

114

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

O.A.No.953/97

Date of Order:4.8.99

BETWEEN:

M.Abid Ali Khan .. Applicant.

AND

1. Secretary, Railway Board,  
Ministry of Railways, Rail Bhavan,  
New Delhi.
  2. The Secretary, Union Public Service  
Commission, New Delhi.
  3. The Chairman, (South Central Railway  
Hospital), Medical Board, Rail Nilayam,  
Secunderabad.
  4. Director General,  
Railway Health Services,  
Railway Board, New Delhi. .. Respondents.
- - -

Counsel for the Applicant .. Mr.S.Ramakrishna Rao

Counsel for the Respondents .. Mr.C.V.Malla Reddy  
for R-1

.. Mr.V.Rajeswara Rao  
for R-2

- - -

CORAM :

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

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

- - -

O R D E R

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

- - -

Mr.S.Ramakrishna Rao, learned counsel for the  
applicant and Mr.C.V.Malla Reddy, learned standing  
counsel for R-1 and Mr.V.Rajeswara Rao, learned standing

R V

counsel for the respondents.

2. The applicant is a Civil Engineer and selected in Engineering Services Examination held in the year 1994. He was send for medical test in which he was ~~found~~<sup>t</sup> unfit. Subsequently a second medical test was conducted and that ~~was~~<sup>also</sup> made him unfit which is available from memorandum No.95/E(GR)I/7/3 dated 19.10.95 (A4).

3. Against that order the applicant filed an appeal to medically examine him for the 3rd time. That request was rejected by the impugned order dated 6.8.96 (A1).

4. This OA is filed to set aside the impugned order dated 6.8.96 of R1 rejecting his claim for constitution of 3rd medical board and for a consequential direction to treat the applicant as fit for all or any of the Engineering Services in the respondents organisation and appoint him in the Railways.

5. The only point for consideration is whether the medical examination was conducted in accordance with the rules or not.

6. A medical examination is to be conducted by forming a medical board. The respondents have constituted a medical board and that medical board initially rejected the applicant after conducting

F

3

... 3 ...

necessary medical tests and he did not come up to the medical standards. Against that the applicant appealed and once again he was put to test and on that basis he was found unfit for all services as indicated in the letter dated 19.10.95. Whether he should be permitted to appear for 3rd medical test is ~~for~~ a point for consideration.

7. The applicant relies on the judgement of this Tribunal in OA.23/88 to state that the 3rd medical test is permissible and hence rejection of his case for conducting the 3rd medical test is irregular.

8. We have perused the judgement. It has been clearly stated in the judgement that the Tribunal cannot substitute the opinion for that of a medical expert and decide whether a person is medically fit or not. However on the facts of that case the case was decided that the applicant therein was to <sup>be</sup> put to 3rd medical test. The present case has to be examined on that basis.

9. The applicant also relies on the judgement of this Tribunal in OA.335/91 to contend that the <sup>3rd medical</sup> ~~appellate~~ board has to be formed and he should be medically examined. The exact meaning of the appellate board is not known. The applicant has been checked by an appellate board for the second time. Whether the 3rd medical examination is permissible or not is a point for consideration. A reading of the judgement

2

D

clearly shows in that case a 3rd medical examination was constituted to examine the applicant in that OA. Hence in our opinion the said judgement may not come to the rescue of the applicant.

10. The case of the applicant was rejected by the 2nd medical board on 19.10.95. If the applicant was of the opinion that <sup>the</sup> ~~his~~ rejection of his case by the 2nd medical board is incorrect he should have appealed against that and ask the department concerned to conduct a 3rd medical examination immediately after 19.10.95. But he obtained a medical report from Dr.G.Chandra Sekhara Reddy, Civil Surgeon Endocrinologist, Gandhi Medical Hospital only on 21.6.96 (A-5). That itself makes clear for unknown reasons the applicant delayed in filing the appeal and asked for medical examination. When such a delay is there even <sup>if</sup> <sub>2</sub> the medical certificate dated 21.6.96 is in his favour how far that certificate <sup>can be</sup> ~~is~~ relied upon to give a relief as prayed for by the applicant. In our opinion such a delay cannot be condoned in the circumstances of this case. Considering all the factors only we are unable to accept the request of the applicant to set aside the impugned letter dated 6.8.96 rejecting his claim for 3rd medical examination. In that view, we are of the opinion that no relief can be given to the applicant in this OA.

3

11. The applicant submits that he is very meritorious in the Engineering Services examination held in the year 1994. Even if he is not medically fit for the open line duties his health condition may permit him in the post which did not require open line activities that he will be eligible for ~~sedentary~~ duties entrusted to <sup>the</sup> stores department. Hence he requests that his case may be considered for appointment in the stores department in Group-A cadre.

12. This OA is filed mainly for considering his case by subjecting him to 3rd medical test. This OA is not meant for offering him alternate ~~sedentary~~ duties. Hence the applicant is at liberty to approach the authorities concerned for considering him <sup>for</sup> any other department where such <sup>strict</sup> medical standard is not required. We have no doubt in our mind that the respondent authorities will consider his case if such an application is made to the concerned authorities of the railways.

13. With the above observation the OA is disposed of. No costs.

  
(B.S.JAI PARAMESHWAR)

Member (Judl.)

4/8/99

Dated : 4th August, 1999

(Dictated in Open Court)

  
(R.RANGARAJAN)

Member (Admn.)

4/8/99