

(2024) 09 CAT CK 0005
In the Central Administrative Tribunal
Case No : Original Application No. 136 Of 2013

Alexander David Saffir

APPELLANT

Vs

Union Of India Through General Manager, North Central
Railway, Hq. Subedarganj. Allahabad & Ors.

RESPONDENT

Date of Decision : 18-09-2024

Acts Referred:

Railway Servant and Discipline Rule, 1968 — Rule 9

Citation : (2024) 09 CAT CK 0005

Hon'ble Judges : Om Prakash VII, Member (J); Mohan Pyare, Member (A)

Bench : Division Bench

Advocate : Ashish Srivastava, S. C. Mishra

Final Decision : Allowed

Judgement

Om Prakash VII, Member (J)

1. Shri Ashish Srivastava, learned counsel for the applicant and Shri S. C. Mishra, learned counsel for the respondents, are present and heard.

2. The instant original application has been filed seeking following relief:

"a) This Hon'ble Court may graciously be pleased to quash the impugned orders dated 15.05.2012 & 13.12.2012 passed by the respondent No. 3 & 2 respectively (Annexure No.A-1 & A-2) to the present Original Application.

b) This Hon'ble Court may graciously be pleased direct to the respondents to restore his pay with all consequential benefits.

c) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the applicant.

d) Award the costs of the original application in favour of the applicant."

3. The brief facts of the case are that the applicant appeared in the examination conducted by the respondents and was successful in all the stages. Thereafter on

dated 14.08.1989, a memo was issued for his medical examination. Applicant appeared before the Chief Medical Officer and he was found fit for A-III category post. Thereafter on dated 28.08.1989, the applicant was sent for training as Traffic Apprentice and after completion of training, he was posted to the post of A-II category. Work and conduct of the applicant was satisfactory, due to this reason, he was given promotion from time to time. On dated 26.02.2008, while the applicant was working as Chief Movement Officer, a vigilance team came and interrogated him. Suddenly on dated 18.02.2010, a charge sheet was served upon the applicant under rule 9 of the Railway Servant and Discipline Rule, 1968, leveling certain allegations. Thereafter applicant submitted his reply, but without considering the facts disclosed in the reply an enquiry was initiated by appointing enquiry officer. Although, applicant participated in the enquiry, the enquiry officer found allegations under Article No. 1 of the charges proved. A report was also submitted stating that Article No. 2 is not found proved. Disciplinary authority supplied a copy of the enquiry report to the applicant calling reply. In pursuance to this, applicant submitted his reply, thereafter, disciplinary authority vide order dated 15.05.2012, imposed punishment upon the applicant without taking into consideration this fact that charges level against the applicant were on the basis of imaginations and there was no evidence. It is also mentioned in the OA that the applicant preferred appeal before the competent authority which was also dismissed on dated 13.12.2012. Feeling aggrieved with the aforesaid orders, present Original Application has been filed.

4. Per contra, respondents have filed their Counter Affidavit refuting the facts disclosed in the OA and alleged that applicant after completion of all the stages of the examination was sent for medical examination before the competent authority and he was found fit only in A-III category. Although he was sent for training and he was allotted the post relating to the A-II category but this fact was not disclosed by him to the competent authority. Thus, he had committed misconduct. It is also mentioned in the Counter Affidavit that applicant ought to have informed about the true fact, since he had concealed this fact, therefore, competent authority has rightly started disciplinary proceedings. It was also disclosed that operation of his eye defect was done without obtaining permission from competent authority, due to this reason, charge no. 2 was leveled against him. It is also argued that applicant was advised to appear in periodical medical examination, but he did not appear before the competent authority for his medical examination. Thus he has committed misconduct. It is also mentioned that the facts mentioned in the charge no. 1 was found true. Enquiry was conducted affording opportunity to the applicant and he has participated in the enquiry and has adduced the evidence. Allegations leveled against the applicant was not based on the imaginations rather it was based on the conduct of the applicant. Charge no. 2 was found not proved but charge no. 1 was found proved. Thus disciplinary authority has rightly imposed the punishment upon the applicant after affording opportunity to him. Appellate authority has also considered all the facts raised by the applicant in the appeal. There is no illegality

or perversity in the impugned orders. Applicant was duty bound to appear before the Medical Board for periodical medical examination as he was performing the duty which requires periodical medical check up. Since he did not appear before the Medical Board in spite of the advice given to him, thus he has committed misconduct and any mishappening may be occasioned due to non medical examination of the applicant. The respondents have also denied all the facts mentioned in the OA and disclosed that the charge sheet was issued on the basis of interrogation made by the vigilance team.

