

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 27th day of JANUARY 2010

Original Application No. 52 of 2006

Hon'ble Mr. S.N. Shukla, Member (A)

Tripurari Updhayaya, S/o late P.N. Updhayaya, R/o Village Chacho, Tahsil
and Post Machali Shahar Bazar, Distt: Jaunpur.

... Applicant

By Adv : Sri S. Dwivedi

VERSUS

1. Union of India through General Manager, North Central Railway, Allahabad.
2. The Divisional Railway Manager, Allahabad Division, North Central Railway, Nawab Yusuf Road, Allahabad.
3. The Chief Medical Director, North Central Railway, Head Quarter, Allahabad.
4. The Chief Medical Superintendent, North Central Railway, Allahabad.
5. Dr. Ashok Kumar, Medical Officer, Railway Hospital, North Central Railway, Allahabad

... Respondents

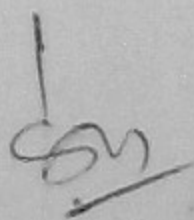
By Adv: Sri Anil Dwivedi

ORDER

Heard Sri Satish Dwivedi, learned counsel for the applicants. Sri Anil Dwivedi, learned counsel for the respondents has sent illness slip. The facts of the case are such that can be decided on the basis of pleadings. This Court, therefore, proceeds accordingly.

2. Earlier the applicant had approached this Tribunal in OA No 986/05. The Tribunal had passed the following orders:-

"2. The case has been considered. Without a formal notice to the respondents to file their version, ends of justice would be met if a



direction be given to the Respondent No. 3 namely, the C.M.D., North Central Railway Hqrs., Allahabad to consider the case of the applicant by referring him for a further medical examination within a period of two months from the date of communication of this order and, therefore, the C.M.D. may pass suitable orders on the basis of medical report. The C.M.D. may also take into account the medical fitness certificate issued by a private Doctor vide Annexure 7 to the O.A."

3. In compliance of the Tribunal's order the respondents passed the order dated 10.10.2005 (Annexure A-1/Compilation I). Findings and recommendations of the Medical Board annexed with said order dated 10.10.2005 which reads as under:-

FINDINGS OF THE BOARD

Shri Tripurari Updhayay, a candidate for appointment in Group 'D' services on Compassionate ground is re-examined by a Medical Board on 27.09.2005. His distant vision is 3/60 in both Eye without glasses and near vision is N-18 in both eyes without glasses. His distant vision is found to be 6/18 in Rt Eye with best correction of +6.0 DSph and 6/24 in Lt. Eye with best correction of + 6.50 DSph. The best corrected near vision with the same glasses are N-8 in both Eyes. His colour vision is normal and Binocular vision is present.

RECOMMENDATION OF THE BOARD

In view of the above mentioned findings Shri Tripurari Updhayaya, an appeal case for re-medical examination candidate for appointment on compassionate ground is being found UNFIT for all categories of Railway services by his visual status."

4. In para 4.21 of the OA, the applicant pleads as follows:

"4.21 That the Chief Medical Director as per direction of the court has not passed any order considering the medical certificate given by the private Doctors till date, the such an action of Chief Medical Director is highly arbitrary, discriminator, unreasonable and unjustified in law and also it amounts disobedience of order of the court."

5. From the pleadings it is also seen that earlier the applicant has filed representation dated 10.12.2005 (Annexure A-10/Compilation II) pointing out to the respondents that order of this Tribunal to consider the certificates issued by the Private Medical Practitioner in this regard. The authorities did not respond to the representation. Learned counsel for the applicant also invited attention of this Court to the Railway Board Circular No. E(NG)II/90/RC-2/14 dated 23.11.1990 (Annexure A-11/Compilation II) and pointed out that under the category 'Quota for Physically Handicapped' there is reservation of 01% for totally blind persons. Meaning otherwise that even if the applicant was found to be totally blind

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he could still be eligible for appointment for Group 'D' post and, therefore, the deficiency of vision alone cannot be a good and sufficient reason for rejecting the candidature of the applicant for appointment in Group 'D' post.

6. The Tribunal has noted the fact that the specific order of the Tribunal in OA No. 968/05 of considering the certificates issued by the Private Medical Practitioner finds no mention in the impugned order dated 10.10.2005. In the Counter Affidavit, through, certificate deficiencies have been pointed out in the certificate issued by the Private Medical Practitioner (Para 12 of the CA). It has to be noted that deficiency in order cannot be made good by sufficient pleadings. The authorities ought to have considered the Private Medical Certificate in compliance of the Tribunal's order and findings thereof ought to have been reflected in the order to give full effect of the order of the Tribunal.

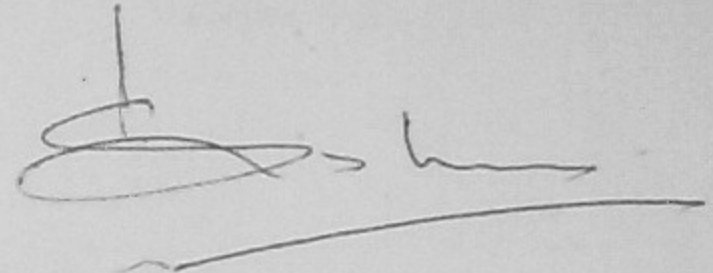
7. Learned counsel for the applicant, however, stated that the grievance of the applicant may be redressed if he is allowed to make fresh comprehensive representation before respondent No. 3 and respondent No. 3 is directed to deal with the representation of the applicant by passing reasoned and speaking order as per law, considering the fact that there is a provision for appointment of Group 'D' employee even when there is a total loss of vision.

8. In view of the above this Tribunal directs the applicant to file a fresh comprehensive representation before respondent No. 3 i.e. Chief Medical Director, North Central Railway, Head Quarter, Allahabad, bringing to his notice the instructions of the Railway Board in this regard and also the Tribunal's order in earlier OA No. 986/05 alongwith certified copy of this

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order and copy of the OA (both compilation No. I and II with all annexures) within a period of 15 days and if such a representation alongwith documents is filed, the respondent No. 3 i.e. Chief Medical Director, North Central Railway, Head Quarter, Allahabad will decide the said representation on all the contentions which may be raised by the applicant in his representation by passing reasoned and speaking order as per law/rules within a period of three months from the date of receipt of copy of this order and communicate the same to the applicant forthwith. In view of these observations the impugned order dated 10.10.2005 is quashed and set aside for passing a fresh order incorporating the findings on the representation of the applicant.

9. In view of the above the OA is disposed of. No cost.



Member (A)

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