

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 108 of 2017

**Present: Hon'ble Mr.Gokul Chandra Pati, Member (A)
Hon'ble Mr.Swarup Kumar Mishra, Member (J)**

Bikram Bag, aged about 48 years, S/o Late Kantha Bag, Technician Grade-I/Elect./Kantabhanjhi under Senior Section Engineer/ Electrical/ Kantabhanjhi/E.Co.Rly./ Sambalpur Division, being a Psychiatric disorder represented through his wife Smt. Bidu Bag, aged about 45 years, permanent resident of Vill./PO-Chaulasukha, PS- Kantabanjhi, Dist. – Bolangir, Odisah, Pin – 767039.

.....Applicant.

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
2. Divisional Railway Manager, E. Co. Rly., Sambalpur Division, At-Khetrajpur, PO – Modipara, Town/Dist.- Sambalpur.
3. Senior Divisional Personnel Officer, East Coast Railway, Sambalpur Division, At-Khetrajpur, PO – Modipara, Town/Dist.- Sambalpur.
4. Chief Medical Superintendent, East Coast Railway, Sambalpur Division, At-Khetrajpur, PO – Modipara, Town/Dist.- Sambalpur.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.T.Rath, counsel

Heard & reserved on : 19.2.2019

Order on : 1.3.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

This original application (in short OA) is filed by Smt. Bidu Bag, wife of Sri Bikram Bag who is a Railway employee working as Technician Grade I, under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- "(i) To quash the speaking order datged 19.10.2016 under Ann.A/10.
- (ii) And to direct the respondents to declare the Railway employee namely Bikram Bag medically invalid for further service;

(iii) And to direct the respondents to release the financial benefits meant for medically invalid employees."

2. It is stated in the OA that Sri Bikram Bag suffered from various ailments including psychological disorder as per the medical report dated 12.6.2012 (Annexure A/1), for which he was referred by the authorities to different hospitals including Central Institute of Psychiatry, Ranchi vide order dated 15.6.2013. Mr.Bag was treated at Ranchi Institute and then was admitted in Sambalpur Railway Hospital which referred the case to the respondents' Central Hospital, Bhubaneswar vide letter dated 6.8.2013 (Annexure A/4). Sri Bag was medically checked in the Central Hospital, Bhubaneswar and was referred again to Garden Reach Hospital of the Railways for further treatment and opinion. It is the contention of the applicant in the OA that due to financial crisis due to non-disbursement of salary for a long period, Sri Bikram Bag could not be taken to Garden Reach Hospital. In the meantime condition of the applicant deteriorated and due to financial stress the family was on the verge of starvation.

3. In the meantime the respondents unilaterally released the applicant from the sick list vide order dated 13.10.2013 and Sri Bikram Bag was considered to be under unauthorised absence as he could not fulfil the requirement for remaining on sick leave as per rules. The first OA No. 453/2016 filed by Sri Bikram Bag was disposed of vide order dated 12.7.2016 (Annexure A/9) directing the respondents to dispose of his representation. Accordingly, the present speaking order dated 19.10.2016 has been passed rejecting the representation on the ground of non-compliance of the rules by Sri Bag for proceeding on leave and declaring him as medically unfit.

4. The facts of the case was discussed vide order dated 27.12.2018 which states as under :

"3. It is the case of the applicant that her husband was referred from one hospital to another without any treatment to harass the family. Since no action was taken on the appeal dated 20.5.2016 (A/7), the first OA was filed which was disposed of by the order dated 12.07.2016 (A/9) with direction to the respondents to dispose of the representation dated 20.5.2016. In compliance of this order of the Tribunal, the respondent no.1 passed the order dated 19.10.2016 (A/10) by which the representation was rejected and the applicant was advised to present her husband before Medical Board for assessment of his

medical condition. This OA has impugned the order dated 19.10.2016, mainly on the following grounds:-

- (i) The respondents did not take any action to declare the applicant medically unfit for further service, although he was under treatment of Railway authorities and did not release the financial benefits, as the employee had more than 12 years of service left.
- (ii) It was not possible for the family to take the patient to Garden Reach as referred by the medical authorities. Allegation of non-cooperation against the employee is not correct.
- (iii) No salary was paid or sick leave sanctioned for the period the employee was under treatment.

4. The respondents have filed the Counter on 9.04.2018, stating that the employee did not cooperate with the medical authorities for a thorough assessment of the psychiatric condition and absconded midway. The applicant has suppressed a vital fact that the proceeding was initiated against the employee vide Charge-sheet dated 7.11.2016 on the ground of unauthorized absence from 14.10.2013 to 31.10.2016 which was served on the employee on 15.11.2016. The employee participated in the inquiry by appearing in person, but thereafter, did not cooperate in the proceeding, which was concluded ex parte and the employee was issued the punishment order of removal from service vide order dated 27.03.2017 (R/3). This has been suppressed by the applicant. A Medical Board was fixed on 9.12.2014 as informed to the employee vide letter dated 2.12.2014. But he failed to attend. Another Medical Board was held on 9.08.2016 at Kantabanji as informed to the employee vide letter dated 1.08.2016, which has been acknowledged by the son of the employee on 4.08.2016. Again he did not attend. Hence, adequate opportunity has been extended to the employee in this regard. It is stated in the counter that as per the para 550 of the Indian Railway Medical Manual read with the Railway Board letter dated 22.12.2014, no railway employee shall be invalidated except on certificate of a Medical Board. Unless the employee is made to present before the Medical Board, no further action can be taken.