5. A rejoinder affidavit has also been filed by the applicant controverting the facts mentioned in the Counter Affidavit mentioning therein that as per the provisions in paragraph 514 and 515 of IRMM, it was the duty of the respondents to relieve the applicant for periodical medical checkup. Since at no point of time, such type of order was given to the applicant, therefore, finding arrived at by the enquiry officer regarding charge no. 1 is against the facts and evidence. It was also mentioned that it is no evidence case, thus applicant supports the facts mentioned in the OA.

6. We have heard the learned counsel for the parties.

7. Submission of learned counsel for the applicant is that after completion of all the stages of examination, the applicant was sent for medical examination where he was found fit for A-III category post. Thereafter he was sent for training and after completion of training, he was allotted the post relating to A-II category. There was no fault or misrepresentation on the part of the applicant and post relating to A-II category was allotted by the respondents themselves. Thus the charge sheet/ enquiry should have been conducted against the respondents. Disciplinary authority has wrongly issued a charge sheet against the applicant, whereas there was no any role of the applicant in allotting the post to the applicant. It was also argued that there is no provision to obtain prior permission from the competent authority for operation of the eye. It is next argued that charge no. 2 was found not proved and charge no 1 is also based on no evidence. Enquiry officer has not appreciated the evidence available on record in correct perspective and has wrongly reached on conclusion that charge no. 1 is found proved. Since post was allotted by the respondents themselves to which applicant was performing his duty satisfactorily, thus disciplinary authority should have observed that charge no.1 is also not proved. To substantiate his argument, learned counsel for the applicant referred to the para no.514 and 515 of IRMM and argued that applicant was well doing his duty and at no point of time he was ordered for periodical medical examination and nor any relieving order was issued to him. Therefore no fault can be attributed to the applicant. It was next argued that these facts have not been considered in correct perspective by the disciplinary authority as well as appellate authority. Thus prayer was made to allow the OA and quash the impugned orders.

8. Learned counsel for the respondents argued that applicant was fully aware about this fact that he was found fit only for A-III category post but when he was

allotted the post relating to A-II category, he must inform to the authority concerned immediately. Since he has not informed to the authority concerned, thus a clear case of misconduct is made out. He also did not appear before the Medical Board for periodical medical checkup despite advice given to appear. Thus, the fact disclosed in the charge no. 1 in this respect is also established. Opinion formed by the enquiry officer as well as disciplinary authority are based on evidence available in the enquiry proceedings. Appellate authority has also rightly decided the appeal and there is no illegality or infirmity in the impugned orders, thus referring to the para no. 514 and 515 of the IRMM, prayer was made to dismiss the OA.

9. We have considered the rival submissions and gone through the entire records.

10. It is admitted fact between the parties that applicant cleared all the stages of examination, thereafter respondents themselves have sent him for medical examination. The applicant appeared before the Medical Board and was found fit in A-III category post. Thereafter he was sent for training and after completion of training he was allotted the post for A-II category. It was the duty of the respondents to allot the post relating to A-III category to the applicant whereas they themselves have allotted to the applicant the post relating to the A-II category. Applicant was satisfactorily serving the duty assigned to him and he was also given promotion from time to time. It appears that on the basis of imaginary fact, charge sheet was served upon the applicant. Respondents have failed to bring on record any document showing the fact that at any point of time, an order was issued for sending the applicant to periodical medical checkup.

11. Before discussing other issues raised on behalf of the parties, it will be useful to quote the relevant provisions of the paragraph no. 514 and 515 of IRMM, which is as follows:-

514. Periodical Re-examination of serving Railway employees:- (1) In order to ensure the continuous ability of Railway employees in class A-1, A-2, A-3, B-1 and B-2 to discharge their duties with safety, they wtf be required to appear for re-examination at the following stated intervals throughout their service.

(A) Category A-1, A-2 and A-3:-

(1) At the termination of every period of four years, calculated from the date of appointment, until they attain the age of 45 years, and then every two years until the age of 55 years and then there after annually, until the conclusion of their service.

(ii) If an employee in Medical category A has been periodically medically examines at any time within two years prior to his attaining the age of 45, his next medical examination should be held two years from the date of the last medical examination and subsequent medical examinations every two years until 55 years and then annually thereafter until retirement. If however such an employee has been medically examined at any time earlier than two years prior

to his attaining the age of 45 years, his next medical examination should be held on the date he attains the age of 45 and subsequent medical examinations every two years thereafter,

(Rly Bd.'s letter No. 88/H/5/12 dt. 29/01/93)

(B) Category B-1 and B-2:- On attaining the age of 45 years, and thereafter at the termination of every period of 5 years.

