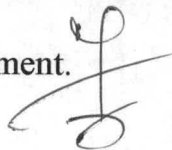


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**O.A.No. 133 OF 2003**

ORDER DATED:24-03-2006

As is seen from the record, through a process of selection, the Applicant was selected as Trainee Appr. Artisan Gr.III under the Physically Handicapped category in the Railways and, accordingly, he was asked to undergo the necessary training under Annexure-4 dated 26.03.2001, in the Zonal Training Schol of South Eastern Railway at Sini subject to passing the prescribed medical examination and production of original certificate. As a pre condition of the appointment under Annexure-4, Applicant reported in the office of the DRM (P) at Khurda on 25.04.2001 and submitted all the documents including medical certificate issued by VRC attached Medical Board. He also deposited the required fees for the purpose of Medical Examination. As per the direction of the DRM(P),Khurda, he reported before the appropriate authority at Garden rich Kolkata for medical examination and he was medically examined on 06-06-2001. Thereafter, as no communication was made with the Applicant in spite of repeated requests, he has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 with prayer to direct the Respondents to allow the Applicant to join his post/employment.



2. Respondents by filing a counter have stated that Medical examination is a precondition before appointment. Accordingly Applicant was asked to be examined by the Railway Doctors who opined that his hearing improves with hearing aid and, therefore, he does not qualify to be considered as a hearing handicapped person as per IRMM para 511 (7) b for Railway service. It has further been disclosed that on examination it was found that the Applicant is having 55% loss in the speech frequency range and, therefore, as per the Rules he was rightly denied for such appointment.

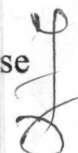
3. Heard learned counsel appearing for the parties and perused the materials placed on record. It was submitted by the learned counsel appearing for the Applicant that, as per the instructions of the DOP&T, there was no need for asking a physically handicapped person to be examined further. It was further argued that, on examination, it has already been opined by the Regional Centre, Ali Yavar Jung National Institute for the hearing handicapped and National Rehabilitation Centre, Bhubaneswar that the Applicant is having 100% disability, that the certificate now given by the Railway Doctor was erroneous one and that basing on such certificate, the Applicant should not have been denied his legitimate right to join the post.

On the other hand, learned counsel appearing for the Respondents has submitted that the Railway is having their own Rules,



which specifically provides that, before taking up an appointment, one has to be examined by the Railway Doctor and only after being declared successful, as per the Rules, he/she can be allowed to join and that the instructions of the DOP&T is not applicable to the Railways. It has further been submitted by the learned counsel appearing for the Applicant that as, on examination, it was found that the Applicant is having only 55% disability; which is fall short of the required percentage of the degree of disability, he was rightly denied such appointment.

4. Having heard the counsel appearing for the parties, perused the materials placed on record. This Tribunal is not competent to express any opinion with regard to the percentage of disability of any one. From the records produced by the Applicant it is seen that once upon a time it was certified by a Government of India organization that the Applicant is having 100% disability; whereas the Railway Doctor certified that the Applicant is having only 55% disability. Since there has been difference of opinion between two Medical Boards, in the fitness of things, it would be just and proper to refer the matter to a fresh medical Board to be constituted by the Senior most Medical Authorities of the Railways headed by the Chief District Medical Officer and the medical report so given by the said constituted medical board will decide the fate of the case. The entire exercise

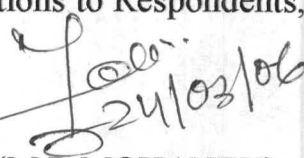


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should be completed within the period of 45 days from the date of receipt of a copy of this order.

5. In the result, with the above said directions to Respondents, this OA stands disposed of. No costs.

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

Copy of Order  
may be given to  
both the Counsel

A  
31.3.06

  
31/3/06  
S.O.J.