

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING: BILASPUR

Original Application No.203/00277/2016

Bilaspur, this Wednesday, the 26th day of September, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Yashwant Singh,
Aged about 50 years
S/o Ajit Singh
R/o Village & Post Purai
District Durg (C.G.)
Pin Code 491107

-Applicant

(By Advocate –**Shri Basant Dewangan**)

V e r s u s

Steel Authority of India Limited
Through Managing Director,
Bhilai Steel Plant,
Bhilai
District Durg (C.G.)
PIN Code 490001

- Respondent

(By Advocate –**Shri Kashif Shakeel**)

O R D E R (REASONED)
By Ramesh Singh Thakur, JM:-

By way of this Original Application the applicant is challenging the inaction on the part of the respondent-company whereby he has been declared unfit without complying its own circular dated 15.01.1971 and not providing alternate job as per the said circular. Further the respondent-company failed to consider his

case sympathetically for alternate employment as per the order passed by Hon'ble High Court.

2. The applicant in the instant Original Application has prayed for the following reliefs:-

“8.1 It is prayed that this Hon'ble Tribunal may kindly be pleased to call for the entire records concerning the case of the applicant from the possession of the respondents for its kind perusal.

8.2 That the decision of Respondent-Company declaring the applicant to be unfit for any job may be set aside/quashed.

8.3 That, this Hon'ble Tribunal may kindly be pleased to issue directions to the respondent-Company to re-employ the applicant on the post of Technician (Group A) or to provide alternative job as per the circular dated 15.01.1971 and to comply with the order passed by Hon'ble High Court in its letters and spirit.

8.4 Any other relief/reliefs, which this Hon'ble Tribunal may think fit and proper in the facts and circumstances of the case, may also please be granted to the applicant.”

3. Precisely the case of the applicant is that the applicant was initially appointed vide order dated 26.11.1988 as Casual Fitter after due process and on being found medically fit. He was again medically examined on 03.02.1990 and found fit and selected for appointment as a Technician in Group A in the mines in L-3 grade vide order dated 04.08.1990. The applicant further submitted that before regular appointment on this post, he was examined on 03.08.1990 by the Medical Board of the respondent-Company and

report of the Medical Examination was submitted in the Main Hospital Bhilai. The copy of the same was never supplied to the applicant. The respondent-Company directed the applicant to appear before the medical board Bhilai on 04.02.1991 and 26.02.1991. The applicant was thereafter terminated from his service vide order dated 06.04.1991 without giving any notice or opportunity of hearing.

3.1 Being aggrieved by the termination order, applicant raised an industrial dispute before the Assistant Labour Commissioner (Central) Raipur, wherefrom the said dispute was referred for proper adjudication before the Central Govt. Industrial Tribunal (CGIT). The applicant approached CGIT, Labour Court in case No.CGIT/LC/R/23/92 whereby the Presiding Officer vide order dated 15.03.1999 has awarded the following order:-

“The order of the management dated 06-04-91 is quashed. The workman will deem to be a Planning Assistant in 1-3 grade from 6-4-91 till date. He will be paid the wages and allowances in this scale. The payment be made within 3 months from the publication of award in the gazette. If this is not done, the workman shall be entitled to interest at the rate of 12% per annum. The award is passed in favour of the workman. Parties to bear their own cost.”

3.2 Thereafter, the respondent-Company against the order of the CGIT preferred a Writ Petition No.3046/1999 before the Hon'ble High Court of Chhattisgarh. The Hon'ble High court vide order dated 25.02.2013 (Annexure A/2) disposed of the petition with a

direction to consider the case of the second respondent, sympathetically, for alternative employment after holding the proper medical examination, as the case of impersonation has not been proved strictly, except on the basis of certain documents. Accordingly, the award dated 15.03.1999 passed by the CGIT is modified.

3.3 In compliance of the order of Hon'ble High Court, the respondent-company vide letter dated 08.05.2013 intimated the applicant to appear before the National Occupational Health Service Centre, Bhilai Steel Plant on 15.05.2013 for medical examination for reappointing on the said post. The applicant appeared on the said date. The applicant was found unfit for appointment on any nature of job by the Review Medical Board on 30.01.2014 (Annexure A/3) as the applicant has developed small Sub-aortic VSD of 3mm size Cong. Acyanotie in the valve of the heart.

