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O.A. No. 31 of 2009

Order dated: 20.01.2009

CORAM:

Hon'ble Mr.Justice K. Thankappan, Member(J)  
Hon'ble Mr. C.R.Mohapatra, Member (A)

We have heard Mr. P.K.Pattnaik, Ld. Counsel for the applicant and Mr. S.K.Ojha, Ld. Standing Counsel for the Respondents.

2. The applicant filed this application under Section 19 of the Administrative Tribunals Act, 1985 on the ground that his application for compassionate appointment was rejected due to the medical unfit certificate issued to him by the Sr. Divisional Medical Officer, East Coast Railways, Waltair Division.

3. The fact of the case is that the applicant is the son of a deceased Railway employee and he is claiming employment assistance under the employment assistance scheme. Even though, required documents have been furnished by the applicant, ~~but~~ on the ground of medical unfitness, the applicant's application has been rejected. Now, it is averred in this O.A. that the applicant has already filed a representation on 27.07.2008 to the second Respondent to refer him for a medical check up to the medical board of the Railways to get second opinion regarding the physical fitness of the applicant. However, as per Annexure-A/5, the same has been now rejected. Hence, the applicant filed this application.

4. We have heard the Ld. Counsel appearing for the applicant and have perused the documents submitted along

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with the application and we are of the view that we are not the experts to see the medical fitness of the applicant though he claims as per the certificate given by the Apollo Hospital, Visakhapatnam, he is not suffering with any heart disease. But that certificate does not show he is fit for employment under the Railways. The only information now furnished before us is that as per Annexure-A/5, the Sr. Divisional Medical Officer, East Coast Railways, Waltair has opined that he is medically unfit for employment under the Railways. As per the rules pertaining to medical fitness, the Railway authorities ought to have seen that second opinion can be sought for which the applicant has already applied on 27.07.2008. Without considering the particular provisions regarding the reference to be made, rejection of the application of the applicant for compassionate appointment and the issuance of exhibit A/5 concluding that the applicant is unfit for employment is erroneous and irregular.

5. In the above circumstances, we quash Annexure-A/5 at this admission stage and direct the Respondent Nos. 2 to 4 to refer the applicant to a medical board for second opinion and on getting such medical opinion, the application for employment assistance shall be reconsidered as per law. This has to be done within a reasonable period at any rate within 90 days from the date of receipt of a copy of this order with due intimation to the applicant. Ordered accordingly.

6. With the above direction, this O.A. is disposed of.

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7. A copy of this order may be handed over to the Ld. Counsel for the applicant and also to Mr. S.K.Ojha, Ld. Standing Counsel for the Respondents for compliance.

MEMBER (A)

MEMBER (J)

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