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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1431 of 1995

DATE OF ORDER: - - - - - August, - 1996

BETWEEN:

M.APPALA SWAMY

.. APPLICANT

AND

1. The General Manager,
South Eastern Railway,
Garden Reach, Calcutta 700043,
2. The Divisional Railway Manager,
S.E.Railway, Visakhapatnam,
3. The Divisional Personnel Officer,
S.E.Railway, Visakhapatnam,
4. The Chief Medical officer,
S.E.Railway, Central Rly. Hospital,
Garden Reach, Calcutta,
5. The Senior Medical Officer,
Divisional Medical Headquarters Hospital,
S.E.Railway, Visakhapatnam,
6. The Railway Medical officer,
S.E.Railway, Vizianagaram.

.. Respondents.

COUNSEL FOR THE APPLICANT: SHRI MVSD Prasada Rao

COUNSEL FOR THE RESPONDENTS: SHRI N.R.DEVARAJ, Sr.CGSC

CORAM:

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

JUDGEMENT

(PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Shri MVSD Prasada Rao, learned counsel for the applicant and Shri N.R.Devaraj, learned senior standing counsel for the respondents.

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2. The sequence of events that took place in the case of the applicant herein from the date he was sent for medical examination i.e., on 26.4.88 till he retired from service on 30.12.91, is narrated below as given in the reply statement, as this sequence has a bearing for the consideration of this case.

3. The applicant while working as Gangman under PWI, Bobbili was referred for special medical examination on 26.4.88 and he presented himself for the medical examination before R-5 on 6.5.88. He was further directed to DMO (eye) for checking. On 7.5.88, the DMO (eye) examined him and found that the applicant is having traumatic cataract. He was advised operation. Subsequently he appeared before the DMO (eye) on 17.11.88 and he was advised to come on the next day. The applicant thereafter appeared before DMO (eye), Waltair on 23.11.88 on which date he was once again advised to go for eye operation. Thereafter it is stated that the applicant did not report himself before R-6 till 24.4.89. On 25.4.89 he was again examined by the DMO (eye), Waltair on that day and the applicant expressed his unwillingness for eye operation as per the remarks of DMO (eye), Waltair enclosed as Annexure R-2. Thus, from the above narration, it appears that the applicant took about a year from 7.5.88 to 25.4.89 for getting his eye examined thoroughly.

3. Though the respondents attribute delay as above on the part of the applicant, the period was treated as sick leave and he was taken on sick list retrospectively with effect from 7.5.88 in view of the circumstances then

prevailing. On 7.6.89 he was once again examined by the DMO (eye) and was asked to report in July 1989 for conducting eye operation. During the period from 1.8.89 to 19.10.89 it is stated that he could not be operated as he was suffering from high blood sugar and he was advised to attend for operation after controlling his sugar. In view of the GMs inspection note (possibly he must have represented to GM during his inspection tour), R-4 summoned him to Calcutta for investigation treatment by his letter dated 14.2.90. He was further asked to attend the office of R-5 on 22.2.90 when he was directed to report to the Central Hospital at Calcutta. The applicant was admitted in Central Hospital, Calcutta on 28.2.90 and his right eye was operated on 9.3.90 and was kept under observation upto 16.3.90. He was discharged on 16.3.90 and advised to report to DMO (eye), Waltair for further direction. He was admitted as indoor patient at Waltair Railway Hospital on 19.3.90 and he was treated in that hospital till 26.3.90. Later on he was discharged duly advising him to attend the hospital at Vizianagaram for further treatment. On 9.5.90, the DMO (eye), Waltair had finally reviewed the case of the applicant and opined that the vision was not improved in right eye with optic atrophy. The Ophthalmologist also held a view that there is no use of operating his left eye also and he was discharged on 1.5.90 as per Annexure R-3. In view of the opinion of the DMO (eye), Waltair dated 1.5.90, R-4 referred his case to Medical Board for further examination on 2.5.90. The Medical Board was constituted two times and the applicant was examined and recommended for medical invalidation for further service in all categories by the report of the Medical Board dated 20.7.90. That report was forwarded to R-4 as he is the

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competent authority for accepting the recommendations of the Medical Board in view of Para 555(5) of the Indian Railway Medical Manual read with Chief Medical Officer, Calcutta's letter No.HME/107/7128 dated 1.10.83 (Annexure R4). R-4 perused the Medical Board's findings and in view of the Railway Board's letter NO.85/II/5/10, dated 27.6.90 (Annexure R-5) decided on 26.3.91 not to invalidate the applicant on medical grounds as the applicant had already attained the age of 57 years and diminution of loss of vision alone would not be sufficient for determination of medical invalidation. The applicant in view of the above decision of R-4 was granted leave as per para 529 of Indian Railway Establishment Code, Volume-I. R-6 was also informed of the above decision under whose jurisdiction the applicant was employed, to inform the applicant accordingly vide CMS/S.E.Rly/Waltair's letter No.WHC/1141/2519, dated 30.8.91. The employee retired on 30.12.91.