3.4 The applicant, thereafter, got himself examined from a well known and recognized medical institute namely Apollo-BSR Hospital Bhilai. No cardiac disease was detected (Annexure A/5). The applicant was found fit for performing all types of job.

4. The respondents in their reply have submitted that the applicant had earlier placed his grievances before the CGIT

claiming himself to be Workman in which even an award was passed on 15.03.1999 (Annexure A/1). The same was challenged in Writ Petition No.3046/1999 before the Hon'ble High Court of Chhattisgarh, which was disposed of vide order dated 25.02.2013 whereby the award dated 15.03.1999 was modified to the extent that the respondent-Company would sympathetically consider the case of the applicant after holding proper medical examination. After medical examination, the applicant has been declared unfit for employment on any nature of job on 31.01.2014. Against this order applicant again approached Hon'ble High Court of Chhattisgarh in WPL No.191/2015 which was dismissed on 25.02.2016 as not maintainable. The respondents submitted that the applicant may not be allowed to do forum shopping at this stage by first approaching CGIT and now CAT. It is further submitted by the respondents that there is an inordinate delay of 2 years in filing this application.

4.2 It is specifically submitted by the respondents that the applicant was initially medically examined on 13.03.1987 for appointment as Trade Apprentice and was found unfit. Subsequently he was again referred for medical examination vide letter dated 19.04.1988 for appointment as NMR fitter along with 14 other candidates which included name of another person named

as Shri Yashwant Singh Thakur S/o Bhagwant Ram Thakur. He got himself registered knowingly well that he is not medically fit and appeared for medical examination. He however, obtained medical certificate of Shri Yashwant Singh Thakur from Senior Industrial Officer and secured employment fraudulently as NMR Fitter w.e.f. 28.11.1988. Since he continued as NMR workman till August 1990 he was considered for appointment on regular basis as Technician subject to medical fitness and the offer to this effect was issued on 04.08.1990. He was medically examined and declared unfit by the Medical Board for the post of Technician vide medical report dated 03.03.1991. Hence, he could not be appointed and his services could have been terminated however as an act of compassion an effort was made to absorb him for an alternative post of Planning Assistant but the Medical board found him unfit for the said post. He requested for referral to Nagpur but his request was not acceded to and he was advised to take medical treatment on his own sort and produce the medical certificate within 15 days from the date of issue of the said letter dated 21.01.1991. He got himself clinically treated in Central Indian Institute of Medical Science Nagpur for “Congenital Acyanotic Heart Disease VSD Small L-R Shunt No PAH NSR” and there his case was diagnosed as “Small Subaortic Ventricular Septal defect trivial mitral regurgitation”. After this

diagnosis he was declared medically unfit for Planning Assistant. The medical Board declared him medically unfit for both the post of Technician and Planning Assistant. Accordingly, there was no scope for regularization. Therefore, his services were terminated w.e.f.06.04.1991 from the post of NMR Fitter. Before his termination his issue was investigated by the Vigilance Department and before receipt of Vigilance report his services were already terminated on the basis of medical unfitness.

4.3 The respondents further submitted that the applicant has raised the Industrial dispute challenging his termination which was referred to the CGIT Jabalpur wherein his claim he has alleged that he was a regular employee of the company and he should be considered for alternative post as per policy. The applicant has also contended that he is fit as per the medical report of Central India Institute of Medical Science Nagpur obtained by him. The respondents submitted that he has never acquired the status of regular employee and he was not found medically fit for the post of Technician or Planning Assistant. He primarily secured the job fraudulently on basis of another person medical certificate.

5. The applicant has filed rejoinder to the reply filed by the respondents. It has been specifically submitted by the applicant that after removal from service on medical grounds, the CGIT awarded

reinstatement in favour of the applicant on 15.03.1999. The Hon'ble High Court vide its order dated 25.02.2013 modified the award of CGIT and directed to consider the case of applicant for alternative employment. Now the respondents had turned down the claim of the applicant. The applicant had filed a Writ Petition before the Hon'ble High Court of Chhattisgarh for non-compliance of the order passed by Hon'ble High Court on 25.02.2013 and vide Annexure A/6 Hon'ble High Court has dismissed the said Writ Petition as not maintainable. Due to subsequent notification issued by the Central Government, the Central Administrative Tribunal is vested with the authority under Section 19 and 14 of the Act, 1985. So, the O.A. is maintainable before this Tribunal. Rest of the contention of the applicant mentioned in the O.A is reiterated in the rejoinder.