Note:- (i) The employees in Railway Protection Force will be re-examined for physical fitness at the termination of every period of three years, calculated from the date of appointment until the conclusion of their service. However, Inspectors, Sub-Inspectors, and Assistant Inspectors of the Railway Protection Force are to be re-examined for physical fitness and visual acuity on attaining the age of 45 years and thereafter at the termination of every period of five years.

(C) Category C-1 and C-2:- Will not be required to undergo any re-examination during the course of their service, unless specifically directed.

(D) Any Railway employee in service may be required to undergo tests for vision and general physical examination in the event of his failure to comply with signals.

(E) Work shop staff and artisan staff in Loco shed and C&W depots would be exempt from P.MES except when such staff are promoted to depots requiring higher medical examination from safety angle.

(F) Special Medical Examination: The staff in the categories A-1, A-2, A-3 should be sent for special medical examination in the interest of safety under the following circumstances unless they have been under the treatment of a Railway Medical Officer.:-

(a) Having undergone any treatment or operation for eye irrespective of the duration of sickness.

(b) Absence from duty for a period in excess of 90 days. In case of A-1, A-2 and A-3 an employee may be asked to give an undertaking to his supervisor when reporting back to duty after leave or absence, irrespective of the period, that he has not suffered from any eye disease or undergone an eye operation.

515. Authority from responsible departmental superior required prior to examination:- (1) Examiners will grant certificates under these regulations only to such candidates or Railway employees as hold authority from their departmental superior to present themselves for examination. The forms to be used are given in annexure V and VI of this chapter.

(2) Authority to present himself for the medical examination should not be granted to any candidate who has at any time been pronounced unfit for Government employment by any duly constituted medical authority. Candidates

should be warned to disclose any previous rejection from Government employment on medical ground.

(3) The onus of sending the candidate or a Railway employee for medical examination is that of the employing department.

(4) The employing branch or the department will in every case be responsible for the punctual appearance of the Railway employee, particularly the operating staff concerned with train passing duties, before the appropriate authorized medical examiner. For this purpose, the staff should be relieved on or before the due date for medical examination. It will not be exactly the date when the re-examination falls due, but it will be the month in which this falls due, so that he can appear for P.M.E any day during the month. This does not, however, mean that staff should be relieved and kept idling for an indefinite period but it should be ensured, in coordination with the medical department, that staff are medically examined invariably on or near about the due dates.

12. As per the provisions of paragraph 514 of IRMM, medical examination of the railway employees in class A-1, A-2, A-3, B-1 and B-2 are done to ensure that the employee discharge his duty with safety. Employee concerned will also be asked to appear for re-examination at the stated intervals throughout their service for medical. What would be period of re-examination has also been disclosed in this paragraph itself. Paragraph No. 515 (3) of IRMM speaks that onus of sending the candidate or a railway employee for medical examination is that of the employing department. If the aforesaid facts as disclosed in paragraph 515 and its sub-para is taking into consideration then also observation recorded hereinabove by us find support with the aforesaid provision. Respondents have failed to bring on record any document showing this fact that orders had been issued for re-medical examination. In that situation, it shall be presumed that onus casts upon the railway department was not fulfilled. If such is the position, finding recorded by the inquiry officer to the extent that applicant himself has not appeared for the medical examination is against the provision mentioned hereinabove. In the first charge, it has also been mentioned that he was allotted A-II category post and he accepted the same but did not inform the respondents, this fact is also based on no evidence. Duty to allot the post lies with the respondents, whatever duty/post was allotted to the applicant, he accepted and performed his duty. If the applicant has not informed about the allotment of A-II category post, he should not be held responsible for the fault of the respondents as respondents were duty bound to check the documents including the medical certificate before allotting the post. Thus submission raised on behalf of the applicant that article no. 1 is based on imagination and without evidence is acceptable. Findings arrived at by the enquiry officer/disciplinary authority as well as observation recorded by the appellate authority are based on conjecture and surmises. Had any order been issued for medical re-examination, then result would otherwise. Since no order has been issued on the part of the respondents, therefore they cannot shift the burden upon the shoulder of the

applicant.

13. Thus, on close scrutiny of entire evidence and enquiry report and comparing the same with the provisions contained in paragraph 514 and 515 of IRMM, we are of the view that prayer made in the OA is liable to be allowed and impugned orders passed by disciplinary authority as well as appellate authority both are liable to be quashed. Thus, OA is accordingly allowed. Impugned orders dated 15.05.2012 and 13.12.2012 passed by the respondents no. 3 and 2 respectively, are hereby quashed/set aside. Respondents are hereby directed to accord/extend all consequential benefits to the applicant. This exercise shall be completed within a period of four months from the date of receipt of certified copy of this order. All associated MAs stand disposed off.

14. No costs.