted as Parcel Porter, ^{hence} he was declared medically unfit under all categories of railway servant as per I.R.E.M. para 512(2)(ii) and also Railway Board's letter No.87/H/5/8, dt. 4.5.87. The respondents further submit that they also got his vision certified by Dr.P.Siva Reddy, the noted Ophthalmologist of this area, in regard to his vision ^{Handovered} who also confirmed that he had perfect vision.

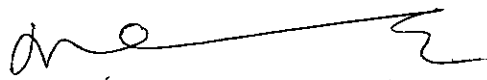
5. From the above version of both sides the applicant though fit in category A-2 malingered to get himself unfit in medical category A-2 when he was tested by the medical authorities. Because ^{he} ~~he~~ was malingering the railways issued the impugned letter dt. 29.6.92 declaring him unfit for all categories of service in railways.

6. If the applicant was genuine in his request to make him fit for A-2 category he should have proved himself to be so in the medical test conducted by the railway authority. There is no advantage for the railway authorities to declare him unfit for

the medical categories or doubt his integrity in regard to reading of the required letters/alphabets and the test prescribed for colour vision. He being a low paid employee we do not see any malafide intention on the part of the medical authority to declare him unfit for all categories ~~wantonly~~ ^{wantonly}. We also find that he was sent to various medical authorities both at Hubli station and Lalaguda hospital for examining his fitness in category A-2. If he has satisfactorily replied the medical test we do not find that all the medical authorities ~~will conspire~~ ^{conspired} to declare him medically unfit. He has not attributed any malafides to any of the medical authorities except to state that they are vindictive. No proof to that effect has been produced by him to show that the medical authorities are vindictive towards him. In view of the above we are convinced that the applicant malingered to reduce himself to a lower medical category thereby acquiring some advantage to get himself posted in a post which he had intention to join. Had he not malingered he would have been found fit in medical A-2 category and would have been posted as a Gateman under the Station Supdt. Hubli which post ^{was} ~~is~~ not to his liking. Hence it has to be held that he did malingered for reduction to fitness in the medical test to the category which enabled him to be posted as Parcel Porter. The applicant cannot play a foul game with the medical authorities for lowering his medical standards. He has not established his case that he acted in accordance with the rules while attending the medical test. Hence we do not find any irregularity in issuing the impugned order declaring him medically unfit for all categories. In view of that we do not find any substance in the OA.

7. AS the OA lacks merit, the OA is dismissed and no costs.

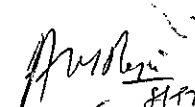

(B.S. JAI PARAMESHWAR)
Member (Judl.)


(R. RANGARAJAN)
Member (Admn.)


Dated 12th December, 1996

(Dictated in open court)

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D.R. (5)

7.6.77

O.A.NO.1501/93

Copy to:

1. The General Manager, South Central Railway,
Railnilayam, Secunderabad.
2. Chief Medical Officer, South Central Railway,
Secunderabad.
3. Divisional Railway Manager, (Personnel),
South Central Railway, Hubli Division,
Hubli
4. Station Superintendent, (Gaz),
South Central Railway, Hubli Division,
Hubli.
5. One copy to Mr. V. Jegayya Sarma, Advocate, CAT, Hyderabad.
6. One copy to Mr. K. Siva Reddy, Advocate, CAT, Hyderabad.
7. One copy to Library, CAT, Hyderabad.
8. One duplicate copy.

YLKR

8/24/97

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR:

DATED:

12/12/96

ORDER/JUDGEMENT

R.A./C.P/M.A.No.

D.A.NO.

in

1501/93

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLIED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT.

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