

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00463/2016

Reserved on : 10.01.2020
Pronounced on: 29.01.2020

C O R A M

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER



Ajay Kumar Akela, aged about 31 years, son of Late Jugeshwar Singh, resident of Mohalla- Shastri Nagar, Road No.5 'B', P.O. & P.S.- Rampur, District- Gaya (Bihar), Pin- 823001.

.... Applicant.

By Advocate: - Mr. P. Kumar

-Versus-

1. Union of India through the Secretary, Govt. of India, Ministry of Railway, New Delhi.
2. The Dy. Director/Health, Railway Board, New Delhi.
3. The Chief Medical Director, South East Central Railway, Bilaspur-495004.
4. The Chief Medical Superintendent, South East Central Railway, Bilaspur-495004.
5. The Secretary, Railway Recruitment Board, Bilaspur, Chattisgarh-495004.
6. The General Manager, South Central Railway, Headquarter, Bilaspur-495004.
7. The Divisional Railway Manager/Addl. Divisional Railway Manager, South East Central Railway, Bilaspur Division- 495004.
8. The Chief Personnel Officer, South East Central Railway, Bilaspur Division- 495004.
9. The Sr. Divisional Personnel Officer, South East Central Railway, Bilaspur Division- 495004.
10. The Asst. Personnel Officer, South East Central Railway, Bilaspur Division- 495004.

.... Respondents.

By Advocate: - Mr. K.P. Narayan

ORDER

Per Dinesh Sharma, A.M:- In the instant OA, the applicant has prayed for the following reliefs:-



“(i) For quashing and to set aside impugned letter No. Med/HQ/SECR/Adv. Report/Gd/57/Vol-1/1678 dt. 05.10.2018 (Annexure 6) issued by the Chief Medical Director, South East Central Railway, Bilaspur [Respondent 3]. Apart from it, letters No. E/GE/Rectt./Gr. ‘C’/’D’/RRB/Med./BSP Divn dated 20.04.2015 [Annexure 5/2] and dated 14.11.2014/04/12/2014 [Annexure 5] issued on behalf of the Sr. Divisional Personnel Officer, South East Central Railway, Bilaspur [Respondent 9] also be quashed.

(ii) For a direction to the Respondents to re-examine applicant afresh by the three members standing medical team/committee/Board and to pass appropriate decision/speaking order in respect of the fitness of Applicant and Applicant be deputed to training for the post of Goods Guard.”

2. The applicant has claimed that he had appeared for medical examination on 28.08.2014 after the completion of selection process following Employment Notice No CEN 3 of 2012 of RRB, Bilaspur for appointment to the post of Goods Guard. Since no report of medical examination was communicated to the applicant till 07.11.2014, he represented before the Sr Divisional Personnel Officer, SECR, Bilaspur Division. Pursuant to an RTI application dated 10.11.2014 and his further persuasion, the applicant was given chance by a letter dated 16.03.2015, to appear for medical examination on 26.03.2015. The applicant was never given any advice to undergo any operation of the ear such as



Tympanoplasty Type-I surgery. The applicant appeared on 26.03.2015 before the three Member Standing Medical Team in terms of Railway Board's letter dated 05.06.2014. During this examination also the applicant was not advised to undergo the Tympanoplasty Type-I surgery which is in violation of the provision of paragraph-6.11 of the detailed guidelines explaining procedures of medical examination and specific diseases affecting fitness of staff [Annexure-3 mentioned in paragraph no. 509(2) of the Indian Railways Medical Attendance Rules]. The applicant has now been informed, by letter dated 20.04.2015 (the impugned order,) that the offer of appointment dated 08.07.2014 to the applicant is cancelled after the re-medical examination. The applicant alleges that such rejection, without advising the applicant to undergo Tympanoplasty Type-I surgery, is in violation of the provision of paragraph no. 6.11 of the Indian Railway Medical Attendance Rules. The applicant has also informed that after this, on 21.08.2015, the applicant has got done Tympanoplasty Type-I surgery in both the ears of the applicant at a Private E&T Care Centre and he states that his hearing is now totally normal. Quoting various provisions of the Indian Railway Medical Attendance Rules, the applicant has prayed for quashing the aforementioned orders cancelling his offer of appointment and also for directing the respondents to re-examine the applicant afresh by a three Member Medical Team.

