

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 10/8 August, 2001

OA No.159/1995

Umesh Chandra Rawat s/o Shri S.C.Rawat, r/o 208 A, Near Natraj Cinema, Kota Junction, presently posted as Sr. TTE, Western Railway, Kota.

..Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Sr. Deputy General Manager & Chief Vigilance Officer, W.Rly., Churchgate, Mumbai.
3. Divisional Railway Manager, Western Railway, Kota.

.. Respondents

Mr. R.N.Mathur, counsel for the applicant

None present for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr.A.P.Nagrath, Administrative Member

ORDER

Per Hon'ble Mr. A.P.Nagrath, Administrative Member

The relief prayed for by the applicant in this case is that orders dated 25.1.95 (Ann.A1) and 24.3.95 (Ann.A2) may be quashed and set-aside and that respondents be directed not to compel the applicant to undergo any medical examination.

2. Facts of the case, as per the applicant, are that he was appointed as an Announcer in the pay scale Rs. 260-400 vide order dated 8.2.86 against the physically handicapped quota meant for blind and deaf candidates. The applicant was visually impaired person. His plea is that over the years, he underwent/under <sup>treatment</sup> different systems of



medicines for improving his vision and when he realised that there was an improvement, he applied for change of category to the post of Ticket Collector on 30.5.1989. He was subjected to medical test on 24.8.89 and was declared fit in B-2 category. He contends that he was given appointment as Ticket Collector by letter dated 12.9.99 (Ann.A13) and given lien on the post of Ticket Collector. By an order dated 14.9.89 he was asked to report for special medical examination and was not allowed to perform his duties till further orders. Feeling aggrieved by the aforesaid order, he filed OA No.861/89 at Jodhpur Bench, which was transferred to this Bench and registered as No.652/92. This OA came to be decided on 10.1.94 and it was held that applicant cannot be compelled for special medical examination for continuing on the post of Announcer. It was also observed by the Tribunal that if any periodical medical examination to judge the suitability to continue on the post, is prescribed, the employer is not restrained from subjecting the applicant for such medical examination. By the impugned order, he has again been asked to report for special medical examination and being aggrieved with this order, the applicant has come before us. His plea is that the issue having been settled already by the Tribunal by their order dated 10.1.94, the respondents cannot now once again compel him to appear in the special medical examination.

3. Reply has been filed by the respondents, in which the main contention is that a vigilance/CBI inquiry was conducted in the present matter for the reason that there was a doubt about the genuineness of the blindness of the applicant on which basis the applicant had obtained his initial employment. The respondents claim that they have a right to subject an employee for special medical examination to decide about his continuation on the post. Respondents have stated that the applicant has mis-interpreted the judgment of the Tribunal dated 10.1.94 in OA No.652/92, as the Tribunal had given



liberty to the respondents to conduct medical examination and in this case Chief Vigilance Officer is competent to order a special medical examination not only where a complained has been received but also in other cases where genuineness of certificate is required to be seen. They have also taken a plea that if the applicant has nothing to fear then he should be willing to offer himself for special medical examination.

4. At the time of hearing, there was no representation from the side of the respondent Department either through any departmental officer or through any counsel. We have heard the learned counsel for the applicant, Shri R.N.Mathur. The learned counsel vehemently argued that the matter regarding compelling the applicant to offer himself for the special medical examination was finally settled by order of this Tribunal in OA No. 652/92 decided on 10.1.94. He read before us the said order to contend that the services of the applicant shall not be terminated merely because he has not offered himself for medical examination to certify him on the post of Ticket Collector. However, the learned counsel admitted that if the applicant seeks change of his category, the Department is not restrained from subjecting him to the required medical examination for that category.

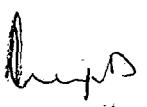
5. We have perused the order dated 10.1.94 of the Tribunal and we find that in para 4 it has been observed that the applicant applied for the post of Ticket Collector for which vision required was of category B-2 and if he seeks appointment to this post, he must necessarily undergo the prescribed medical examination to enable the authorities to find out if he is fit in term of category B-2. During the arguments stage and even in the written reply by the respondents, one thing has not been given out clearly, in which category the applicant is working. From the averments made in the application, the

applicant claims to have already passed the B-2 category medical examination in 1989 itself and he is stated to be working as Senior TTE at Kota. We are not able to ascertain under what circumstances the applicant was promoted to work as Ticket Collector and now Sr. TTE. If the Department's contention is that he is to be subjected to medical examination. We are also not able to ascertain as to under what circumstances this fact was not brought before the Tribunal in OA No. 652/92 that the applicant was working as TTE. The respondents have also not made any categorical assertion regarding implication of the certificate dated 25.8.89 (Ann. All) by which the applicant was declared fit for B-2 category. The Department has also not stated whether after this certificate was issued, any inquiry was launched on the medical side to ascertain whether a person declared visually handicapped could obtain such improvement in his vision so as to be declared fit in B-2 classification even with special type of glasses, and if at all, such inquiry was conducted what was the outcome. The only effort on the part of the respondent Department appears to be to compel the applicant to appear for special medical examination, but the steps taken by them to ascertain as to under what circumstances the candidate was accepted as physically handicapped at the time of initial appointment, have not been spelt out, including the fact whether any investigation had been conducted against the Doctor who certified him fit at the first instance. The facts now not controverted are that the applicant is working as Sr. TTE at Kota on a post in B-2 medical category. We find from the averments made by the applicant himself in para 4.13 of his application that in accordance with para 516 of the Indian Railways Medical Manual, for B-2 category, in which the applicant is working, periodical medical examination can be conducted at the age of 45 years and thereafter at intervals of every 5 years. The applicant has declared his date of birth as 10.6.55. Obviously, he has completed the age of 45 years, and now he

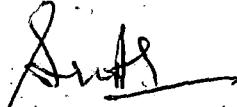
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cannot take a plea that he should not offer himself for periodical medical examination. The respondents have a right as per provisions of rules that an employee in B-2 medical category can be subjected to a periodic medical examination on attaining the age of 45 years. The applicant cannot raise any plea against such action.

6. We, therefore, dismiss this OA and direct the applicant to present himself for medical examination whenever called by the competent authority of the Department to assess his medical fitness under the rules. The Department is at liberty to take any further action depending on the suitability so assessed. No order as to costs.

  
(A.P. NAGRATH)

Adm. Member

  
(S.K. AGARWAL)

Judl. Member