

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No. 290/00117/2010

Reserved on : 20.05.2019

Pronounced on: 30.05.2019

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

HON'BLE MS. ARCHANA NIGAM, MEMBER (A)

Kishan Lal (Deceased) through LRs

1. Ganga Devi Wd/o Late Shri Kishan Lal, aged about ...years.
2. Ganesh s/o Late Shri Kishan Lal, aged about.... years.
3. Maya D/o Late Shri Kishan Lal, aged about... years
4. Raj Kumar s/o Late Shri Kishan Lal, aged about... years.

All Residents of Near Harinarayan Maharaj Ki Kothi,
Inside Jassusar Gate, Bikaner.

...Applicant

(By Advocate: Shri Dilip Sharma)

Versus

1. Union of India through the General Manager, Northern Western Railway, Ganpati Nagar, Jaipur.
2. Divisional Personnel Officer, Northern Western Railway, Bikaner.
3. Divisional Railway Manager, Northern Western Railway, Bikaner.
4. Assistant Personnel Officer, Northern-Western Railway, Bikaner.

...Respondents

(By Advocate: Shri Salil Trivedi)

ORDER

Per Mrs. Hina P.Shah

The applicant has filed the present OA u/s 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs: -

- 8.1 That record of the case may kindly be called for.
- 8.2 That the order impugned dated 22.4.2010 (Annex.1) may kindly be declared illegal & the same may kindly be quashed & set aside.
- 8.3. That respondents may kindly be restrained from terminating the services of the applicant in pursuance of the order dated 22.4.2010.
- 8.4 The respondents may kindly be further directed to undertake the proceedings to regularize the services of the applicant.
- 8.5 Any other relief, which this Hon'ble Tribunal deems fit and proper in favour of the applicant, may be granted.
- 8.6. The Original Application may kindly be allowed with costs and all circumstantial benefits may be granted in favour of the applicant.

2. The applicant was initially appointed as Casual Labour in 1968 and was working continuously till his services were terminated in December, 1976. The applicant challenged the said termination order before the Munsiff Court, Bikaner and thereafter before the District Court, Bikaner, which was transferred to this Tribunal and registered as OA No.1495/1986. This Tribunal vide its order dated 9.4.1993 directed the respondents to give him appointment from

20.05.1985 on any Class-IV post in which he fulfils necessary conditions and the order of appointment to be issued within two months from the date of issue of the order. Accordingly, the applicant was appointed on 21.11.1994 (Ann.A/3). The applicant thereafter continued in service. Vide letter dated 19.3.2010 (Ann.A/4) respondents mentioned that the applicant has not been sent for medical examination and therefore, he was immediately relieved for medical examination. Thereafter, the Chief Medical Superintendent after examining the applicant vide certificate dated 9.4.2010 declared the applicant unfit for all categories. On the basis of this certification, the respondents issued order dated 13.4.2010 (Ann.A/5), that since the applicant has been declared unfit for all categories, it is not possible to retain him in service. In response to this order, applicant filed representation dated 20.4.2010. Thereafter, the vide impugned order dated 22.4.2010 (Ann.A/1), the services of the applicant have been terminated being medically unfit. The applicant avers that the order dated 22.4.2010 is arbitrary, unconstitutional and malafide and, therefore, the same requires to be quashed and set-aside. Therefore, the present OA is preferred by the applicant praying to quash

and set-aside the impugned order by which his services were terminated. The applicant has also prayed that his services may be regularised.

3. The respondents vide reply dated 3rd August, 2010 have raised preliminary objection stating that in para 4.7 of the OA, the applicant has left blank the date of birth as well as his date of retirement and ex-parte interim order was passed by this Tribunal on 19.5.2010. The order dated 19.05.2010 reveals that submission was made on behalf of the applicant that he is going to retire on 31st May, 2010. The applicant misled this Tribunal firstly by not mentioning his date of birth as well as the date of his due retirement. In order to obtain an interim relief, he has made a false statement that he is going to retire in few days and, therefore, ex-parte order was issued in favour of the applicant. As per the official service record of the applicant, the date of birth of the applicant is 1.5.1950. Even if the services of the applicant were not terminated by the impugned order, the applicant would have retired on 30th April, 2010 i.e. much before the date of ex-parte order was passed on 19.5.2010. The applicant, thus approached the Tribunal with unclean hands and obtained interim order by suppressing material and actual facts and, therefore, in

view of the conduct of the applicant he is not entitled to any relief from this Tribunal and the OA deserves to be dismissed.

The respondents have further stated that the applicant was sent for medical examination and as a result, he was declared medically unfit in C-1 category. The applicant was informed that he is not fit for appointment in Group-D post vide letter dated 18.01.1977. The appeal preferred by applicant was also dismissed. Since he was not found medically fit for appointment in C-1 medical category, there was no question for his appointment on post of AM Khalashi. The Suit filed before the Munsif Court, Bikaner was dismissed on 25.4.1985. Thereafter in compliance of the order dated 9.4.1993 of this Tribunal, the applicant again directed to Sr. MS/LGH for re-medical examination vide medical memo dated 23.8.1993 (Ann.R/2). The applicant was again declared medically unfit for all categories vide medical certificate No.124544 dated 1.9.1993 issued by Senior DMO/LGH (Ann.R/3). The said medical certificate was received by the applicant under his own signature but he never submitted this certificate in the office of respondents for the reasons best known to him. In the meantime, a Contempt Petition was preferred by the

applicant and during the pendency of the same, he was appointed as substitute AM Khalashi subject to passing of the examination in C-1 medical category vide letter dated 21.11.1994. It is further submitted that an employee working as substitute for a continuous period without passing the pre-requisite medical examination does not by itself becomes entitled for regularization. As per the record of the respondents, the date of birth of the applicant is shown as 1.5.1950 and according to this date of birth, the applicant ought to have retired from service on 30th April, 2010, had his services not been terminated, but the applicant intentionally left the date of birth as blank. The applicant was again declared unfit for all categories and, therefore, there is no justification in the case of the applicant as he was very much aware about the medical certificate no. 125725 dated 9.4.2010 (Ann.R/5), which was received by him under his signature. The applicant has suppressed and mis-represented before this Tribunal, therefore, he is not entitled to any relief and the OA deserves to be dismissed.

