

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No.260/00343 of 2013

Date of Order : 28TH, MAR, 2017

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**HON'BLE SHRI A.K. PATNAIK, MEMBER (J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)**

Prabhat Mohanty aged about 34 years, S/o Shri Pitambar Mohanty, At-
Mallipur, PO Seasan, District Kendrapara. **...Applicant**

By the Advocate(s)- Mr. K.P.Mishra

-V E R S U S-

- 1- Union of India represented through the General Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar.
- 2- Chief Personnel Officer, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar.
- 3- Medical Director, Central Hospital, East Coast Railway, Mancheswar, Bhubaneswar. **...Respondents**

By the Advocate-Mr. B.B.Patnaik

O R D E R

Per R.C.MISRA, MEMBER(A):

The applicant by filing this O.A. has made a prayer that he may be declared as eligible in all respects for appointment to the post of Goods Guard and respondents may be directed to give him appointment in the said post.

2. The facts as submitted by the applicant in this OA are that the applicant was empanelled for appointment to the post of Goods Guard by the Railway Recruitment Board and he was also given a provisional appointment vide order dated 6.8.2012, a copy of which has been enclosed to this OA as Annex.A/3. The applicant was thereafter asked to go through a medical test and after his medical test, he was informed by the respondent authorities on 6.9.2012 that he has been found unfit in requisite medical classification i.e. A-2 by the concerned medical

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 authorities. However, the applicant was asked to make an appeal to the Chief Medical Director, East Coast Railway, Bhubaneswar within a period of 30 days if he suspected any possibility of error of judgment by the medical examination authority. The appeal of the applicant was forwarded to the Chief Medical Superintendent East Coast Railways, Sambalpur by letter dated 5.10.2012 issued by the Divisional Railway Manager, Sambalpur. In the meantime, the applicant got his eyes tested by a consultant eye surgeon at Kendrapara and also the L.V. Prasad Eye Institute at Bhubaneswar. Subsequently, he also got his eye tested in the S.C.B. Medical College and Hospital at Cuttack. The applicant's submission is that in these medical tests, his vision was found perfectly normal. However, due to dispute in the medical board on 2.2.2013, the case of the applicant was referred to the higher medical centre at Garden Reach, Kolkata and this information was given to the applicant vide letter dated 2.2.2013 with an advice to report to the office on 11.2.2013 for further course of action. The applicant has argued that his vision has already been tested and certified as normal by a renowned eye institute and also by a premier medical college hospital of the State, therefore, he is medically fit in A-2 category for appointment as Goods Guard in the East Coast Railway, ^{and} therefore, the applicant has made a prayer as already mentioned above to this Tribunal.

3. The respondent authorities have filed a counter affidavit in this regard wherein they have admitted that offer of appointment was issued to the applicant by the Divisional Railway Manager, East Coast Railway at Sambalpur vide letter dated 6.8.2012 and he accepted the offer and submitted relevant documents but, during the process of medical examination, he was found unfit in A-2 category for his posting. The applicant preferred an appeal prayer for medical re-examination which was forwarded to the Chief Medical Superintendent of East Coast Railways, Sambalpur. His medical re-examination was conducted at the Central Hospital, Mancheswar and he was declared as Unfit for A-2

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medical category. It is submitted in the counter affidavit that Visually Acuity Standard (VAS) is one of the important criteria of medical fitness in the Railway Staff. Before appointment as Goods Guard, the applicant has to be certified to be fit under A-2 medical category. The medical board had also examined him and since some more tests were to be conducted, the matter was referred to higher centre i.e. Garden Reach, Kolkata where facilities for further tests are available. The case was examined by the ACHD (Eye)/ GRC and vide Memo dated 18.2.2013 the following opinion was given :

"BE-Epithelial Scar mark of LASIK Procedure Flap present on Cornea & hence made unfit"

4. The medical authorities informed that the candidate has evidence of laser LASIK Surgery in both eyes with Corneal Operation on left eye & Epithelial Scar mark of LASIK Procedure flap present on both corneas. The candidate has suppressed these important material facts while giving a declaration. The recommendation of the medical board has been approved by the competent authority and the applicant has been declared as 'unfit' for employment as Goods Guard.
5. We have heard the learned counsel for both sides and perused the records. It is an admitted fact that the applicant has been declared unfit in the A-2 medical category because some flaw was detected in the vision test. The medical board has also declared him as 'unfit', therefore, the matter was referred to the higher centre at Garden Reach, Kolkata. The respondents in their counter affidavit have referred to Annex.R/9 wherein there is a recommendation and some observation was given about Lasik procedure and the examining doctor has written "please decide accordingly". Thereafter, according to the documents available with us there is no communication or order from the departmental authorities to the applicant. We have considered the submission of the applicant that according to the tests conducted by a private medical

