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RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

ALLAHABAD this the 12th day of **April**, 2007.

HON'BLE MR. S.K. DHAL, MEMBER-J.

ORIGINAL APPLICATION NO. 695 OF 2005

1. Kanchedi Lal, aged about 42 years, S/o Sri Govind Das, R/o 366, Nainagarh, Nagra, Jhansi, U.P.
2. Krishna Gopal Singh Yadav alias Gopal Singh, aged about 43 years, S/o Late Indrapal Singh Yadav, R/o 25/18-B, Hatha Pyare Lal Nagra, Jhansi. U.P.

.....Applicants.

V E R S U S

1. Union of India through the General Manager, Northern Central Railway, Allahabad.
2. The D.R.M., N.C.R., Jhansi.
3. The Chief Medical Superintendent, N.C.R., Jhansi.

.....Respondents

Present for the Applicant:	Sri S.K. Misra
Present for the Respondents:	Sri D.P. Singh

O R D E R

The legality of the order-dated 8.2.2005 under which the claim of the applicants has been turned down has been questioned in this O.A.

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2. The averments of the applicants made in the application run thus: The applicant no. 1 was appointed as casual labourer/Khalasi on 17.5.1983 and continued as such till 22.7.1991 in Railway service. Similarly, the applicant no. 2 was

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appointed as casual labourer and worked till 31.5.1986. Both of them stated to have been completed more than 120 days and so according to Rules, they have enjoyed temporary status of MRCL. The casual labourer cards were issued in their favour and their names find place in the casual labour register.

3. Notification was issued for absorbing the ex-casual labourers in Railway service. Applications were invited for screening test. Both the applicants applied for absorption and they were declared passed in the screening test. They were called to face the medical test under letter dated 30.3.2004 and 2.4.2004 paying the required medical examination fee. The medical test was done by CMS, N.R. Jhansi, but both the applicants were declared unfit treating them as fresh candidates ignoring the provisions of the Rules.

4. Both the applicants themselves appeared before the District Hospital, Jhansi for medical check up and CMS, Medical hospital, Jhansi issued fitness certificate for all Government services including the Railway service. Thereafter both the applicants filed representation dated 10.5.2004 and 26.5.2004 before the DRM, Jhansi enclosing the fitness certificate for re-medical examination treating them as ex-casual labourers. Both the applicants filed O.A. 1500 of 2004 before this Tribunal. While

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disposing of the said O.A., it was directed that the representation pending before the respondents should be disposed of. In pursuance of the said directions, the representations of the applicants was considered, but the prayer of the applicants for re-medical examination did not find favour of the respondents. So, the present O.A. has been filed with a prayer to quash the order dated 8.5.2005 (Annexure A-1) with further prayer to direct the respondents to constitute Special Medical Board for re-medical examination and to regularize them against the existing vacancy for ex-casual labourers in the Group 'D' post.

5. In the Counter, the respondents have taken the stand that the applicants having been found medically unfit by the Medical Officer, N. Railway, Jhansi, they are not entitled for absorption in any post. It is further submitted that the prayer for constitution of special Medical Board for their medical examination is not at all necessary when there is special Railway Medical Establishment for the purpose.

6. I have heard the learned counsel for both the parties and perused the documents available on record.

7. The only point emerges for consideration as to whether both the applicants are entitled to the

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relax medical standard as provided under Rule 4 (a) & (b) of the Rules 207 of I.R.E.M. Vol. II for the reasons that the applicants were not in the service, but both of them were ex-casual labourers.

8. It is urged on behalf of the applicants that they being 'the ex-casual labourers under the respondents, they are entitled for a medical test by a Special Medical Board for appointment in a Group 'D' post.

9. During the course of arguments, the attention of this Tribunal has been invited on behalf of the applicants to O.A. no. 643 of 2005, which has been disposed of on 5.7.2006. According to the applicants, the facts of the said case and of this case are same and the applicants are standing on the same footing and so the ratio of the said case should apply in this case also.

10. The documents like casual labour card and entry in the register and call letters sent to the applicants would give rise to the only conclusion that both of them were casual labourers. After perusal of the judgment passed in O.A. 643 of 2005, I found that the facts of the said case and the facts of the present case are the same. This fact has not been disputed by the respondents. While disposing of O.A. no. 643 of 2005, the following observation has been made by this Tribunal:-

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"..... So the order dated 8.2.2005 (Annexure-1) is quashed and the respondent nos. 1 & 2 are directed to get the applicant medically re-examined by the Board of three Doctors of the Railway, giving him the benefit of being ex-casual labourer, and then decide whether he is medically fit for getting appointment in Group 'D' for the post he has been so sent for medical examination or for any other alternative post in the same category and if so pass suitable orders accordingly."

11. More-over, this Tribunal has also indicated in its earlier order dated 23.12.2004 that the applicants being ex-casual labourers, they are entitled to the benefit of relax medical standard. So, in that case, I am of the opinion, the authorities should not have taken the technical view of the matter and should have gone by the spirit of the said rules especially when there is direction of this Tribunal.

12. As per the above findings, the O.A. succeeds and is allowed. The claim of the applicants for their re-medical examination by a Special Constituted Medical Board is to be accepted by the respondents. In the other words, the impugned order, which is under challenge, is set-aside. The respondent nos. 1 & 2 are directed to get the applicants medically re-examined by a Board consisting of three Doctors of their department and pass necessary orders for giving appointment in Group 'D' post to both the applicants if they are found medically fit. This shall be done within a period of six months from the date of receipt of certified copy of this order ^{produced} ~~filed~~ by the applicants. No costs.

[Signature]
12/4/2007
MEMBER-J