

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHCIRCUIT BENCH AT RANCHIOA/051/00733/2018Date of Order:- -Oct-2018**C O R A M**

HON'BLE MR. K.N.SHRIVASTAVA, MEMBER (ADMN.)

HON'BLE MR. JAYESH V.BHAIRAVIA, MEMBER (JUDL.)

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Manas Chandra Mahanta, age about 38 years, S/o Sri B.C.Mahanta, Qtr. No. 236 A/ECC Flat, Kadma, PO & PS-Jamshedpur, Distt.-Jamshedpur, Jharkhand-831005.Applicant.

By Advocate:- Mrs. M.M.Pal, Sr.Adv.

Mrs. Leena Mukherjee.

Vs.

1. Union of India through the General Manager, South Eastern Railway, Garden Reach, Kolkata-43 (W.B.).
2. Divisional Railway Manager (P), South Eastern Railway, CKP Division, PO-Chakradharpur, Distt.-Singhbhum (West), Jharkhand-833 102.
3. Sr. Divisional Personnel Officer, South Eastern Railway, Chakradharpur Division, PO & PS-Chakradharpur, Distt.-Singhbhum (West)-833 102.
4. Asstt. Personnel Officer, South Eastern Railway, Chakradharpur Division, PO & PS-Chakradharpur, Distt.-Singhbhum (West)-833 102.
5. State Disability Commissioner (Under the person with Disabilities), Office at Project Building, Dhurwa, Ranchi, Jharkhand-834 002.Respondents.

By Advocate:- Mr. Prabhat Kumar, Standing Counsel.

O R D E R (ORAL)

Per K.N.Shrivastava, Member (Admn.):- Through the medium of this OA filed under Section 19 of the A.T.Act, the applicant has prayed for the following reliefs:-

“8.1 That the rejection-cum-removal order dated 29.01.2010 issued by the Sr. D.P.O. (Annexure-A/5) be quashed.

8.2 That the respondents be directed not to give effect to the order dt. 29.01.2010 and to reinstate the petitioner to his original post with back wages and with all consequential benefits.

8.3 That the respondents be directed to pay the full salary for the period from 21.09.2001 to 08.10.2009 i.e. the date from the termination order to the finding of the fresh Medical Board in terms of the judgment dt. 10.07.2009 passed by the Hon’ble Orissa High Court.

8.4 That the respondents be directed to act on the basis of the disability certificate issued by the competent District Level Medical Board constituted in terms of the Disability Act, 1995.

8.5 That the respondents be directed not to discriminate the petitioner and to extend the benefits of employment at par with same and similarly situated persons.

8.6 That the respondents be directed to give effect to the Disability certificate issued by the competent Medical Board dt. 05.07.1996 and 2018 as the disability percentage determined by the Medical Board duly constituted under the Disability Act 1995 is conclusive and binding of the parties.”

2. The factual matrix of the case, as noticed from the records, is as under:-

(i) The Railway Department issued a notification on 10.02.1999 inviting applications for various posts including the post of Ty. Chowkidar. There were 44 posts notified for Physically Handicapped (PH) - 15 for Visually Handicapped; 15 for Orthopaedically Handicapped and the remaining 14 for Hearing Handicapped persons. The applicant was selected under the Visually Handicapped category and was appointed as Ty. Chowkidar under the Divisional (Signal & Telecom) Engineer (Con.)/Chakradharpur vide order dated 03.04.2001. The applicant's appointment was granted after subjecting him to medical examination.

(ii) A complaint was received regarding the degree of visual disability of the applicant pursuant to which he was subjected to medical examination at Ophthalmological Clinic, at Divisional Railway Hospital, Chakradharpur. The Chief Medical Direction (Eye) of the Railways, after looking into the findings of the medical examinations, opined that the applicant is having less than 40% disability. Hence, the

Railway department held that he was not entitled for availing employment under the Physically Handicapped category. Accordingly, vide order dated 21.06.2001 his services were terminated by the competent authority.

(iii) The applicant challenged his termination order before the Tribunal in OA No. 300 of 2001 which was dismissed vide order dated 16.11.2005. The applicant challenged the order of the Tribunal before the Hon'ble Orissa High Court in W.P.(C) No. 15699 of 2005 which was disposed of vide order dated 10.07.2009, operative part of which would read as under:-

"6. We, accordingly set aside the impugned judgment of the Tribunal as well as the order of termination and direct the opposite party No.2 to set up a medical board consisting of Eye Specialist for examination of the petitioner in order to find out as to whether he could be categorized as Visually Handicapped person or not. In the event, the petitioner is found fit for employment as Visually Handicapped Person, he should be allowed to continue in service. In the event he is not found eligible for employment as a Visually Handicapped Person, a fresh order shall be passed on the basis of the report of the Medical Board. So far as salary for the period he is kept out of service is concerned, the competent authority shall pass necessary orders

keeping in mind the fact that the order of termination at Annexure-10 has been quashed and petitioner is deemed to be continuing in service (though he has not actually worked) till a fresh order is passed on the basis of the report of the Medical Board.”

(iv) In compliance of the order of the Hon’ble Orissa High Court, the respondents vide Annexure-A/3 letter dated 19.08.2009 directed the applicant to re-appear for medical examination before the Chief Medical Superintendent, S.E.Railway, Chakradharpur. A duly constituted Medical Board consisting of Three Eye Specialists examined him at Central Hospital, Garden Reach, Kolkata on 08.10.2009. The Medical Board adjudged his impairment to be 20%. Acting on the findings of the Medical Board the respondents vide impugned Annexure-A/5 letter dated 29.01.2010 informed the applicant as under:-

“Since your disability has been assessed to be less than 40% as per the aforesaid findings of the Medical Board you do not come within the purview of the definition “person with disability” as stipulated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. As such you are not eligible for appointment under Physically Handicapped quota in terms of Section 33 read with Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Right & Full

Participation) Act, 1995 as well as S.E.Rly's Estt. Srl. No.56/08.

