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**Central Administrative Tribunal
Principal Bench**

OA No.454/2004

New Delhi this the 9th day of August, 2005.

Hon'ble Mr. Shanker Raju, Member (Jud)

Shri H.K. Yadav,
R/o 2-D Railway Colony,
Tughalakabad.

-Applicant

(By Advocate Shri Amit Anand)

-Versus-

1. Union of India through
the General Manager,
Northern Railway, Hd. Qrs. Office,
Baroda House,
New Delhi.

2. Divisional Railway Manager,
DRM's Office, State Entry Road,
New Delhi.

3. Smt. Urmila Khati,
Sr. Divisional Personnel Office,
Northern Railway Manager,
New Delhi.

-Respondents

(By Advocate Shri V.S.R. Krishna)

ORDER (ORAL)

By virtue of this Application applicant has assailed an order passed by respondents on 26.3.2003, where on review of review Medical Board applicant has been found fit in C-2 medical category.

2. Applicant on 15.1.83 joined as Guard (Goods) and was declared unfit while working as Guard 'A' permanently on 9.8.2001 but was declared unfit for alternative job in category A-2 where brisk walk, running etc. are not involved. Applicant appeared before a Committee on 4.3.2002 to adjudge is

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suitability for an alternative appointment. He was found fit by an order dated 19.4.2002 for the post of Chief Booking Supervisor. However, he was not given a posting but as an alternative appointment later on applicant was accorded a posting at CBS at Panipat instead of Delhi on 5.7.2002. A representation preferred for posting in Delhi resulted in not allowing applicant posting at CBS, Panipat and instead given a supernumerary post as agreed in Delhi by an order dated 31.7.2002, where applicant was required to undergo a training course, i.e., CP-7. By an order dated 1.10.2002 in PS 125/2002 all cases decided by the medical authorities were decided to be reviewed.

3. Applicant successfully passed CP-7 course and in the wake of merger of booking and parcel cadres applicant in the wake of retirement of one A.P. Gupta sought posting as CBS. However, applicant's medical was reviewed by an order dated 29.11.2002 and on re-examination the medical authorities re-iterated their earlier decision. A representation preferred against the review culminated into non-examination of applicant before the medical authorities and vide order dated 26.3.2003 applicant was lowered down in the category and was found fit in C-2 category, with the result applicant is yet to be given a posting.

4. Shri Amit Anand, learned counsel appearing for applicant relying upon the decision of the Apex Court in **Govind Prasad v. R.G. Prasad**, 1994 (1) SCC 347 contended that the decision of the respondents to review the review Medical Board's findings

vide their order dated 1.10.2002 being an executive instruction cannot be relied retrospectively as applicant had already been declared fit for A-2 category on 9.8.2001.

5. Shri Anand contended that posting of applicant at Panipat is in violation of the medical recommendations made by the Committee and the non-posting to any of the places is not justifiable. As applicant has been declared fit in 'A' category, downgrading him in C-2 category and non-posting after clearance of C-7 training course is not legally sustainable.

6. On the other hand, learned counsel appearing for respondents Shri V.S.R. Krishna opposed the contentions and stated that earlier applicant was declared unfit as Senior Passenger Guard but was found fit in medical category A-1. As his case was reviewed by the competent authority and was declared fit for CBS in Delhi area, for non-availability of vacancies he was posted at CBS, Panipat. However, he has not joined on supernumerary post he was allowed to join at New Delhi as CBS.

7. However, in the wake of instructions vide office letter dated 1.10.2002 his medical review was further reviewed and he was declared fit in C-2 category and applicant is utilized in control office at New Delhi against supernumerary post till alternate post is offered.

8. I have carefully considered the rival contentions of the parties and perused the material on record.

9. In my considered view once applicant has been declared fit for A-2 category and was recommended to be posted at Delhi his posting at Panipat initially was not in accordance with instructions and the recommendations of the Medical Board. However, later on, applicant was adjusted on supernumerary post at Delhi. The instructions issued by the respondents on 1.10.2002 where on periodic medical examination fitness is to be proved the case already decided otherwise in the past few months have been decided to be reviewed, as the case of applicant has already been reviewed by the Medical Board on 9.8.2001 and in October, 2002, which is beyond past few months cannot be legally brought within the ambit of administrative instructions. Moreover, administrative instructions cannot be operated retrospectively and would be prospective in effect. As such, the cases would be reviewed w.e.f. 4.10.2002 and past cases cannot be re-opened.

10. I also find that assuming that circular is applicable to applicant, even thereafter applicant's review which has already been done by the competent medical authority the same has been reviewed by the medical authorities subsequently even without examination of applicant, which is not only illogical but unreasonable as well.

11. In the result, for the foregoing reasons, OA is disposed of and the impugned orders are set aside. Respondents are directed to post applicant as CBS at New Delhi, within a period of

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two months from the date of receipt of a copy of this order with
all consequential benefits. No costs.

S. Raju
(Shanker Raju)
Member (J)

'San.'