4. No rejoinder has been filed contradicting the above sequence of events. Even on the date when this OA was reserved for judgement i.e., on 14.8.96, the learned counsel for the applicant submitted that he will give some more documents in this case on 19.8.96. But no document was supplied as stated earlier even till today. The case was posted under the heading for being mentioned on date i.e., 26.8.96 to get some more clarification from the learned standing counsel. The applicant's counsel was also present. He made one or two points which are repetition of the previous arguments. Even today, no other documents were produced by the learned counsel for the applicant. Hence there is no doubt that the sequence of events as indicated earlier stands good and on that basis the case

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has to be decided.

5. The main contention of the applicant in this OA is that the Medical Board was not constituted in time though it was stated in the hospital discharge certificate at Page 11 of the OA that this is a Medical Board case. From 6.5.88 till he ~~was sent~~ no attempt was made to send him for the Medical Board examination. As he was sent for medical test on 6.5.88, he should be deemed to have been medically disqualified from that date and discharged from service from that date. The service certificate issued by R-3 enclosed at Page 9 of the OA should not have been issued, as he was neither allowed to retire on medical grounds nor permitted to join service from 6.5.88. As his case was kept undecided during that period from 6.5.88 to 31.12.91, that period should be treated as duty and he should be paid for that period or else he should be deemed to have been retired from service from 6.5.88 and his pension and pensionary benefits paid to him on the basis of the qualifying service upto that date. By this it would mean that he will be entitled for leave salary which he has earned earlier to 6.5.88 and also pension and pensionary benefits from 1.6.57 when he joined as Gangman upto 6.5.88 for the service rendered by him earlier to 6.5.88. It may be possible that the qualifying service upto 6.5.88 would have been 33 years. ~~xxxxxxxxxxxxxxmaxxxgxxxxxxxxxxxx~~ It is stated that though the applicant submitted a number of representations he did not get any satisfactory reply.

5. This OA is filed for release of pensionary benefits with effect from 28.4.88 (from 6.5.88 when he was sent for medical examination) by issuing medical





invalidation certificate from that date instead of retiring him on the Afternoon of 31.12.1991 and other consequential benefits. The second prayer in this OA is to absorb his son on compassionate ground on the ground of his medical invalidation.

6. The applicant was sent for medical examination on 6.5.88. It is not possible to declare an employee medically unfit right from the date he was sent for medical examination. He has to be medically examined by the appropriate medical authorities and after they satisfy only medical invalidation certificate can be issued. It is seen from the sequence of this case that the applicant for about an year i.e, from 7.5.88 to 25.4.89 did not present himself to medical authorities though he was instructed to attend the hospital. Hence the delay of about a year is directly attributable to the employee himself. Had he attended immediately after 7.5.88, it is possible that the sequence would have been different. But nothing can be said at this distant juncture. However this period was treated as sick leave by the respondent-authorities. He was examined once again on 7.6.89. During the period between 1.8.89 and 19.10.89, he could not be operated upon as he was suffering from high blood sugar and high blood pressure and the control of the blood sugar took some time. Hence during that period it may be possible that he may not be fit enough to be operated. He was directed to present himself before R-4 by the letter dated 14.2.90. He was admitted in the Central Hospital, Calcutta on 28.2.90 and his right eye was operated on 9.3.90. From April 1989 to March 1990 it appears that he was under the observation. He was discharged on 16.3.90 and treated as an indoor patient at



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Waltair Hospital from 19.3.90 upto 26.3.90 when he was finally discharged. From the above it will be seen that the medical authorities after deciding to operate his eye took time to perform actual operation due to his health condition and finally after operation he was discharged on 26.3.90. Thus the period from April 1989 to March 1990, the applicant was under medical observation, underwent tests and recouped himself. Hence during this period also he could not have been sent for examination by the Medical Board as it was possible that he could be certified fit to put back in his job if he is found fit during this period. The C.M.S., Waltair on the opinion of DMO (eye), Waltair referred his case to Medical Board for further examination to see whether he can be made medically fit for resuming his duties. The Medical Board after examining him, recommended for medical invalidation for further service in all the categories by the report dated 20.7.90 which was forwarded to the Chief Medical Officer, Calcutta for his approval in terms of the instructions and the Manual para enclosed as Annexure R-4. R-4 did not medically invalidate him as he was left with less than one year of service and medical invalidation on the last one year of service is restricted in terms of the letter No.85/II/5/10 dated 27.6.90 (Annexure R-5) and this was informed to R-6 by the letter No.WHC/1141/2519 dated 30.8.91.

7. When the medical report was submitted by the Medical Board on 20.7.90, it is not understood why it took so much time to inform the applicant on 30.8.91. It appears that a decision was taken by R-4 not to invalidate him on 26.3.91. But due to some inexplicable reasons, the applicant was informed about the decision of R-4 only on 30.8.91. Conveying decision to the applicant from 20.7.90

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to 30.8.91 appears to be too long. There is no reason indicated for this long delay in the reply to decide the issue after submission of the Medical Board's report on 20.7.90. Hence this long delay cannot be accepted and should not stand in the way of the applicant for getting relief in this OA. If the CMO had taken a decision on the report of the Medical Board within a reasonable time, say within 3 months from 20.7.90, the date on which the Medical Board's report was submitted and if R-4 had decided to medically invalidate him for all categories, then a medical invalidation certificate can be issued earlier to the last one year of his service. In that case, the Railway Board's letter at Annexure R-5 will not stand in the way of the applicant for medically invalidating him for all categories. In that event, the applicant will be eligible for consideration of his ward for the purpose of compassionate ground appointment as medical invalidation had taken place earlier to the last one year of his service.

8. It appears that R-4 has decided not to medically invalidate him for all categories on two grounds viz, (i) the applicant has attained the age of 57 years; and (ii) the diminution of loss of vision alone would not be sufficient for determination of medical invalidation. If the diminution of loss of vision would not be sufficient for medical invalidation it appears that he could have been absorbed in an alternative category in accordance with the rules if R-4 had decided to decategorise him for certain duties and medically found him fit for other categories. In that event, the Railways could have provided him an alternative job which would have enabled him to earn his

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salary for the period he was in service. Hence it has to be held that the applicant has a case for getting some monetary benefits by way of pay and allowances after a lapse of three months from 20.7.90, in other words from 1.11.90 onwards. As he has been informed of the medical invalidation on 30.8.91, he cannot be kept in service after that date. In view of the above, there is a possibility of the applicant getting some alternative job during the period from 1.11.90 to 30.8.91. Hence the applicant is to be given monetary relief for the period from 1.11.90 to 30.8.91 by way of pay and allowance which he was drawing on 26.4.88 when he was referred to the special medical examination. The learned standing counsel argued today i.e, 26.8.96 that such a view cannot be taken as he was medically invalidated for all categories and he would not have been medically fit for any category even if the decision has been taken immediately after the submission of the medical report. As the medical report is the opinion of an expert body, R-4 could not have given any other relief on the basis of the medical report. If R-4 is the approving authority, then there is nothing wrong to take a view on the basis of the medical report even if it is contrary to the decision of the Medical Board. He could have sent the applicant for reexamination before the Medical Board if he does not agree with the report of the Medical Board. But in view of the second ground as indicated above in this para, as above, it may be possible that R-4 could have recommended the case of the applicant for appointment in a post which is lower in medical category compared to Gangman such as Chowkidar etc. This possibility cannot be ruled out. By taking a late decision by R-4 and conveying the same to him even much later than

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the date of taking that decision, the applicant was put to disadvantage to get some alternative job on the basis of the medical decategorisation.

9. In the OA it is not indicated that he had applied for compassionate ground appointment to his ward. Hence he should now make a representation for compassionate ground appointment to R-2 and if such a representation is received, the same should be considered by R-2 in accordance with the rules.

10. In the result, the following directions are given:-

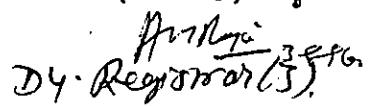
(i) The applicant should be paid the pay and allowances for the period from 1.11.90 to 30.8.91 on the basis of his last pay drawn on 26.4.88. The arrears as above should be paid within a period of three months from the date of receipt of a copy of this order;

(ii) The applicant if so advised, may submit a representation to R-2 for consideration of one of his wards for appointment on compassionate grounds. If such a representation is received, the same should be disposed of by R-2 in accordance with the rules within three months from the date of receipt of that representation notwithstanding the fact that he was medically invalidated for all categories in the last year of his service.

11. The O.A. is ordered accordingly. No costs.


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 28 August, 1996


D.Y. Registrar (S)

OA.1431/95.

Copy to:-

1. The General Manager, South Eastern Railway, Garden Reach, Calcutta.
2. The Divisional Railwa Manager, S.E.Railway, Visakhapatnam.
3. The Divisional Personnel Officer, S.E.Railway, Visakhapatnam.
4. The Chief Medical Officer, S.E.Railway, Central Rly. Hospital, Garden Reach, Calcutta.
5. The Senior Medical Officer, Divisional Medical Headquarters Hospital, S.E.Rly, Visakhapatnam.
6. ~~maxam~~ The Railway Medical Officer, S.E.Rly, Vizianagaram.
7. One copy to Sri. M.V.S.D.Prasad Rao, advocate, CAT, Hyd.
8. One copy to Sri. N.R.Devaraj, SC for Rlys, CAT, Hyd.
9. One copy to Library, CAT, Hyd.
10. One spare copy.

Rsm/-

11/9/96

09/1431/95

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

~~Hon'ble Justice S. Venkateswaran~~
THE HON'BLE SHRI R. RANGARAJAN: M(A)

DATED: 29/8/96

ORDER/JUDGEMENT

D.A. NO. /R.A. /C.P. NO.

D.A. NO.

1431/95

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS.

YLKR

II COURT

No Spare Copy

Central Administrative Tribunal

HYDERABAD BENCH

- 9 SEP 1996 N.Y.

HYDERABAD BENCH