

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A. No. 050/00346/2020**

Date of Order: 23rd March, 2021

C O R A M

**HON'BLE MR. M.C. VERMA, JUDICIAL MEMBER
HON'BLE MR. S.K. SINHA, ADMINISTRATIVE MEMBER**



Vineet Prakash, Son of Shri Vinay Sharma, Resident of B/528, Sonalika Cooperative Colony, Ranipur (Paijaba), P.O- Jhauganj, P.S. Bypass, Dist. Patna-800008.

..... Applicant.

By Advocate: - Shri Hrishikesh Jha

-Versus-

1. The Union of India, Ministry of Railways through its Secretary, Rail Bhavan, 256-A, Raisina Road, Rajpath Area, Central Secretariat, New Delhi-110001.
2. Railway Recruitment Board, Mahendrugat, Patna through its Chairman, Patna-800004.
3. Principal Chief Medical Director, East Central Railway, Hajipur, P.O.- Digghi Kala, P.S.- Hajipur (Town), District- Vaishali-844101.
4. Divisional Railway Manager, East Central Railway, Sonapur, P.O. & P.S.- Sonapur, District- Saran-841101.
5. Divisional Railway Manager (Personnel), East Central Railway, Sonapur, P.O. & PS – Sonapur, District-Saran-841101.

..... Respondents.

By Advocate :- Shri Ajay Kumar

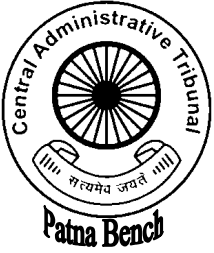
O R D E R (O R A L)

M.C. Verma, JM

1. Instant OA has been preferred by the applicant for direction to the respondents to re-consider his candidature for the post of Goods

Guard in view of the existing guidelines for medical fitness in A-2 Category and to quash the letter/order dated 17.03.2020 wherein request of the applicant for re-medical was rejected.

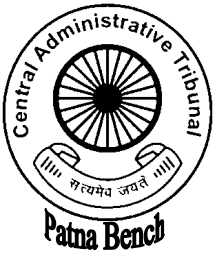
2. The facts of the case, as is emerging from the pleadings made in the OA are as under:-



(I). That the applicant did apply for the post of Goods Guard, declared successful in examination conducted by the RRB and thereafter received letter dated 18/2/19 of Divisional Railway Manager Sonpur directing him to appear on 18/3/19 with all documents. That he did appear on date fixed and was sent for medical examination. That before commencement of medical examination illegal gratification was demanded which was not fulfilled by him. That he underwent medical test in hospital at Sonpur. That he received letter, dated 29/05/2019, of Divisional Railway Manager Sonpur whereby it was informed to him that in certificate No. 038996 dated 24/5/19 issued by Divisional Hospital Sonpur he has been declared unfit for A-2 Category and thus he is not being considered for selection purpose and that if he wants he may opt for appeal.

(II). That vide his letter dated 10/06/19 he preferred appeal but was informed, vide letter dated 1/7/19 that medical certificate of doctor furnished by him with purposed appeal was not having declaration of the examiner doctor that he was aware that the examinee has already been examined and has been rejected by panel of Railway doctors. That he again

preferred the appeal in due Performa enclosing certificate of Sadar Hospital Bhagalpur declaring him fit for for A-2 Category but again his appeal was not entertained and it was informed, vide letter dated 19/9/19 that he had to file medical certificate in due Performa .

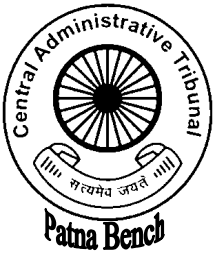


(III). That he has obtained copy of all documents relating to his medical examination at Divisional hospital Sonpur , under RTI and came to know that the Divisional Medical Committee has stated in its report that as per IRMM Chapter 5 Para 501(03) & 502 (6h,6j, 6k) applicant is unfit for medical category A2. That he once again resubmitted the appeal and also sent his grievances to Railway Board. That this time he, vide letter dated 20/01.2020 was directed to appear on 13/2/2020, for re-medical before Principal Chief Medical Officer Hajipur. That he appeared before Principal Chief Medical Officer Hajipur on 13/2/2020 and the later gave a bird's eye view to his medical reports and sent him back within 1 to 2 minutes without properly or even summarily examining him physically.

