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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL APPLICATION NO: 1483 of 1995

DATE OF ORDER: 14th November, 1996

BETWEEN:

G.LAWRENCE

.. Applicant

AND

1. The Garrison Engineer, North,  
35, Allen by line, Secunderabad 500587,

2. The Chief Engineer, Southern Command,  
Pune-1.

.. Respondents

COUNSEL FOR THE APPLICANT: SHRI K.K.CHAKRAVARTHY

COUNSEL FOR THE RESPONDENTS: SRI V.RAJESWARA RAO, ADDL.CGSC

CORAM:

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

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

JUDGMENT

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

Heard Shri Joshi Prasad for Shri K.K.Chakravarthy, learned counsel for the applicant and Shri V.Rajeswara Rao, learned standing counsel for the respondents.

2. The applicant in this OA was appointed as Military Truck Driver in the year 1978. Later it is stated that he worked in the Gujarat Region and came back to Andhra Circle some time in 1985. Thereafter he was working in that

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capacity in Andhra Circle.

3. The applicant was sent for medical examination for ascertaining his fitness to the Regional Medical Board, Gandhi Hospital, Secunderabad on 9.8.95 by R-1 vide letter No.PF-420/02/EIR dated 9.8.95 (Annexure A-2). The applicant was medically unfitted and permanently incapacitated for further service of any kind as seen from the invalidation certificate issued by the Regional Medical Board, Gandhi Hospital, Secunderabad dated 31.10.95. On the basis of the medical invalidation certificate, the applicant was discharged from service and admitted to pension on medical invalidation by the impugned order No.PF/420/11/EIR dated 9.11.95 (annexure A-4).

4. This OA is filed for setting aside the order No.PF/420/11/EIR dated 9.11.95 by holding it as illegal, arbitrary and contrary to the law and consequently directing the respondents to reinstate the applicant to duty and to treat the period from 9.11.95 till the date of his reinstatement into service as duty with all wages and other benefits. The main contention of the applicant in this OA is that he was medically invalidated by the medical authorities at the instance of R-1. R-1 is biased against him. This the learned counsel for the applicant submits from the letter addressed to the Superintendent, Gandhi Hospital, Secunderabad on 9.8.95. Instead of asking the Superintendent, Gandhi Hoospital, Secunderabad to examine the applicant for continuing in the post and also certify

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him about his fitness to continue in service, R-1 has commented in his letter to the effect that "the individual (applicant) is unable to perform his duty as MT Driver Grade-I due to physical disability". This remark would mean making up the mind of the Superintendent, Gandhi Hospital to issue medical certificate incapacitating him for further service in his organisation. Thus the applicant submits that the medical invalidation certificate issued by the Medical Board is at the instance of R-1 who is ill disposed towards him and but for him he would have continued in service. It is also the contention of the applicant that his state of health is satisfactory and he is regular in attendance. The above can be seen from the Confidential Report of the applicant for the year 1992-93. Thus within a short period of two years thereafter the ~~decat~~ categorisation in his opinion is only at the instance of R-1 and hence his prayer is to be allowed.

5. A reply has been filed in this connection. The learned counsel for the respondents submits that even in the certificate issued on 30.4.92 (Annexure R-7 page 12) by the Regional Medical Board, Gandhi Hospital, Secunderabad it was certified that the applicant is found suffering from Hemiparesis (Left) and he will not be in a position to drive vehicle. It was further recommended by the said Board in the year 1992 that the applicant should be given light duties other than driving. In view of the above recommendations of the Medical Board, the applicant was put

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to work as Messenger and other similar duties which are not strenuous and are light in nature though he was paid salary and allowances as that of Military Truck Driver which is in Group 'C' post. This itself is a concession given to the applicant and hence it cannot be stated that R-1 is biased towards the applicant. Further it is also stated by the learned counsel for the respondents that even in the confidential reports of 1992 his case was not recommended for fitness for confirmation in the grade of Military Truck Driver. Thus the applicant was allowed to continue on sympathetic and humanitarian grounds for a long time getting salary of MT Driver though he ~~is~~ <sup>was</sup> not actually performing those duties. The learned counsel for the respondents further submitted that the invalidation certificate is categorical in that he is incapacitated for further service of any kind. The applicant has not ~~.....~~ <sup>.....</sup> medical certificate and the discharge of the applicant from service is on the basis of that medical certificate. Hence challenging the discharge memo impugned in this OA cannot be upheld when the primary document connected with his discharge is not challenged.

