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Central Administrative Tribunal, Allahabad Bench, Allahabad

CCP No. 330/00141/2015 in O.A. No. 330/00159/2015

Reserved on 8.1.2018

Pronounced on 15.2.2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

Hon'ble Mr. Gokul Chandra Pati, Member (A)

1. B.K. Srivastava son of Late H.P. Srivastava r/o Village Tundali, Near Jain Mandir, Tundla, Post, Tundla, Firozabad.
2. Navdeep Srivastava s/o B.K. Srivastava r/o Village Tundali, Near Jain Mandir, Tundla, Post, Tundla, Firozabad.

Applicants

By Advocate: A. Srivastava

Versus

1. Sri Arvind Tripathi, Divisional Railway Manager, Allahabad Division, North Central Railway, Allahabad and others.
2. Sri Vipin Sinha Senior Divisional Operating Manager, North Central Railway, Allahabad Division, Allahabad,
3. Sri Y.S. Ataria, Medical Superintendent, Kanpur, Office of the Chief Superintendent, Allahabad.

Respondents

By Advocate: Sri K.P. Singh

ORDER

Hon'ble Member Justice Dinesh Gupta, Member (J)

The present contempt petition is filed by the applicant for non-compliance of the Tribunal's order dated 22.5.2015 passed by this Tribunal in O.A. No. 159/2015 whereby this Tribunal had directed the respondents to place the case of the applicant before the Medical Board for determination of his medical decategorization or otherwise based upon available medical reports within a period of two months from the date of receipt of certified copy of this order.

2. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that as per direction of this Tribunal, the Senior Divisional Operating Manager, North Central Railway, Allahabad has sent a letter to the Medical Director, Central Hospital, N.C. Railway, Allahabad with a request that a Medical Board be constituted for determination of the case of applicant and in pursuance of the same, the Medical Board was constituted and medical examination was held under the Panel of Dr. N.K. Garg, Dr. R.J. Choudhary, and Dr. K. Mishra on 11.8.2015 with the thumb impression of the applicant and medical board recommended that applicant's medical category is A-3 (Aye-three) and the recommendation of Medical Board was accepted by the Chief Medical Director, N.C. Railway, Allahabad. Copy of the same was sent to the applicant on 29.8.2015 and the same has been received by the applicant on 4.9.2015. Photo copy of finding of medical Board dated 11.8.2015 and acceptance dated 14.8.2015 and letter dated 29.8.2015 and are annexed as Annexure CA-1, CA-2 and CA-3 to the Counter Affidavit.

2.1 It is also submitted that the applicant was placed before the Medical Board and Medical Board has recommended the case of loss of vision in both eyes and advised contract surgery but applicant has declined. As such the order of the Tribunal has been complied with.

3. Applicant has filed Rejoinder reply through which it is stated that finding of the board was totally baseless with reference to the report of the Central

Hospital, New Delhi AIIMS New Delhi as at no point of time the applicant was diagnosed any contract surgery. It is further submitted that Tribunal had never directed for re-examination of the visual capability of the applicant rather it was directed for constituting a Board for medical de-categorization and as such the respondents have willfully violated the direction of the Tribunal.

4. Vide order dated 26.5.2017, this Tribunal has directed the respondents to take up the case of applicant and decide the same for medical de-categorization without considering that it is a case where the applicant has some malafide intention/desire because of which he is seeking medical de-categorization and directed that this is to be done by constituting a fresh Medical Board/ panel within a period of three months of passing of the order.

5. In compliance of the same, respondents have filed Affidavit of compliance through which it is stated that the Railway Administration vide letter dated 12.7.2017 (Annexure No. 1 to Affidavit of Compliance) directed the Medical Director, N.C. Railway, Allahabad to hold Medical Board of the applicant on 22.7.2017. The Medical Board was held on 22.7.2017 and the Chief Medical Superintendent, N.C. Railway, Kanpur vide his letter dated 22.7.2017 (Annexure No. 3 to Affidavit of Compliance) forwarded the finding of re-medical board to the Divisional Personnel Officer (Law), N.C. Railway, Allahabad and vide order dated 25.7.2017 (Annexure No. 4 to Affidavit of Compliance), respondents have informed the applicant about the recommendation of the medical Board.

5.1 It is further submitted in the Affidavit of compliance that in view of the Medical Board's recommendation considering the applicant as a case of visual handicapped, he should be absorbed under visual handicapped as per extent rule of Indian Railways, the committee was constituted for the purpose of alternative employment and as a result of screening of medically de-categorized Group C staff, with the approval of competent authority, the applicant has been posted on alternative absorption vide notice dated 7.8.2017 ((Annexure No. 5 to Affidavit of Compliance).

5.2 Divisional Railway Manager (P) North Central Railway, Allahabad vide letter dated 11.8.2017 (Annexure No. 6 to Affidavit of Compliance) informed the applicant that he has been absorbed on the post of Reservation Supervisor in the Grade pay of Rs. 4200/- in Commercial Department and applicant was directed to join his duty as Announcer in the Commercial Department. As such the order passed by this Tribunal has fully been complied with by the respondents and there is no willful or deliberate disobedience of the order passed by this Tribunal and the contempt petition is liable to be dismissed.

6. Heard the learned counsel for applicant Sri A. Srivastava and learned counsel for respondents Sri K.P. Singh.

7. Learned counsel for applicant has reiterated the facts as stated in the Contempt Petition and submitted that respondents have malafidely lingered the case of the applicant for second medical examination of the Board and have passed the order only when the applicant was going to retire in the month of July, 2017 and offering the alternative employment to him is nothing but an eye wash to prevent the applicant from taking advantage of medical de-categorisation like job to one of his ward. Counsel further submitted that job offered to him is neither practicable nor feasible to him.

8. Learned counsel for respondents submitted that respondents have complied with the order passed by this Tribunal by which the Tribunal simply directed them to place the case of applicant before Medical Board for determination of his medical decategorisation and in pursuance of the same, respondents have placed the case of the applicant before the Medical Board who accepted the medical de-categorisation of the applicant and as per policy, the applicant was offered an alternative job on the same pay scale and same pay grade. Thus, they have complied with the order passed by this Tribunal.

9. From perusal of pleadings, it transpires that there is some delay in complying the order passed by this Tribunal. However, the respondents have complied with the order passed by this Tribunal and passed the impugned order. As such, they have substantially complied with the order passed by this Tribunal and there is no willful disobedience of the order by the respondents and respondent cannot be punished for contempt.

10. So far as, the applicant's contention that applicant has not been paid his due salary for some of the past years is concerned, the applicant can seek his

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remedy by filing a separate O. A.

11. In view of the above, CCP is dismissed. Notices are discharged.

(GOKUL CHANDRA PATI)
MEMBER (A)

(JUSTICE DINESH GUPTA)

MEMBER (J)

HLS/-