(IV). That applicant procured the report and result relating to his medical examination of 13/2/2020 , under RTI and did find that Principal Chief Medical Officer Hajipur has recorded that as per IRMM Chapter 5 para 501(03) and 502 (6h, 6j, 6k) he is unfit as candidate as Goods Guard in medical category A-2.

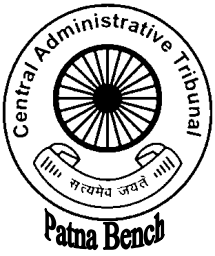
Applicant has contended that he is medically fit but dishonestly has been declared unfit and hence is the OA.

3. Upon notice, respondents have appeared and have filed written statement stating that applicant was examined firstly on 23.03.19 wherein some orthopedically abnormalities were detected by Sr. DMO and ultimately the medical examination of the applicant was conducted on 24.05.2019 by a Board comprising of three specialist doctors and the applicant was found unfit in required medical category A-2. The applicant was communicated with his medical test result vide letter dated 29.05.2019 with advice to submit his appeal for re-medical as per direction mentioned in PCMD/HJP's letter dated 08.08.2018. That applicant submitted his application and his case was referred to PCMD/HJP vide letter dated 13.06.2019 for considering his appeal and it was responded that applicant's appeal for re-medical examination has not been considered because the application submitted by the applicant was not in proper format in consonance with Railway Board's letter No. 2014/H/5/8(Policy) dated 07.07.2017. That thereafter applicant preferred another application on 11.11.2019 in proper format. That PCMD/HJP vide his letter dated 13.02.2020 sent report that applicant has bony abnormalities of left knees and ankles with restricted flexion of knees and dorsiflexion of ankles and is not fit for Aye 2 Goods Guard and thus no need for further review. That said information was passed on to the applicant. It has been categorically stated in the written statement that applicant was not fit



in A-2 medical category which is the required medical standard for safety category post of Goods Guard.

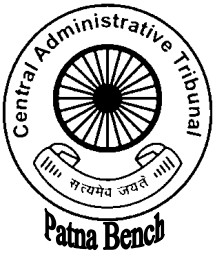
4. After admission, matter was fixed for final hearing. It was heard in part previously and on that day learned counsel urged that the applicant has got himself medically examined by various experts and that whatever has been observed by the Medical Board of respondents is not wholly correct. That though applicant is having slight deformity of leg but is fit to discharge the duty of Goods Guard. He also argued that if duty of the post of Goods Guard can successfully be discharged by a person having one leg and one arm, appointed under handicapped quota then how a person having lesser deficiency in one leg cannot discharge duty of Goods Guard and how he can be declared unfit. He invited our attention to the category requirement and stated that specifically mentioned medical requirement are fulfilled by the applicant and he has wrongly been declared unfit. He also drew our attention to the observation of the Medical Officer of respondent department and of their Board and pointing the variances in the two reports urged that variances indicate something fishy.



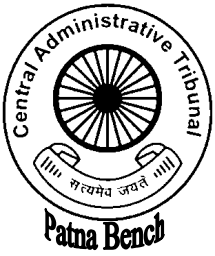
5. During argument on that day counsel for parties to lis showed their consensus to examine the feasibility whether applicant may be got medically re-examined at some other reputed institute like AIIMS etc., for determining whether he is medically fit or not to discharge the duty of Goods Guard but today both learned counsel, counsel for the applicant and counsel for the respondents submit that it would not be appropriate. The learned counsel for the respondents also relied

decision titled **Union of India Vs. Vikash Kumar** 2016(2) PLJR 281 wherein Hon'ble High Court of Patna held that whether a candidate is medically fit or not is the satisfaction of the doctors of the Organization.