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practitioner at Kendrapara and the further tests undergone by the applicant in a reputed centers like L.V.Prasad Eye Institute and S.C.B. Medical College and Hospital, the vision of the applicant is 'normal'. However, the authorities will have to decide the matter on the basis of medical examination done as per the rules which prescribed the medical authorities who would give opinion in the matter. The opinion of various other medical authorities will not help the case of the applicant. If such a principle is allowed then various candidates will go for tests in various centers and the uniformity of medical examination cannot be maintained. Moreover, what are the medical requirements for the appointment of a Goods Guard or for that matter in other posts in the Railways, have to be decided by the respondents themselves. If medical fitness as per A-2 category is required for the post of Goods Guard, this has to be adhered to by the authorities in respect of all the candidates. The respondents have to decide the medical requirements as per the job requirements of a particular post and this is not an area where this Tribunal would like to interfere. Learned counsel for the applicant in their written notes have referred to a judgment of this Tribunal delivered by Ernakulam Bench on 20.07.2012 wherein, the following view was taken :

"In the light of the above aspects and in the absence of any specific inclusion of the Zyoptis Laser treatment as a disqualification for B-1 category of appointment, it must be held that the applicant who underwent Zyoptis Laser treatment cannot be disqualified for employment in the category of B-1. We declare so. To that extent Annexure A-1 is quashed and we direct the authorities to consider the applicant as fit for employment in B-1 category and do the needful and consider him for appointment to the post applied for with consequential benefits. This shall be done, at any rate, within three months from the date of receipt of a copy of this order."

6. The learned counsel for applicant by drawing our attention to the aforesaid judgment of the Tribunal, has emphasized the fact that applicant having undergone laser treatment cannot be considered as disqualified. We are, however, not in a position to apply the ratio of the afore-quoted case to the instant case because there are no pleadings in this regard and applicant has not taken any such ground in his O.A.. On

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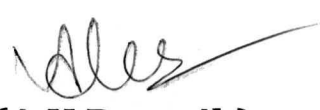
the other hand, he has based his claim on the fact that he was found to be fit by a renowned eye institute and another premier medical college of the State. The applicant has also not brought any averment in the OA that he has gone through laser treatment. In this regard, we cannot disagree with the stand taken by the respondents that applicant has suppressed certain facts with regard to alleged laser treatment. On the other hand, it is also found from Annex. R/9 filed along with the reply that a medical examination report has been filed in which some observation has been made but the examining doctor has mentioned that "please decide accordingly". The respondents have no doubt pleaded that the applicant has been finally declared 'unfit' from medical point of view after his examination in the higher medical centre at Garden Reach, Kolkata. We, however, do not come across any specific order passed by the competent authority and sent to the applicant. In this regard, the action of the respondent authorities ~~have~~^{is} not been completed since no specific order containing the grounds as to why he has not been considered fit, has been communicated to the applicant.

7. However, at the cost of repetition we would say that prescribed medical authorities are only empowered to certify the medical category of the applicant for his suitability as Goods Guard. It cannot be contested that medical standard at the time of recruitment has to be met and the employer has every right to decide the medical fitness of the applicant who was provisionally selected for appointment. The decision has to be however based upon genuine medical examination and cannot be an arbitrary view of the authorities. However, the applicant having not been found to be fit at various levels of the medical examination conducted by the respondents has not been able to establish his case in the present O.A. It has never been the stand of the applicant that he has undergone laser surgery, and that should not be a bar to medical eligibility. Therefore, he can derive no relief from the decision of the Ernakulam Bench of the Tribunal (supra). But, the records also reveal that even

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though some medical information and observation was given on 18.2.2013 in a document marked at Annex.R/9 the final decision of the competent authority giving the grounds for such decision has not been communicated to the applicant as per the records placed before us. Therefore, we would like to direct the respondent authorities to communicate the decision taken by them along with ^{stating} the reasons for such decision to the applicant forthwith within a period of thirty days from the date of receipt of a copy of this order. Ordered accordingly. With this direction, the OA is disposed of with no order as to costs.


(R.C.Misra)
Member (A)


(A.K.Patnaik)
Member (J)

