

**Central Administrative Tribunal
Jaipur Bench, JAIPUR**

OA.411/2007

This the 27th day of January, 2010

Hon'ble Dr. K.S.Sugathan, Member (Administrative)

Hon'ble Dr. K.B.Suresh, Member (Judicial)

Mr. Babul Lal S/o Shri Ram Lal Jatav aged about 46 years,
Gangman, Engineering PWI, South Jaipur Resident of Village &
Post Bharawali Tehsil Kumher, District Bharatpur.

...Applicant

(By Advocate: Shri Nand Kishore)

- *VERSUS* -

1. Union of India, through, General Manager,
North Western Railway, Hasanpura Road, Jaipur
2. Divisional Railway Manager,
North Western Railway, Power House Road, Jaipur (Raj.)

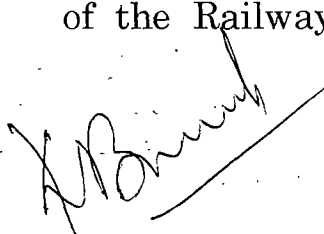
.....Respondents

(By Advocate: Shri Virendra Dave)

ORDER

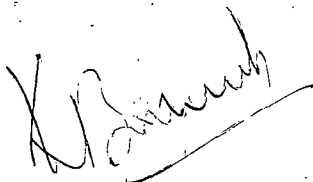
(By Hon'ble Dr. K.B. Suresh, M(J):-

The applicant joined the Railway in the year 1992 and was regularized from 10th May, 1996. Apparently, the applicant was a Gangman and is a regular visitor before the Medical Authority of the Railways and had apparently spoken about his color



vision being impaired. It is to be noted at this juncture that the Railways as the model employer had enunciated a methodology for medical de-categorization whereby persons found to be medically unfit in one medical category will be de-categorised and posted in another category which may be less demanding.

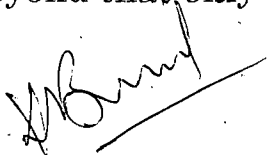
2. The applicant was examined and the Doctors found that the applicant on examination of his color perceptions was recorded defective on EGL with 13 MM aperture and was referred to specialist ophthalmologist, on examination the applicant was not cooperative at all and his response seemed to be abnormal. He was not following any set pattern of colour perception on EGL & ishihara colour plates and he was referred to JRH/Bombay for second opinion and as per their opinion he was very uncooperative & not answering any question properly & very difficult to comment over his colour vision. He was advised for psychiatric evaluation, which was done by Dr. Anil Tambe, Hon/Consultant, he has also opined that employee does not have any psychiatric disorder. He was also examined by Dr. Prashan Bhatnagar SR.DMO(phy) Jaipur on 20.1.2007 and recommended that "Medical Board is of the opinion that Mr. Babu Lal, Gangman Engg. Jaipur is malingering for color



vision. As per para 509, 512 sub para 5.3 of Indian Railway Medical Manual 2000 Vol. I "if malingering is established he is psychologically not fit to remain in service and may be declared unfit for all classes"

3. Thereupon, the Railways compulsory retired the applicant from service without following the procedure for awarding such a penalty.

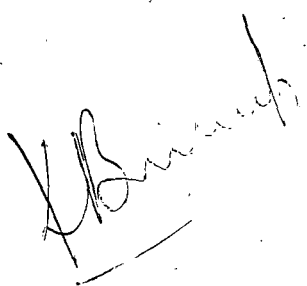
4. Apparently the Medical Board had recommended that he was psychologically not fit to remain in service. Probably what they mean is his laziness or other similar internally originated reasons which is in the control of the concerned person but he does not want to work and being a shirker of work had advanced a case of a disease and therefore they deemed him to be psychologically unfit to remain in service. Two grounds militate against this. The first ground is that on examination a defect was noted in the EGL which led to ophthalmologist psychological opinion. The second ground is on suspicious of malingering he is not to be dealt with brutally but should be allowed a chance by way of a show cause notice to be issued to him and even if reply is wanting in merit, then in the first phase warning should be issued to him. If the malingering proceeds beyond that only then penalty of severe nature is to be employed.



Since malingering is suspected; methodology adopted by the Railways in the present case is hardly adequate in terms of processual and procedural justice.

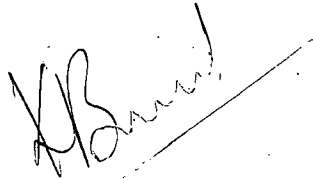
5. Since the applicant was present in court, we had opportunity of examining him. There does not seem to be any inadequacy even at present and he expresses his willingness to work as a Gangman should he be reinstated. Therefore, we declare that the failure to follow proper procedure has vitiated the punishment of compulsory retirement on the applicant and the Annexure A-1 & A-2 are hereby quashed. The relief claimed by the applicant for payment of salary with interest till such receipt is rejected on the ground that he was not working in the meanwhile and prior to this his conduct do not inspire us to order back wages for the period for which he has not worked even though he was kept out of the work unwillingly. Therefore the following directions are issued in view of the constitutional process envisaged in the Right of life:

- (a) The Railway shall reinstate the applicant as Gangman within a period of three months from the date of receipt of a copy of this order.

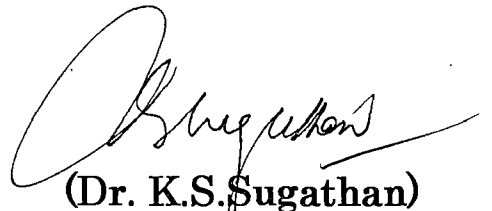
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(b) This order will not preclude the Railways from initiating appropriate process against the applicant of malingering in respect to his earlier conduct and follow up it with necessary procedures and even to inflict appropriate punishment if need be.

6. In terms of the above, the present OA is allowed and there shall be no order as to the costs.



(Dr. K.B. Suresh)
Member (J)



(Dr. K.S. Sugathan)
Member (A)

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