6. Taking note of submissions made today that examination by AIIMS would be of no use as the doctors of said institute may be unaware of the physical standard required in the Railway, arguments on merit of the OA were directed to be resumed.



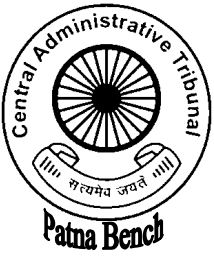
7. Learned counsel for the applicant resuming his submissions and urged that IRMM Chapter 5 Para 501(03)&502(6h,6j, 6k), under which applicant was declared unfit relates to medical of gazetted officer and not to Goods Guard. He placing reliance upon decision of Hon'ble High Court of Andhra Pradesh in WP No. 14919 of 2000 (K. Gangadhar Vs. A.P. State Road Transport Corporation and Ors.) decided on 09.11.2006 submits that considering the nature of work and degree of fitness employment is to be given. That insisting 100% medical fitness without referring to the nature of the job is abuse of power. He added that otherwise also neither it is in the report of DMO nor in the report of Medical Board as to how the applicant is not fit to discharge his duty. That impugned decision is nothing but abuse of power and is liable to be quashed. He also urged that alternative prayer of the applicant would be to direct the respondents to constitute another medical board and to re-examine the applicant relating to the nature of job. He categorically stated that applicant is able and fit to discharge the normal duties of Goods Guard.



8. Learned counsel for respondent did urge that it was for the Medical Board to see whether the applicant was fit or not to discharge the duties and that Medical Board has opined that applicant is not medically fit and as such he cannot be given appointment treating him medically fit. He also submits that mere selection does not confer any right on the applicant for appointment and appointment has to be based upon medical fitness and as applicant was not medically fit so rightly has not been given appointment. However, at this stage counsel for the respondents do agree and has no objection if direction for reconstitution of the Medical Board of Railway's Doctor is given and the Board is directed to re-examine the applicant with reference to the nature of duties to be discharged for the post.

9. Considered the submissions. The medical standard and conditions of medical examination is to ensure that the appointee is of sound health and is free from bodily defect or infirmity to render him unable to discharge the duty. Principal Chief Medical Officer Hajipur has recorded:- *“Mr. Vineet Prakash, IME Candidate for Goods Guard is suffering from Multiple Exostosis with restricted squatting with valgus deformity Lt. Knee with short Lt. Upper Limb with gynaecomastia with testicular atrophy. The condition is congenital and has malignant potential. Further, limited ROM of Lt. Ankle restricts him from normal squatting. As per IRMM Chapter 5 para 501(03) and 502 (6h, 6j, 6k) he is unfit as candidate as goods guard in medical category A2.”*

10. Insistence on 100% medical fitness irrespective of nature of job is arbitrary and a candidate ought not to be rejected merely on account of the presence of a defect which is not of nature to interfere with his continuous service. Standard of medical fitness may vary from job to job and hence the nature of work and the degree of fitness have to be considered co-relatively and unless nature of the duty entrusted to a particular person disqualifies him to hold the said post, the State cannot justify such denial.



11. In view of the submissions made at Bar and taking note of entirety of the case in hand, we did find that applicant needs to be re-examination referring to the nature of the job of Goods Guard by a Medical Board to be constituted by respondent authority. The OA in hand thus stand disposed of with direction that within six weeks from the date of receipt of copy this order, the respondents would constitute a Medical Board for medical re-examination of the applicant and would provide to such constituted Medical Board the details of duty inhered to the post of Goods Guard. That the Board would examine the applicant with reference to the nature of duties of Goods Guard to see whether the applicant is medically fit or not to discharge the duty of Goods Guard. After constitution of the Board the applicant would be informed by the respondent about the date time and the place where he has to appear before the Board. Needless to say that reasonable time would be given to the applicant to appear before the Board. That after his re- medical examination by the Board, final

outcome of the medical re-examination would be communicated to the applicant within three weeks. No order as to costs.

[Sunil Kumar Sinha]
Member [A]
Srk.

[M.C. Verma]
Member [J]