In view of the above facts and circumstances, you claim for appointment in Railways against Physically Handicapped Quota cannot be considered and is accordingly regretted.

Since you are not found eligible for employment as Visually Handicapped Persons by the Medical Board your service is terminated w.e.f. 08.10.2009 i.e. when you were declared unfit for the post by the Medical Board in the re-medical examination conducted in terms of Hon'ble HC/CTC's order dt. 10.07.2009.

Hon'ble in compliance of Hon'ble High Court's direction the intervening period from the date of your initial termination to the date of the findings of the Medical Board i.e. 21.06.2001 to 08.10.2009, wherein you were found Unfit for the post reserved for Physically Handicapped quota is treated as leave on LAP and LHAP to the extent available at your credit at that material time and the balance period as sanctioned LWP (Leave without pay)."

(v) As delay was taking at the end of the respondents in complying with the direction of the Hon'ble Orissa High Court vide its judgment dated 10.07.2009 in W.P.(C) No. 15699 of 2009, the applicant filed a Contempt Petition No. 551 of 2010 before the Hon'ble High Court which came up for consideration on 22.11.2017 by which time the respondents had already passed the order dated

29.01.2010. The Hon'ble High Court taking cognizance of it vide its order dated 21.11.2017 came to a conclusion that its order had been duly complied with and accordingly decided to drop the contempt proceedings. The order of the Hon'ble Orissa High Court is reproduced below:-

"22.11.2017 - In view of the averments made in paragraph-4 of the show cause affidavit and on perusal of annexure A/1, we are satisfied that the order passed by this Court has been complied.

Accordingly, the contempt proceeding is dropped."

3. The applicant is aggrieved of Annexure-A/5 order dated 29.01.2010 and has, accordingly, approached the Tribunal in the instant OA seeking the reliefs as indicated in para-1 supra.

4. The OA was taken up for admission on 22.10.2010. Mrs. M.M.Pal, learned Sr. Counsel for the applicant submitted that the order of the Tribunal dated 16.11.2005 passed in OA 300 of 2001 had been set-aside by the Hon'ble Orissa High Court vide order dated 10.07.2009 and hence, the applicant is legally entitled for reinstatement and full back-wages with all consequential benefits. She further submitted that the Medical Board constituted by the Railway department was not competent to issue disability

certificate indicating therein the degree of disability. According to her, as per Rule-4 of Disability Rules 1996, only District Level Medical Board consisting of Civil Surgeon and two Doctors is competent to decide the percentage of disability. Mrs. Pal also submitted that as per Master Circular 13 of the Railway Board dated 05.04.1999 the disability certificate issued under Disability Act, 1995 cannot be questioned.

5. In support of her contention the learned counsel for the applicant referred following judgments/orders of the Tribunal:-

(i) Judgment dated 10.03.2011 passed in OA No. 263 of 2009
- Vidya Sagar Mahto and others.

(ii) Order dated 24th Aug. 2015 in OA No. 280 of 2012(R) –
Vidya Sagar Mahto & Ors.

6. When a query was put to Mrs. Pal as to why the applicant has approached the Tribunal now impugning Annexure-A/5 rejection letter dated 29.01.2010, she submitted that the contempt petition filed by the applicant before the Hon'ble Orissa High Court was disposed of on 22.11.2017 and immediately

thereafter he has approached the Tribunal in the instant OA and as such, the issue of limitation would not arise.

7. It is not in dispute that Annexure-A/5 rejection letter has been issued by the respondents in compliance of the direction of Hon'ble Orissa High Court vide its order dated 16.11.2005 in WP(C) No. 15699 of 2005 filed by the present applicant. The Hon'ble High Court has clearly directed the respondents to constitute a Medical Board for medical re-examination of the applicant. Accordingly, the respondents had constituted the Medial Board and got the applicant re-examined. The impugned Annexure-A/5 rejection letter has been issued on the basis of opinion of the Medical Board whereby the physical disability of the applicant has been assessed as 20%. On the basis of the opinion of the Medical Board, the respondents rightly took a view that the applicant was not entitled for Physically Handicapped benefits as his degree of disability was less than 40%. We do not agree with the contention of Mrs. Pal, learned Sr.Counsel for the applicant that the Medical Board was not authorised to issue a medical certificate for the applicant including the degree of disability and that such certificate can only be issued by District Level Medical Board. It is pertinent to

mention that the respondents were only complying with the direction of the Hon'ble Orissa High Court. If the applicant has any disagreement with the direction of the Hon'ble Orissa High Court he ought to have approached appropriate judicial forum for challenging it. We would also like to mention that while disposing of the contempt petition filed by the applicant against alleged non-compliance of the order of the Hon'ble Orissa High Court, the High Court vide its order dated 10.07.2009 dropped the contempt proceeding with observation that its order has been complied with by the respondents.

8. In view of the discussions in the foregoing paragraphs, we are of the view that Annexure-A/5 rejection letter dated 29.01.2010 cannot be impugned by the applicant before the Tribunal since it has been issued in compliance of the direction of the Hon'ble Orissa High Court.

In the conspectus, we do not find any merit in the OA and it is, accordingly, dismissed.

Sd/-
(Jayesh V.Bhairavia)
Member (Judl.)

Sd/-
(K.N.Shrivastava)
Member (Admn.)

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