5. The OA was admitted on 3.03.2017 and the respondents were given four weeks to file counter. Vide order dated 28.7.2017, four week time was prayed by the respondents' counsel to file reply. The counter was not filed as on 29.08.2017. The OA was listed on 21.9.2017 before the Bench and after hearing the parties, it was disposed of directing the respondents to constitute the Medical Board for examination of the employee within four weeks from the date of receipt of the order.

6. The respondents, thereafter, filed the Review Application No. 4/2017 on various grounds and the said Review Application was allowed vide order dated 8.03.2018, recalling the order dated 21.9.2017 disposing of the OA. After restoration, the OA was listed on 26.3.2018 when the request of the respondents' counsel for time of 2 weeks to file counter was allowed. Thereafter, the counter was filed on 9.04.2018. The OA was heard finally on 7.12.2018, when the son the applicant was present on behalf of the applicant. Mr. T. Rath, learned counsel for the respondents was also present. Heard both the parties and perused the pleadings as well as the documents placed on record.

7. It is revealed from the counter that Sri Bikram Bag (employee) had been imposed a punishment of removal from service for unauthorized absence, which was not brought to the notice of this Tribunal by the applicant. It is admitted in the counter that the employee had reported sick from 12.06.2013 and had been affected by psychological disorder. It is stated in the OA that no salary was disbursed to the employee since 12.06.2013 for which a legal notice dated 16.05.2014 (A/5) was sent by the employee's counsel. The reply dated 9.06.2014 (A/6) was sent by the respondents stating that since the employee did not furnish the PMC/RMC, the salary could not be paid.

8. It is further stated in the counter that the employee was admitted in Sambalpur hospital on 3.02.2014 for further evaluation, but he left the hospital without any advice from the medical authorities on 5.02.2014. Admittedly, the employee is suffering from psychological disorder, due to which it is possible

that he may not act rationally to take steps as per the rules to protect his interest. It is not mentioned in the counter if any step was taken by the authorities to prevent the employee from running away from the hospital since he was suffering from psychological disorder. In any case, it was assumed by the respondents that the employee is not cooperating with the authorities by not presenting himself before the medical authorities, for which the departmental proceeding was initiated against the employee for unauthorized absence and after ex-parte conclusion of the inquiry, the employee has been removed from service vide order dated 27.03.2017 (R/3), when this OA was pending. It is also noted that although the OA was filed after issue of charge-sheet issued vide order dated 7.11.2016, there was no mention in the OA about initiation of departmental proceeding against the employee."

5. Mr.N.R.Routray, learned counsel for the applicant was heard in the matter and he submitted that the charge sheet against Sri Bag (employee) was issued on 7.11.2016 after the Tribunal passed the order dated 12.7.2016 on the first OA of the applicant and immediately after issuing the speaking order dated 19.10.2016 rejecting the representation of Sri Bikram Bag. It is further stated that as per the pleadings of the respondents, Medical Board issued letter to the employee to appear at Kantabanji Health Unit for medical check up on 9.8.2016 but he could not appear before the Medical Board. It is also stated that the punishment order dated 27.3.2017 (Annexure R/3) removing Sri Bag from service has not been served on the applicant.

6. Learned counsel for the respondents submitted that since the employee Sri Bag has already been removed from service, the prayer made in the present OA to declare Sri Bag as medically invalid for further service and other reliefs are not admissible.

7. We have considered the pleadings on record and submissions of learned counsels for both sides. Admittedly the applicant's husband has been removed from the service by the authorities vide order dated 27.3.2017 which has not been challenged in this OA. It is also not known whether the appeal has been filed by the employee against the punishment order. It is seen from para 3 of the counter that Sri Bikram Bag had participated in the proceeding by appearing in person on 21.12.2016 and subsequently he did not co-operate in the proceeding. It is also undisputed that Sri Bikram Bag was medically examined and was found to be suffering from serious psychological disorder for which he was referred to Garden Reach Hospital of the respondents, which was not complied with by the applicant. The reason for not reporting to Garden

Reach Hospital is stated to be the financial problems faced by the family. The respondents for reasons best known to them, have taken steps with presumption that Sri Bag was deliberately avoiding medical examination without any enquiry. Since Sri Bikram Bag has already been removed from service, we are not able to consider any relief as prayed for in the present OA.

8. However, taking into consideration the fact that Sri Bikram Bag is suffering from psychological disorders as per the medical report on record, the OA is disposed of with liberty to the applicant/applicant's husband to take appropriate steps as per law for challenging the order dated 27.3.2017 (Annexure R/3) by which the punishment of removal from service has been imposed if advised, in case they want to pursue further the prayers made in the OA. It is made clear that the maintainability of the prayers made in this OA has been considered by us in the context of the order dated 27.3.2017 removing Sri Bikram Bag from service, leaving the question of merit of the prayers open. We are also of the view that the applicant may be in need of legal assistance to protect their interest, for which the Registry is directed to send a copy of this order to the State Legal Services Authority and concerned District Legal Services Authority to sympathetically consider the case of the applicant for legal aid, if necessary.

9. The OA is disposed of accordingly with the above observations/directions. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath