

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 470 of 2014

**Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. T.Jacob, Member (A)**

Sujeet Kumar Singh, aged about 32 years, S/o Jay Narayan Prasad Singh, C/O Manohar Kumar Singh, At-Dhanbe, PO-Mahadeo Simaria, Dist-Jamui, Bihar, PIN-811307.

.....Applicant

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Deputy Chief Personnel Officer (Recruitment), Railway Recruitment Cell, 2nd Floor, Rail Sadan, Chandrasekharpur, Bhubaneswar-17, Dist.-Khurda.
3. Asst. Medical Officer/E.Co.Rly., At/PO-Mancheswar, Bhubaneswar, Dist-Khurda.

.....Respondents

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.R.S.Behera, counsel

Heard & reserved on : 1.2.2021

Order on : 09.07.2021

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

- “(i) To quash the order of cancellation of candidature vide speaking order dtd. 15.5.2014 under Annexure A/12;
- (ii) And to direct the Respondents to issue appointment order in favour of the applicant in the post of Junior Trackman & Helper-II;
And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice;
And for which act of your kindness the applicant as in duty bound shall every pray.”

2. The facts of the case in a nutshell are that the RRC/E.Co.Rly. issued notification dated 28.10.2006 for the post of Junior Trackman & Helper-II. Being successful in the written examination held on 23.9.2007, the applicant appeared in the Physical Efficiency Test on 27.3.2008 and came out successful. Some of the qualified candidates approached this Tribunal in OA 531/2009 which was disposed of vide order dated 12.3.2010 (Annexure A/3) directing the

Railway authorities to commence the medical test of the successful candidates within a period of 3 months and publish the final result in consultation with the Railway Board. The respondents being aggrieved by the order approached Hon'ble High Court in Writ Petition No.10324/2010 and the same was dismissed vide order dated 8.12.2010. The respondents further challenged the order by filing SLP before Hon'ble Apex Court and the same was also dismissed. After dismissal of SLP the respondents took initiative to implement the order of this Tribunal dated 12.3.2010 passed in OA 531/2010 and the applicant was asked to be present with all certificates in original on 3.4.2012 vide letter dated 27.3.2012 (Annexure A/4). On 23.8.2012 respondent No.2 informed the applicant that he has been declared unfit in B-1 medical category by the concerned medical authority due to colour blindness which is the minimum medical classification or being considered for appointment (Annexure A/5). The applicant was also asked to submit an appeal to respondent No.2 within a period of 30 days if he suspect any possibility of error of judgment by medical examining authority. He was further advised to produce a medical certificate as evidence about the error of judgment in the decision of the first medical authority with certain endorsement. The applicant submitted his appeal to CMD/E.Co.R/BBS dated 25.9.2012 (annexure A/6) with medical fitness certificate from Rajendra Nagar Super Specialty Ophthalmic Science Centre, Rajendra Nagar, Patna who declared the applicant normal in colour vision test. After receiving the appeal dated 25.9.2012, the respondent No.2 vide his order dated 11.4.2013 (Annexure A/7) informed the applicant that his appeal does not contain the exact endorsement and granted him one more chance to submit his appeal for re-medical examination with specified medical certificate with proper endorsement within 21 days. The applicant submitted his appeal dated 27.4.2013 enclosing medical certificate dated 26.4.2013 issued by Kar Vision Eye Hospital carrying the exact endorsement. After receiving the appeal and medical fitness certificate, the Chairman/RRC vide his order dated 5.9.2013 (Annexure A/8) informed the applicant to report to RRC/ECOR, BBS on 23.9.2013 at about 09.30 hours. The applicant reported

on the date and time mentioned above to face re-medical examination before the medical authorities of Mancheswar Railway Hospital. The applicant was declared unfit in B-1 by the Asst. Divisional Medical Officer, East Coast Railway, Khurda Road due to colour blindness for which the applicant was declared unfit for Railway service (Annexure A/12). The applicant submitted a detail application to respondent No.2 on 3.2.2014 (annexure A/9) for issuance of appointment order in his favour in the post of Junior Trackman and Helper-II. Being aggrieved by the inaction on the part of the respondents, the applicant approached this Tribunal in OA 253/2014 which was disposed of vide order dated 23.4.2014 (Annexure A/11) with a direction to the respondent No.2 to consider and dispose of the representation dated 3.2.2014. The respondents in compliance of the order of this Tribunal disposed of the representation by passing a speaking order dated 15.5.2014 (Annexure A/12) treating the candidature of the applicant against employment notice dated 28.10.2006 as cancelled on the ground that he was declared unfit in B-1 (Bee-One) category vide medical certificate dated 23.9.2010 issued by Asst. Divisional Medical Officer, East Coast Railway, Bhubaneswar. Being aggrieved by the order of cancellation of candidature for the post of Junior Trackman and Helper-II vide order dated 15.5.2014, the applicant has filed the present OA taking the ground that the order of cancellation is bad, illegal and not sustainable in the eye of law and hence is liable to be quashed. He has also taken the ground of non-communication of the medical certificate dated 23.9.2013 along with the impugned speaking order dated 15.5.2014.

3. The respondents have filed their Counter stating that the applicant was found unfit in the medical examination which was conducted at the Railway hospital, Waltair against which he preferred appeal and was re-examined at Central Railway Hospital, Mancheswar, the report of which also went against the applicant. In both the medical reports the applicant was found unfit in B-1 eye test. It is also submitted that the applicant is bound by the terms and conditions of advertisement dated 28.10.2006 and is stopped to rely on the contents of Annexure A/1. The alleged certificates procured by him from

different hospitals are not binding on the respondents in as much as those have been obtained without any authority. Moreover, as per the terms of advertisement the applicant has to cross the medical examination stage successfully to be considered for appointment to the post in question and undergoing the B-1 test of the eye is mandatory as the post of Junior Trackman and Helper Gr.II is identified as safety category post for which the minimum medical standard is B-1 of eye. The applicant cannot question such prescription after having participated in the selection process and failed in the same. The contention of the applicant that the respondents ought to have referred the matter to Third Medical Officer is not tenable in facts because the employment notice does not prescribe such a course to be adopted. Besides the applicant's case is not a solitary case and many other candidates have faced such things. It is further submitted that non-supply of medical certificate dated 23.9.2013 along with the impugned order was due to inadvertence in as much as the applicant never asked for the same before approaching this Tribunal. The respondents have therefore submitted that the speaking order at Annexure A/12 is just and proper and reasonable in as much as it has been passed keeping in view the terms and conditions stipulated in the employment notice dated 28.10.2006 (Annexure A/1) particularly Condition NO. 12(viii) which lays down that the candidates in zone of consideration after written examination and PET will be subjected to medical examination of prescribed B-1 medical standard and only those who qualify in the medical examination will be included in the final merit list. Hence the candidature of the applicant was rightly rejected after the applicant had been found unfit in the above eye test conducted twice at two different places. Therefore the respondents have prayed for dismissal of the present OA being devoid of any merit.

4. The applicant has filed Rejoinder to the Counter filed by the respondents.
5. We have heard both the learned counsels and have gone through the pleadings on record.
6. The applicant had appeared in the written test held on 23.9.2007 and physical efficiency test (PET) on 27.3.2008. Thereafter on medical examination

he was found unsuitable as per requirement of post was B1 category since he had colour blindness. He was initially examined by the doctor of the concerned department at Waltair (Annexure R/1). Thereafter on the request of the applicant he was medically examined on second occasion by the concerned medical authorities of the Mancheswar Railway Hospital and his second report confirmed the first medical report (Annexure R/2). He has filed earlier OA 253/2014 and thereafter on 15.5.2014 a speaking and reasoned order was passed cancelling his candidature for the post of Junior Trackman & Helper-II (Annexure A/12). It was mentioned therein that since he has colour blindness therefore he was not found suitable under the medical category of B1. Therefore he was not found suitable for appointment to the post in question.

7. It was submitted by learned counsel for the applicant that the applicant had gone to Rajendra Nagar Super Specialty Ophthalmic Science Centre, Rajendra nagar, Patna and on examination it was found that he was not having any colour blindness. The said doctor or hospital does not come within the recognized institution to which the respondents send candidates for medical examination for recruitment in Railway services and the decisions are taken only by the empanelled hospitals.

8. It was submitted by learned counsel for the applicant that the medical reports on the basis of which the medical certificates have been issued vide Annexure R/1 & R/2 were not supplied to him. But in the appeal filed by the applicant dated 23.9.2013 before the concerned authorities i.e. Respondent No.2, the applicant had not brought to the knowledge of the respondent No.2 regarding the medical reports by which he has already been declared unfit. On that occasion the applicant had not whispered any word and had not raised any objection or made any prayer to the concerned authorities of the respondent department that any such medical report to be supplied to him, therefore the point raised in this regard by him after undergoing second medical test on his own volition by the doctor of empanelled hospital at Mancheswar, who also found him unfit vide Annexure R/2, cannot give rise to fresh cause of action in favour of the applicant to say that he was not supplied

with medical reports in question. In the circumstances we find that he has not been prejudiced. However, in normal course, besides issuing the copy of medical certificate, it is expected that the respondents should have supplied copy of medical reports on the basis of which medical certificates have been filed. Accordingly the respondents are directed to supply copy of the medical reports on the basis of which medical certificates have been filed, to the applicant so that he can make his stand clear on the vital aspects and thereafter the applicant will be given an opportunity to make representation so that the competent authority/concerned respondent can dispose of the same by passing a speaking order and intimating it to the applicant within a period of three months from the date of receipt of copy of this order.

9. Accordingly the OA is disposed of with the above observation. There will be no order as to costs.

(T. JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

I.Nath