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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.443/97

Date of order: 5.1.1998

Surendra Nath

: Applicant

Vs.

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. The Divisional Railway Manager, Kota Division, Kota.
3. William Speak, Chief Foreman (T.T), Western Railway, Ajmer Division, Ajmer.
4. The Divisional Medical Officer, Western Fly, Sawaimadhopur.

...Respondents.

Mr.J.K.Kaushik - Counsel for applicant.

None for the respondents.

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

Hon'ble Mr.O.P.Sharma, Administrative Member.

PER HON'BLE MR.O.P.SHAERMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Surendra Nath has sought a declaration that the action of the respondent in not taking the applicant on duty is tainted with malice of third respondent namely Shri William Speak, Chief Foreman (T.T), Western Railway, Ajmer. He has sought a direction to the respondents to take the applicant on duty forthwith and to treat the intervening period as spent on duty for all purposes with all consequential benefits including the pay and allowances for the period from 24.7.1995 till the date of taking him on duty.

2. The applicant's case is that while working on the post of Khallasi, T.T.M.Department, the applicant reported sick on 7.7.1995 under the treatment of a private Doctor. The certificate of sickness is at Annx.A1 stated to be dated 7.7.95. Thereafter, vide Annx.A2 dated 24.7.95, which the form for taking treatment from the Railway Hospital, the applicant

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reported to the Railway Doctor. He was informed by respondent No.4, the Divisional Medical Officer Western Railway, that there is no need for any medical examination in view of the order dated 23.11.94/ ^(Annx.A3) and that the applicant should report for duty to his controlling officer and submit the fitness certificate to him. The applicant presented the fitness certificate dated 23.7.95 (Annx.A4). The third respondent, however, refused to accept it. The applicant reported the matter to the Labour Commissioner vide his application dated 24.7.95 (Annx.A5). On 27.7.95, the third respondent made an endorsement on the reverse of the certificate of fitness, Annx.A4, requesting respondent No.4 to issue necessary duty certificate to the applicant. The applicant was thus directed to go to the same Divisional Medical Officer when in fact no medical checkup was required. The applicant has not been taken on duty and has been running from pillar to post for this purpose. Earlier the applicant approached the Tribunal by filing O.A No.399/95 which was disposed of by the Tribunal vide order dated 1.1.96. ^(Annx.A6) In this order the application was held to be premature but it was further stated that if the applicant makes a representation to the concerned authority regarding his grievance, it shall be disposed of by the respondents by a speaking order on merits within a period of one month from the date of the receipt of a copy thereof. The applicant submitted a detailed representation in this behalf on 20.1.1996 (Annx.A7) but it has still not been disposed of. The applicant has also filed a Contempt Petition for non-implementation of the direction of the Tribunal given in order Annx.A6 which is also pending. The applicant has therefore prayed that he should be taken on duty forthwith and also be paid back wages for the period during which he has unjustifiably not been taken on duty.

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3. The O.A was admitted for adjudication on 14.10.97 and notices were issued on 17.10.97 fixing 24.11.97 as the next date. Notices on respondents Nos.1,2 and 3 were served but the acknowledgement in respect of the notice sent to respondent No.4, the Divisional Medical Officer, by registered post was not received back. On 24.11.97, service of the aforesaid notice sent to respondent No.4 was presumed. Since no reply had been filed by the respondents nor had anybody put appearance on behalf of the respondents on 24.11.97 we thought it appropriate to grant one more opportunity to the respondents to file their reply failing which it was observed that the O.A would be disposed of exparte. The O.A was listed for hearing on 5.1.1998 i.e. to day. A copy of the order sheet dated 24.11.97 was sent to all the respondents on 1.12.97. Still however no reply has been filed by the respondents and none has appeared on behalf of the respondents.

4. During his arguments, the learned counsel for the applicant drew our attention to the instructions at Annx.A3 regarding reporting sick, taking treatment from private Doctor, etc. According to him, in view of these instructions the matter was required to be looked into by a Medical Officer of the Railway only if there was any suspicion regarding the genuineness of the certificate issued by the private Medical Practitioner. Instead the Chief Foreman (T.T) made a request to the Divisional Medical Officer, Sawaimadhopur on 27.7.95 vide the endorsement at the back of Annx.A4 dated 23.7.95 that necessary duty certificate should be issued to the applicant. However, the applicant did not report to the Divisional Medical Officer on the ground that he was again directed to go to the same Divisional Medical Officer and this would not serve any purpose when no medical checkup by a Railway Doctor was required before the applicant was allowed to join duty.

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5. We have heard the learned counsel for the applicant and have perused the material on record.

6. As already stated above, no reply has been filed by the respondents and the averments of the applicant have not been controverted. From what has been stated by the applicant, it appears that he was keen to join duty but was still not taken on duty by the respondents. In these circumstances, we direct respondent No.2 to take the applicant on duty on the post of Khallasi as soon as he reports for duty.

7. As regards the question of back wages, the applicant did not report to the Divisional Medical Officer when he was instructed to do so by the Chief Foreman (T.T), Sawaimadhopur on 27.7.95. The applicant's case however is that the Divisional Medical Officer drew the attention of the applicant to the instruction Annex.A3 dated 23.11.94 under which he was not required to be referred to the Railway Doctor. In the circumstances of the present case, we direct that the respondents shall take a decision on merit about the back wages of the applicant within a period of three months from the date of the receipt of a copy of this order.

8. The O.A stands disposed of accordingly. No order as to costs.

(O.P.Sharma)

Administrative Member.

(Gopal Krishna)

Vice Chairman.