

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16738 of 2012

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1. Ramdeo Paswan Son Of Jaldhar Paswan Resident Of Village- Hasanpur, P.O.-
Jitwarpur, P.S.- Muffasil Samastipur, District- Samastipur

.... Petitioner/s

Versus

1. The Union Of India Through G.M., E.C. Railway, Hazipur
2. The Chief Workshop Manager, E.C. Railway, Samastipur
3. Medical Superintendent, E.C. Railway, Samastipur
4. Chief Medical Director, E.C. Railway, Hazipur
5. Chief Medical Superintendent, E.C. Railway, Samastipur

.... Respondent/s

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Appearance :

For the Petitioner/s : M/S M. P. Dixit, Sanjay Kumar Dixit, Sanjay Kumar
Choubey & Shailendra Kumar

For the Respondent/s : Mr. Devendra Kumar Sinha, Sr. Adv. & Abhinay
Raj, Adv.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 18-04-2016

Heard the parties. The present writ petition is directed against the order dated 6-1-2012 passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A.No. 591 of 2005, by which the application filed by the petitioner has been dismissed. The petitioner had sought his appointment in Class IV in the Railways having been selected in the written examination. He was denied the same on medical ground. The facts are not in dispute.

2. The petitioner was a substitute Khalasi having been selected in 1984, and was working as such in the Railway Workshop at Samastipur. He worked up to 1990. In 1990 he was asked to appear in the examination for being absorbed as Class IV regular employee. He appeared in the examination and qualified. But, he then was medically examined and he was certified in medical category C-1, and thus found medically unfit. He appealed. He was sent to Gorakhpur



for medical examination. We do not find anything on record as to what happened, but later in 1993 the Chief Medical Superintendent gave a report that he was medically unfit again. The petitioner found that another similarly situated person, namely, Laloo was confirmed in service in spite of such medical certification. It appears that pursuant to representation, the petitioner was then referred to the South Eastern Railway Specialty Hospital at Perambur, Madras. On 13-10-1995 he having been examined by Experts, was certified fit for employment in Railway with no cardiac abnormality. The certificate was granted by Dr. H.S. Somanath, D.M.(Cardio), Senior Cardiologist of the said Hospital. The report is Annexure-6 to the writ petition. When the petitioner returned to Samastipur with this clear finding of the Expert Body of the Railway itself, it appears that the Chief Medical Superintendent, Railway, Samastipur, apparently could not reconcile to the expert opinion. Instead of proceeding or allowing the Railway to proceed with the appointment, he wrote to the General Manager(Medical) requesting for guidance. The reply of the General Manager is Annexure-7, which is quoted hereinunder:

“ S. Railway Hospital/Perambur
have given a clear opinion, so what valuable
guidance is solicited?

The letter seems to be an exercise
in shifting off action to a higher level when
division is fully competent.”

3. This clearly indicates as to what had to be done and was being done. It is virtually a reprimand that once there is a clear finding by Perambur Hospital, the process of absorption of the petitioner must proceed. This is dated 2-1-1996. It is pursuant to this that the Chief Medical Superintendent then communicated to the Chief Works Manager, Samastipur that papers may be given to the petitioner to be



filled up for joining. The petitioner then represented the Chief Works Manager, Samastipur, who immediately now responded by his letter dated 29-2-1996(Annexure-9) that the Chief Medical Superintendent- vide his letter dated 31-1-1996 has found the petitioner unfit for appointment, and as such he is not able to give any duty or work or absorb the petitioner. The first thing we would like to notice at this juncture is that when the Chief Medical Superintendent sought guidance from the General Manager(Medical), he was fully aware of the report of Perambur Railway Hospital, Madras. He was reprimanded by the General Manager. Where was the occasion for acting on a medical test by a subordinate medical officer? At that time Perambur Railway Hospital was one of the topmost Cardiac Hospital of the country. How could the Chief Medical Superintendent of Samastipur sit in appeal over that? The General Manager had clearly opined to proceed accordingly. He had nowhere said to examine again. From these facts one thing is absolutely clear that the Chief Medical Superintendent took an affront that not only his opinion was overruled by the Railway Hospital at Madras, he even got reprimand from the General Manager, and it is apparent that these two, then forced him to issue the certificate declaring him medically unfit. This reflects a very sorry state of affairs. It is this certificate, which is now being issued in the year 1996 declaring him unfit after the Expert Body declaring him fit. That has debarred the petitioner from absorption as Class-IV permanent employee, and also resulted in taking away whatever little he had as a substitute Khalasi. The matter thereafter travelled in OA before the Tribunal and in Review and ultimately by the present OA even the Tribunal rejected his application, holding that the latest report being of the Chief Medical Superintendent, Samastipur dated 31-1-1996, the petitioner could not be employed.

4. Having considered the matter, in our view, the Tribunal misdirected itself. The true question before the Tribunal was the validity of the report of the Chief Medical Superintendent dated 31-1-2006. Once the petitioner had been sent to the Expert Hospital at Perambur, Madras, and had been certified fit by the Senior Cardiologist there, where was the occasion for fresh certification? The reason is apparent, as noted above. First, efforts were made to delay his appointment, then to deny, having been rebuffed and reprimanded, a fresh test was done at Samastipur and the petitioner declared unfit. It is virtually a subordinate sitting in appeal over the superior body of Experts. It is impermissible. The latter medical certification virtually overruling an Expert Body cannot be permitted. Thus, in our view, the petitioner has been unjustly treated all these years.

5. We, therefore, allow this writ petition, set aside the order of the Tribunal dated 6-1-2012, allow the O.A.application, and direct the Railway to consider the absorption of the petitioner in Class IV, as he has still time to serve. He was earlier, as noted above, working in temporary status as substitute Khalasi for over six years and had qualified for appointment to Class IV post, which appointment could not be nullified because he was given a wrong medical “unfit” certificate. The Railway is, thus, now directed to immediately employ the petitioner in Class –IV grade.

B.K.Roy/
A.F.R.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

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