3. A written statement has been filed by the respondents in which they have denied the claim of the applicant. It is stated that the applicant was declared unfit due to bilateral Chronic Supportive Otitis Media (CSOM). On the appeal of the applicant, he was directed to appear for further medical examination on 01/02.09.2014. But on 02.09.2014, the applicant did not report. On a further appeal by the applicant the case of the applicant was re-considered and he was allowed one more chance. The Medical Board, which examined the applicant on 26.03.2015, found the applicant to have “bilateral CSOM” with bilateral hearing impairment having perforations of Tympanic Membrane with acute discharge from both ears and hence as per Annexure-3 Sl. No. 12.13.2, page no. 100 of 2000, Vol. I the applicant was declared unfit as candidate in A-2 medical category. Thereafter, the applicant again appealed for re-consideration of his case by submitting private medical certificate mentioning that he had undergone Tympanoplasty Type-I in both ears on 21.08.2015 and requested to consider his appeal on the basis of Railway Board’s letter No. 2008/H/5/3 dated 20.01.2011. This letter describes that candidates who have undergone Tympanoplasty Type-I or Type-II may be made fit in A-1, A-2 and A-3 category. This request of the applicant was not accepted since the above-mentioned letter does not say anything about making anyone fit after Tympanoplasty operation when he/she has already been declared unfit by Medical Board. Since the applicant was detected to have CSOM twice, once at the time of initial medical examination and



subsequently by Medical Board his appeal was not considered for re-medical examination and was rejected. It is also mentioned in the WS that when the applicant had appeared for medical examination on 01.09.2014 he was duly advised for Tympanoplasty by the E&T Specialist. The respondents have prayed for rejection of the OA on the above grounds.



4. A rejoinder has been filed by the applicant in which he was reiterated his earlier claim and have forcefully denied that any medical advice to undergo Tympanoplasty was given to him or that he was called for further medical examination on 02.09.2014 when he is alleged to have not appeared. He categorically stated that Annexure R/1 filed by the respondents is only a proof of his having appeared for medical examination on 30.08.2014 and there is no evidence produced by the respondents of their having advised him to undergo Tympanoplasty as claimed in the written statement. The applicant has also annexed Annexure A/7 (which was also produced by the respondents at Annexure R/4) which is a copy of the letter No. 2014/H/5/8(Policy) dated 31.12.2015, where there is a specific mention about declaring candidates as temporary unfit and advising them to get treated within a specified time frame, with a written advise.

5. We have gone through the pleadings and heard the arguments of learned counsel of both the parties. The main issue, on which the adjudication of this OA rests, is whether the applicant should

have been declared temporary unfit and specifically advised to go through corrective surgery and whether a failure to observe this makes the rejection of the applicant's candidature on this medical ground illegal. The applicant has quoted the following provisions of the IRMM, 2000 in support of his argument: -



“Section-A- Medical Examination of Candidates for appointment to the Gazetted Railway Service

502 (7) The following are the guidelines for the medical examining authority in respect of hearing and diseases of ear, nose and throat:

(i) Marked or total deafness in one ear, other ear being normal.	Fit for non technical job if the deafness is upto 30 decibels in higher frequency.
(ii) Perceptive deafness in both ears in which some improvement is possible by a hearing aid	Fit in respect of both technical and non-technical jobs if deafness is up to 30 decibels in speech aid frequencies of 1000-4000
(iii) Perforation of tympanic membrane of central or marginal type	(i) One ear normal; other ear perforation of tympanic membrane present-temporarily unfit. Under improved conditions of ear surgery a candidate with marginal or other perforation in both ears should be given a chance by declaring him temporarily unfit. (ii) Marginal or attic perforation in both ears-unfit. (iii) Central Perforation both ears-temporarily unfit.
(iv) Ears with mastoid cavity, sub-normal hearing on one or both sides.	(i) Either ear normal hearing, other ear with mastoid cavity fit for both technical and non-technical jobs. (ii) Mastoid cavity both sides – unfit for technical jobs- Fit for non-technical jobs if hearing improves to 30 decibels in either ear with or without hearing aid.
(v) Persistently discharging ear-operated / non-operated.	Temporarily unfit for both technical and non-technical jobs.