6. We have heard the learned counsel for the parties and also gone through the documents attached with the pleadings.

7. It is the admitted case of the parties that the applicant had raised an industrial dispute before the Assistant Labour Commissioner (Central) Raipur, wherefrom the said dispute was referred for proper adjudication before the Central Govt. Industrial Tribunal (CGIT). It is also admitted fact that the applicant approached CGIT, Labour Court in case No.CGIT/LC/R/23/92

whereby the Presiding Officer vide order dated 15.03.1999 has awarded the following order:-

“The order of the management dated 06-04-91 is quashed. The workman will deem to be a Planning Assistant in 1-3 grade from 6-4-91 till date. He will be paid the wages and allowances in this scale. The payment be made within 3 months from the publication of award in the gazette. If this is not done, the workman shall be entitled to interest at the rate of 12% per annum. The award is passed in favour of the workman. Parties to bear their own cost.”

8. Thereafter the respondent-Company against the order of the CGIT preferred a Writ Petition No.3046/1999 before the Hon'ble High Court of Chhattisgarh, and vide order dated 25.02.2013 (Annexure A/2) was disposed of with a following direction:

“7. In view of the matter, the petitioner is directed to consider the case of the second respondent, sympathetically, for alternative employment after holding the proper medical examination, as the case of impersonation has not been proved strictly, except on the basis of certain documents. Accordingly, the award dated 15.03.1999 passed by the CGIT is modified.

8. With the aforesaid observations and directions, the writ petition is disposed of. No order as to costs.”

9. In pursuance to order dated 25.02.2013 (Annexure A/2) of the Hon'ble High Court of Chhattisgarh, the matter has been considered by the respondent-Company. The applicant has been medically examined and has been found medically unfit for job classified in A, B, C categories. Thereafter the Medical Board was communicated by the respondent-Company to clarify regarding the same vide note sheet dated 24.08.2016 (Annexure R/1). So, it is the

specific stand of the replying respondents that vide circular dated 10.03.1989 (Annexure R/2) regarding the medical standards of candidates for appointment in SAIL, the applicant suffers from diseases and have been declared unfit.

10. The main submission of the replying respondents is that the applicant was re-examined after the modified order of Hon'ble High Court of Chhattisgarh and the applicant was found unfit even for the alternative employment.

11. If the Annexure A/1 is seen, it is crystal clear that the applicant has raised the dispute being the workman under the replying respondents. The reference has been made by the competent authority of the CGIT. The same issue, for which the present O.A. has been filed, has been raised before the CGIT. Not only this, the CGIT has also adjudicated upon the matter and also passed the award vide Annexure A/1. The said award was challenged by the replying respondents before Hon'ble High Court of Chhattisgarh by way of filing Writ Petition No.3046/1999, whereby vide order dated 25.02.2013 (Annexure A/2) the said petition was disposed of by modifying the order of CGIT. The Hon'ble High Court has directed the replying respondents to consider the case of the second respondent, sympathetically, for alternative employment after holding the proper medical

examination, as the case of impersonation has not been proved strictly, except on the basis of certain documents. So, for issue of impersonation is concerned, the matter has been settled by the Hon'ble High Court. So the replying respondents are not at liberty to raise this issue again.

12. Regarding the award passed by CGIT vide order dated 15.03.1999 has been modified to the extent to consider the case of the applicant sympathetically for the alternative employment after holding the appropriate medical examination.

13. From the reply of the respondents, it is clear that the applicant was duly examined by the Medical Board after an order of Hon'ble High Court of Chhattisgarh and the applicant was not found fit for the alternative employment. As per annexure R/1, the Medical Board reviewed the record on 24.08.2016 and found the applicant unfit for all the categories (A/B/C) jobs. The replying respondents have relied upon Annexure R/2 regarding medical standards of candidates for appointment in SAIL. It has been specifically mentioned in Annexure R/1 that the applicant was found to have congenital heart disease (Sub Aortic V.S.D. with Mild AR) and has been found unfit. So the applicant was found unfit for all the categories and cannot be employed against any alternative employment.

14. In view of the above, we are of the affirmed view that there is no illegality on the part of the respondents in declaring the applicant unfit for providing alternative jobs as per Annexure R/1.

15. Resultantly this Original Application is dismissed. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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