

12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No. 340/96

Date of Order : 19.8.98

BETWEEN :

R.Appa Rao

.. Applicant.

AND

1. The Divisional Rly. Manager,
S.C.Railway, Vijayawada.

2. The Divisional Mechanical Engineer,
(Loco), S.C.Rly., Vijayawada.

3. The Medical Superintendent,
S.C.Rly., Vijayawada.

.. Respondents.

Counsel for the Applicant

.. Mr.G.V.Subba Rao

Counsel for the Respondents

.. Mr.V.Bhimanna

CORAM:

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

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

O R D E R

X As per Hon'ble Shri R.Rangarajan, Member (Admn.) X

Mr.G.V.Subba Rao, learned counsel for the applicant
and Mr.V.Bhimanna, learned standing counsel for the respondents.

2. The applicant in this OA who met with an accident while working as Senior Gangman in the scale of Rs.800-1150 was decategorised from the category of B-1 on 6.9.88. As he was Sr.Gangman he must necessarily possess the medical category of B-1. As per the provisions of the Indian Railway Medical Manual, the employee who is medically unfitted ^{has a} right to make

an appeal against the decision of the Medical Authority, who declared him medically unfit, to enable the case to be referred to the next higher authority ^{also and} that the appeal should be filed within 7 days. It is stated by the respondents that the applicant had categorically stated that he is not interested in ^{filing} the appeal. The applicant was found suitable in C-2 category. Hence he was provided ^{an} alternate job as Peon in C-2 category and ^{was} posted to work under AME, Rajahmundry by the order dated 6.2.89. The applicant was subjected to a medical examination once again on 21.1.92. When he was not willing to appeal for remedical examination it is not understood why he was subjected to a medical examination once again on 21.1.92. The learned counsel for the respondents submits that as he was repeatedly requesting for remedical examination he was sent for remedical examination on 21.1.92. This explanation does not appear to be in order. But he was found fit in the B-1 category as Gangman on the basis of his remedical examination held on 21.1.92. But subsequently it was revised to the effect that he was erroneously found fit for medical B-1 category in the examination held on 21.1.92 and his medical examination was changed to C-2 category. It is stated that the applicant is having a deformity, [The deformity being amputation of first, second and third toes from the Metatarso Phalangeal joint of the right foot due to crush injury sustained while on duty. The above injury is a visible one. Hence no Doctor ^{-es} miss that evidence available before him for making him fit for B-1 category if with that deformity ^{aw} the employee can be termed as fit for B-1 category. The learned counsel for the respondents submitted that the doctor concerned who examined him on 21.1.92 did not ask the applicant to remove his socks to check the deformity. This submission is ~~that~~ ^{that} astonishing the doctor who conducted the remedical examination on 21.1.92 did not perform his duties diligently and for reasons best known

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19

to him fitted him in the B-1 category. Hence when it is stated that the medical examination held on 21.1.92 is erroneous the same cannot be accepted ^{at} ~~in~~ the face value. For extraneous reasons the doctor who had conducted the examination on 21.1.92 had made the applicant fit for B-1 category. Such lapses ~~xxx~~ on the part of the doctor cannot be condoned easily. If such lapses are condoned it will lead to situations where medically unfitted persons can be fitted against a safety post. Hence it is necessary the doctor who examined the applicant on 21.1.92, and declared him fit for B-1 category may have to be taken up suitably in accordance with the rules for the ~~laps~~es on his part.

3. The applicant submits that he is wanting to be posted as a Watchman or in the commercial department where he will be fit to perform the duties even though he is medically unfit in B-1 category. He also submitted representations in this connection and those representations are not looked into.

4. This OA is filed praying for a direction to the respondents to produce the records pertaining to the medical examination and for a consequential direction to the respondents to send him for being continued as Senior Gangman or in the alternative, to direct the respondents to absorb him in any suitable post either in Commercial or other departments without reducing his pay and grade by declaring that the absorption of the applicant as a Peon in lower grade in Mechanical Department is illegal.

5. The applicant no doubt has to be posted in an ^{equivalent} ~~equivalent~~ capacity. But if such ^{equivalent} ~~equivalent~~ posts are not available to suit his medical category then there is nothing wrong if he is posted ⁱⁿ ~~to~~ a immediate lower category as per his medical examination. He was posted as Peon accordingly. Hence the applicant cannot demand a post of his choice where he is fit only in medical category of C-2.

6. The applicant had come under C-2 category by correcting the error made in remedical examination on 21.1.92. But it is not known whether the applicant ^{was} ~~had~~ subjected to another medical examination after 21.1.92 to bring him under C-2. Mere noting in this connection in our opinion is not sufficient. Hence the applicant if not fitted properly in the C-2 category after the remedical examination conducted on 21.1.92 he should be sent for medical examination now and his medical category is fixed accordingly.

7. The applicant it is stated had submitted representations for change of category either as a watchman or in commercial department. If such representations are available with the respondents the same should be disposed of in accordance with the rules within a period of 2 months from the date of receipt of this order. If no such representations are available with the respondents, ^{then} the applicant should be asked to produce the representations or in the alternate to file a fresh representation to reply him suitably.


8. In the result the following directions are given :-


(1) Fitting him in the medical category C-2 should be re-examined as observed above.

(2) His representations if any pending for posting as watchman or in Commercial department should be disposed of as per the observations made above.

(3) The doctor who made him fit for B-1 category on 21.1.92 should be taken up suitably as per rules after hearing him for the lapses if any committed by him in declaring the applicant fit for B-1 category.

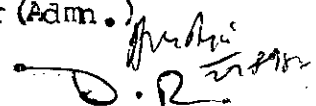
9. The OA is ordered accordingly. No costs.


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


(R. RANGARAJAN)
Member (Adm.)

19.8.98
sd

Dated : 19th August, 1998
(Dictated in Open Court)


D.R.

DA.340/96

21

Copy to:-

1. The Divisional Railway Manager, South Central Railway, Vijayawada.
2. The Divisional Mechanical Engineer, (Loco), S.C.Rly, Vijayawada.
3. The Medical Superintendent, S.C.Rly., Vijayawada.
4. One copy to Mr. G.V.Subba Rao, Advocate, CAT., Hyd.
5. One copy to Mr. V.Shimanne, Addl.DSSE., CAT., Hyd.
6. One copy to D.R.(A), CAT., Hyd.
7. One duplicate copy.

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7/9/98
TYPED BY
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II COURT

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M(J) L

DATED: 19/8/98

ORDER/JUDGMENT

~~M.A./B.A./C.P.H.S.~~

in
C.A. NO. 340/98

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