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“Section-B – Medical Examination of Candidates for appointment to Non-Gazetted Railway Services and of serving Non-Gazetted Railway employees.

6.11. If any defect is found, which is likely to interfere with the efficient performance of the Railway employee's duties, but is remediable by treatment

or operation, the Railway employee should be advised to undergo such treatment or operation.”

The respondents have quoted the following guidelines of the same manual in their support: -

“ 12.13 Ear:

12.13.1 Hearing: Each ear is to be tested separately. If hearing of an employee is found to be defective, opinion of the ENT specialist should be obtained.

The categories for which hearing, aid is not permissible should be borne in mind.

12.13.2 Other diseases of ear: Purulent discharge, perforation etc. will be cause for rejection in the case of candidates.”



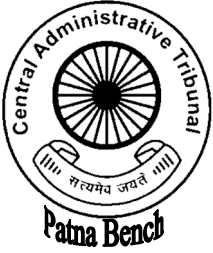
6. After examining the above rules, it is clear that the specific rule regarding the examination of ears of the candidates applicable to this case is Rule 502 (7) (iii). It clearly mentions that in case of any perforation of Tympanic Membrane of Central or Marginal Type a candidate with such marginal or other perforation in both ears should be given a chance by declaring him temporary unfit. The rule 502 (7) (iv) further also mentions that persistently discharging ears should also be declared temporary unfit. The respondents have admitted that the applicant suffered from perforations of Tympanic Membrane with acute discharge from both ears and this squarely fits into what is described in Rules 502 (7) (iii) and (iv) quoted above and thus, there can be no doubt that the applicant's case fell into the category of temporary unfitness. Though the written statement claims that an advice was given at the time of his first appearance to get an operation done no written evidence of having given such advise has been produced. It was argued



by the learned counsel for the respondents that the circulars specifically requiring such written advice was issued on 31.12.2015, which is after the date of examination in the current case. However, it is a fact that no communication declaring the applicant as temporarily unfit, either with or without any advice for an operation, was given to the applicant. There is another circular dated 04.02.2010 (Annexure R/3) which clarifies that persons having undergone Tympanoplasty (Type -I and Type-II) are considered fit for all safety categories. The respondents have argued that this circular is not applicable in case of the applicant since it does not specifically mention about Tympanoplasty done after failing in a medical test. This would be a very unsympathetic interpretation of a guideline which has been issued to help a category of persons who have a treatable disease. Similarly, rejecting a case quoting Rule-12.13.2, (which is a rule mentioned in the general context of medical examinations about other diseases of the ear), will also not be a proper implementation of the guidelines when there are other more specific provisions in the same Manual, relating to examination of the ear for the candidates.

7. In the light of the above, we are satisfied that rejection of the applicant without first declaring him temporary unfit and giving him chance to have his condition corrected by surgery, was not correct, and therefore, he deserves to be given another opportunity to have himself tested as he claims to have got his temporary unfitness removed by getting a curative operation done. Accordingly, the impugned orders

dated 05.10.2015 [Annexure 6], 20.04.2015 [Annexure 5/2] and dated 14.11.2014/04.12.2014 [Annexure 5] are quashed and the respondents are directed to allow the applicant to appear before a duly constituted medical board to evaluate his medical fitness for A-1, A-2 and A-3 jobs. This should be done within three months of the date of receipt of this order. The OA is disposed of accordingly.



[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member