4. Heard Shri Dilip Sharma, counsel for the applicant and Shri Salil Trivedi, counsel for the respondents and perused the material available on record.

5. From the pleadings of the parties, it transpired that the applicant was sent for medical examination and he was declared unfit vide medical certificate dated 1.9.1993, but the said certificate was not taken into account by the respondents on the plea that the said medical certificate was received by the applicant under his signature, but he never submitted this certificate in the office of the respondents. The said plea cannot be accepted. The respondents cannot absolve from their responsibility about not knowing about the said certificate as the respondents themselves have sent the applicant for re-medical examination and it was the duty of the concerned authority to obtain the certificate as it was a pre-requisite for appointment. Thereafter, vide order dated 21.11.1994, the applicant was appointed as Substitute A.M.Khallasi, subject to passing of medical examination in C-1 medical classification. The applicant continued in railway service without the requirement of any medical fitness certificate until the order of termination order dated 22.4.2010 passed by the respondent authorities. The respondents allowed the applicant to perform his services as Substitute A.M.Khallasi as if he was medically fit without any requirement of the medical fitness certificate from any competent authority at

any point of time before termination of his services in the year 2010. This was due to the fault of the respondent department. The concerned administrative authority was bound to send the applicant for medical re-examination immediately as the appointment was subject to the medical fitness. If the applicant was not found medically fit, appropriate action could have been taken against the applicant, rather he was given opportunity to continue on the post inspite of being medically unfit. It appears that the respondents slept over the matter for a long period from 1994 to 2010 and only vide letter dated 19.3.2010 (Ann.A/4) addressed to Sr. DMO/LGH stated that pursuant to letter dated 21.11.1994 after appointing the applicant to the post of Substitute AM Khallasi, you were requested for medical examination and in the absence of which regularisation is not being done. Therefore, the applicant is being sent for special medical examination along with medical memo and after medical examination of the employee, the same may be informed immediately. The Chief Medical Officer vide medical certificate dated 09.04.2010 (Ann.R/5) declared the applicant medically unfit for all categories. Thereafter the respondents vide letter dated 13.4.2010 (Ann.A/5) informed the applicant that due

to his being medically unfit, it is not possible to retain him on any post and thereafter vide impugned order dated 22.4.2010, terminated the services of the applicant. In the above series of events, we find no fault on the part of the applicant while working as a medically unfit employee. It was totally due to the carelessness on the part of the respondents that the applicant continued to work. The respondents themselves allowed the applicant to work as such without insisting for any medical fitness certificate, which was though pre-requisite condition of appointment as per letter dated 22.11.1994, but only in the year 2010 i.e. near to the date of his superannuation, they have sent a letter to the Sr. DMO/LHG for medical examination, and thereafter he was declared unfit and stood terminated as per impugned order/letter dated 22.4.2010. The termination at such a stage and in the manner as mentioned above cannot be said to be justified.

That apart, it is also not clear from the available record whether the respondents have undertaken any exercise to adjust him on any other alternate category meant for the employees like the applicant since as per order of this Tribunal dated 9.4.1993 there was a direction to the

respondents to give him appointment from 25.10.1985 on any class IV post for which he fulfils necessary conditions.

6. In these peculiar facts and circumstances, we are of the view that termination of the applicant at such a stage cannot be said to be justified. The administrative authorities in the respondent-department did not bother to send the applicant for getting medical fitness certificate for a long time after his appointment as substitute, though it was pre-requisite condition. It is not the case of the respondents that they have sent the applicant for medical examination, but the applicant refused. Instead the stand of the respondents is that the medical certificate issued on 1.9.1993 received by the applicant has not been submitted in the respondent department. It appears that ignoring the medical certificate dated 1.9.1993, the applicant was appointed as Substitute subject to medical examination and thereafter also the respondents allowed him to continue from 1994 to 2010 without insisting for medical fitness certificate. It was the duty of the officer concerned to obtain the medical fitness certificate from the medical officer concerned/applicant, if the same has not been received, being a re-requisite condition for appointment of an

employee in the Govt. service and the respondents cannot shift their responsibility on the applicant in this behalf.

7. In view of above discussions, the termination order being bad in law is quashed. The respondents are directed to extend all the benefits to the applicant similar to those extendable to a medically fit candidate including post-retiral benefits. So far as regularisation is concerned, the applicant worked as substitute for a quite long time, therefore, the matter of his regularisation is required to be considered as per the relevant rules. Since the applicant has expired, these benefits may be provided to the wife of the applicant within a period of 3 months from the date of receipt of a copy of this order. This direction is given in the peculiar facts and circumstances of this case only and it shall not be a precedent in other matters.

8. The OA stands allowed in above terms with no order as to costs.

(ARCHANA NIGAM)
ADMV. MEMBER

(HINA P.SHAH)
JUDL. MEMBER

R/