6. We have heard the learned counsel on both sides. The applicant is a sick person as admitted by himself. It is also admitted by him that he is doing light duties right from 1986 onwards though the respondents submit that he is doing such duties only from 1992 onwards even though he is getting the salary and allowances pertaining to Group 'C' employee. R-1 stating merely in his letter dated 9.8.95

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while refering his case to the medical authorites to check his physical capability to work as MT Driver Grade-I cannot be taken as recommendation from R-1 to decategorise him for all services. It is his observation. This observation cannot be faulted as the applicant is evidently not doing the duties of MT Driver. He is doing only light duties and his condition at the time of refering his case to the medical authorities was commented upon without any motive behind it. There is no reason to come to the conclusion that this observation has influenced the Medical Board. The Medical Board consisted of three eminent Doctors of the Gandhi Medical Hospital. Mere observation cannot influence the qualified Doctors to come to such a conclusion. The certificate issued by the medical authorities dated 30.9.95 clearly states that the Medical Board considered the applicant to be completely and permanently incapacitated for further service of any kind due to the disease mentioned in that certificate. Mere fact that a remark has been made in the confidential report of 1992-93 that his health <sup>was</sup> ~~is~~ satisfactory does not mean that he <sup>could</sup> ~~will~~ continue in that state of health even beyond that date also. The medical certificate was issued in September 1995 about two years later. As the applicant even in 1992 was suffering from the disease mentioned in the certificate, it is possible that his condition would have deteriorated resulting in full incapacitating for any service as observed in the medical invalidation certificate. There is no clear cut evidence or material available on record to show that R-1 had influenced Doctors to issue invalidation

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certificate. We are satisfied that the invalidation certificate was issued considering his health status after a proper medical examination. Hence we see no reason to set-aside the impugned order dated 9.11.95 discharging him from service. Further, the order dated 27.12.95 medically invalidating him from service with effect from 30.9.95 and placing him on pension list from 1.10.95 as per Annexure A6 letter hence cannot also be faulted.

7. While admitting this application, an interim order was passed on 5.1.96 in M.A.No.22/96 in this OA. By this interim order, the applicant was allowed to continue in the quarters until further orders. The market rent for the quarters as referred to had to be deducted from the pension payable. The question as to whether ultimately the market rent has to be collected from the applicant or not will be considered at the time of final disposal of this OA. Now that we have come to the conclusion that the final order issued by R-1 stands good, occupation of the quarter has to be regularised in accordance with the rules in such cases. The recovery of rent on that basis has to be done. There is no specific order required in this connection as the discharge order has been upheld by this Bench.

8. In the result, the OA is dismissed as having no merits. The recovery of rent as indicated in the order of this Tribunal dated 5.1.96 should be regulated in accordance with the rules in such cases. No order as to costs.

(B.S.JAI PARAMESHWAR)  
MEMBER (JUDICIAL)

(R.RANGARAJAN)  
MEMBER (ADMN.)

DATED: 14th November, 1996  
Dictated in Open Court

vsn

D.R.(S)

O.A.NO.1483/95

Copy to:

1. The Garrison Engineer, North,  
35, Allen by line, Secunderabad. 500 587
2. The Chief Engineer, Southern Command,  
Pune - 1.
3. One copy to Mr.K.K.Chakravarthy, Advocate,  
CAT, Hyderabad.
4. One copy to Mr.V.Rajeswar Rao,  
Addl.CGSC, CAT, Hyderabad.
5. One copy to Library,CAT, Hyderabad.
6. One duplicate copy.

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9/12/96

Typed By  
Compared by

Checked By  
Approved by

THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH HYDERABAD

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

The hon'ble shri B.S. Jai Parameshwar: M(T)

DATED: 14/11/96

ORDER/JUDGEMENT  
R.A/C.P./M.A.NO.

in  
O.A.NO. 1483/95

ADMITTED AND INTERIM DIRECTIONS ISSUED  
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS.

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II COURT

