

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. NO. 439 OF 2010**

*Thursday* this the 3<sup>rd</sup> day of *March*, 2011

**CORAM:**

**HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

L.Devaraj, aged 57 years  
S/o Lazar, Retrenched Casual Labourers  
Southern Railway, Trivandrum Division  
Residing at Cheruvathoor Potta  
Vadakkekara, Pasasuvaickal P.O  
Parasuvaickal Trivandrum District

- Applicant

(By Advocate Mr. T.C. Govindaswamy)

**Versus**

- 1 Union of India represented by  
The General Manager  
Southern Railway  
Headquarters Office, Park Town (P.O)  
Chennai - 3
- 2 The Divisional Railway Manager  
Southern Railway, Trivandrum Division  
Trivandrum - 14.
- 3 The Divisional Personnel Officer  
Southern Railway, Trivandrum Division  
Trivandrum - 14
4. The Chief Medical Director  
Southern Railway, Head Quarters Office  
Park Town.P.O, Chennai

5. The Medical Superintendent  
Southern Railway Hospital  
Pettah, Trivandrum

- Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil )

The application having been heard on 23.02.2011, the Tribunal on 3.3.2011 delivered the following:

### **ORDER**

#### **HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

1. The challenge in this Original Application is against the refusal of the respondents to consider the applicant for absorption in any Group 'D' post on the ground of medical unfitness.
  
2. This is the third round of litigation. Initially the applicant and 4 others filed O.A 374/04 which was disposed of by an order to the respondents to consider their representations. The representation was rejected by the respondents. Therefore the applicant and others filed O.A 793/05, which was allowed. The respondents challenged order of this Tribunal in O.A 793/05 and similar O.A No.271/06 before the Hon'ble High Court by filing W.P (C) No.29813/07 and 21777/07. The High Court in its judgment dated 29.11.07 in W.P(C) 21777/07 upheld the order of the Tribunal. Due to inaction on the part of the respondents the applicants and three others filed CP(C) No.44/2008 in O.A 793/2005. During the pendency of the Contempt Petition the 3<sup>rd</sup> respondent filed an affidavit dated 15.07.2008 stating that the applicant could not be considered for absorption as he was found unfit in

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medical classification b-1 and hence his case has to be rejected. However he approached Eye Specialist of Kerala Health Service, Government Hospital, Neyyattinkara, Trivandrum and obtained a fitness certificate from him, wherein he was advised to use spectacles to correct vision. The applicant says that he was not served with a copy of the medical unfitness certificate by the respondents. Therefore he avers that the refusal of the respondents in considering his case for absorption in a Group D post is arbitrary, discriminatory, contrary to law and unconstitutional.

3. The applicant has submitted Annexure A-9 representation to the 4<sup>th</sup> respondent requesting for a re-medical examination on 25.07.08. As there was no response from the respondents, the applicant filed a miscellaneous application for condoning the delay in filing this O.A. The applicant relied on this Tribunal's order dated 15.06.09 in O.A 590/08 wherein the respondents were directed to subject the applicant therein for a re-medical examination within a period of one month and to re-assess his medical fitness for a Group D post with lower medical classification. The applicant therefore prayed for a similar consideration for him to have a second medical examination.

4. The respondents submitted in their reply statement that no appeal for a re-medical examination was received from the applicant and appropriate action will be taken as and when an appeal is received.



5. The applicant filed rejoinder producing M.A 1/2011 which is the medical certificate issued by the Ophthalmic Surgeon, Taluk Hospital at Neyyattinkara on 27.07.2010. M.A 2 shows that APO/TVC has forwarded this certificate to the 5<sup>th</sup> respondent. The applicant has also produced M.A 3/2011 which is a letter issued on 10.08.10 by the 3<sup>rd</sup> respondent which shows that the applicant had his initial medical examination on 17.06.2008. He was expected to send his appeal within 30 days of being declared unfit. Since the appeal was unduly delayed he could not be considered for a re-medical examination.

6. Heard the parties of both sides and perused the documents. In his favour the applicant avers that his appeal was perhaps not seen. His initial appeal, Annexure A-9 dated 25.07.2008 might have escaped the notice of the respondents. The undisputed fact is that the applicant was merely told that he was found unfit in medical classification b-1 and a copy of the medical certificate was never given to him. Only when he came to know about the reason for his medical unfitness, he approached an Ophthalmologist in Government Hospital and got a certificate as he was not called by the respondents for a second medical examination. An identical issue was dealt with in O.A No.590/08 wherein the respondents were directed to conduct a second medical examination for the three applicants in that case. A similar consideration will have to be extended to this applicant also.



7. The respondents have submitted that posts other than Trackman in Civil Engineering Department are the categories of Senior Record Sorter, Record Sorter, Jamadar Peon and Peon, which need less than b-1 medical classification. However, there is no vacancy in these categories at present. Moreover, a large number of medically de-categorised employees are awaiting alternative appointment as they have been medically categorised below b-1 category. They also pointed out that Railway Board has taken a policy decision that the candidates selected by Railway Recruitment Board and who fail in the medical classification need not be considered for alternative appointment in accordance with Railway Board circular dated 25.05.2009. In view of the above circular, they expressed their inability to consider the applicant for appointment in any post in Railways.

8. When the case was being heard, the applicant produced information, which he obtained through Right to Information Act, 2005. This was taken on record. It shows that there are six vacancies in the post of Record Sorter, Peon, which need C-2 medical categorisation. Similarly, there are three vacancies in the post of Watchman, Gardener and another two vacancies in Parcel Porter, Lascar, etc.

9. Hence the applicant contends that in accordance with this Tribunal's order in O.A No.590/08 he also has a right to be considered for Group D post which requires lesser medical qualification than b-1.

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10. Accordingly, following orders of this Tribunal in O.A 590/08 the respondents are directed to subject him to a re-medical examination within a period of 4 weeks from the date of receipt of copy of this order and re-assess his medical fitness and consider him for a Group D post requiring lesser medical qualification than b-1 according to his turn and subject to availability of vacancies. Ordered accordingly.

(Dated, the 3<sup>rd</sup> day of March, 2011.)

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**K. NOORJEHAN**

**ADMINISTRATIVE MEMBER**

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