

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.48/10

Thursday this the 8th day of April 2010

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

C.Babu,
S/o.Chami,
Licensed Coolie Porter,
Badge No.165/Puthu Nagaram RS&PO,
Pudunagaram/Southern Railway, Palghat District.
Residing at Mayan House, Kulathumedu,
Pudunagaram, Palghat District.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India represented by General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.
2. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division, Palghat.
3. The Chief Medical Director,
Medical Branch, Southern Railway,
M.M.Complex, Chennai – 3.
4. The Chief Medical Superintendent,
Southern Railway Hospital, Palghat.

...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 8th April 2010 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant in this Original Application has been working as a Licensed Coolie Porter in Palghat Division under the Southern Railway. The Ministry of Railways has taken a policy decision that, as a one time



measure, all those Licensed Coolie Porters who are upto the age of 50 years and minimum age of 18 years as on 26.2.2008 may be appointed to the post of Gangman subject to their fulfillment of the prescribed eligibility conditions. One of the conditions was that the Licensed Coolie Porter should be medically fit for the aforesaid post. As part of the selection process, the applicant was directed to undergo a screening test to be held on 5.5.2008, with the original certificates vide Annexure A-2 letter dated 21.4.2008. Thereafter, he along with others have been recommended for being placed in the panel for appointment as Trackman vide Annexure A-3 Memorandum dated 12.5.2008. The applicant is at Sl.No.5 in the said panel. All the empanelled Porters were directed to undergo the medical examination and the applicant was examined on 16.5.2008. According to the applicant, after the medical examination, the medical authorities have not issued any certificate of fitness or otherwise to him. On the other hand, he was advised to attend the Railway Hospital, Perambur on 21.5.2008 for further medical check up and on their advise he underwent certain operations. Thereafter, the respondents did not subject him for any medical examination for the purpose of granting fitness certificate. He has, therefore, made Annexure A-6 (2) representation dated 14.11.2008 enclosing therewith all the medical reports given to him by the Railway Hospital, Perambur. Thereafter, he has subjected himself for a medical examination on his own volition by Dr.C.P.Karunadas, Assistant Professor of Cardiology, Government Medical College, Thrissur and submitted a certificate issued by him (date not clear) wherein it has been certified that he was a case of post OP ASD in Cardiology and he is now having normal heart and is fit to join as Licensed Coolie Porter/Trackman in Railways. The applicant has again made the Annexure A-7 representation requesting



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the respondents to subject him for re-medical examination by the Railway medical authorities and to get the fitness certificate so that he can join as Trackman. Since there was no response from the respondents he continued to make representations vide Annexure A-9 dated 7.5.2009, Annexure A-10 dated 22.5.2009, Annexure A-13 dated 24.7.2009 and Annexure A-14 dated 24.7.2009.

2. The stand of the respondents as evident from the Annexure A-11 letter dated 1.6.2009 is that the applicant was declared unfit in the medical classification of 'B-1' for the post of Trackman on 26.5.2008 by Senior Divisional Medical Officer, Palghat based on the recommendation of cardiologist of Railway Hospital, Perambur and as such in terms of the Railway Board's letter dated 24.9.2008 his request for re-medical examination cannot be acceded to and being a Licensed Coolie Porters/
who was found unfit for the medical classification of 'B-1' for the post of Trackman, he is to be sent back as Licensed Porter

3. The respondents in their reply has also submitted that after the medical examination of the applicant he was declared unfit in class B1 by the Senior Divisional Medical Officer, Railway Hospital, Southern Railway, Palghat and there is no provision of re-medical examination for the Licensed Porters who were declared medically unfit. They have also submitted that the applicant was not officially referred to Railway Hospital, Perambur for any medical examination and he underwent the cardiac surgery there at his own will and volition and after duly remitting the charges prescribed for patients not working in the Railways.

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4. We have heard learned Advocate Shri.T.C.Govindaswamy for the applicant and learned Advocate Shri.Thomas Mathew Nellimoottil for the respondents. The undisputed facts as emerged from the above discussion ^{are} ~~is~~ that the applicant was medically examined on 16.5.2008 and the medical authorities have found him having some cardiac problems. He was, therefore, declared medically unfit but no certificate to that effect was issued to him. As the applicant was suffering from certain medical infirmities, he was recommended for further treatment at Railway Hospital, Perambur. Being not a Railway employee he had undergone treatment there as a private patient and he was cured of the problems being suffered by him. Thereafter, the respondents, in spite of his repeated requests, did not subject him for a second medical examination to ascertain his fitness to join as Trackman. He has, therefore, produced a medical certificate from the Assistant Professor of Cardiology, Government Medical College, Thrissur stating that after his post OP ASD he is having a normal heart and he is fit to join as Licensed Codie Porter/Trackman in Railways. The only issue for consideration now is that though the applicant was suffering from some heart disease at the time of his medical examination on 16.5.2008, whether he is fit for appointment as Trackman if he is medically fit afterwards. In spite of the repeated requests of the applicant the respondents have not arranged a medical examination to find out whether he is now medically fit to be appointed as Trackman. That is the reason why he on his own volition has approached the Government Medical College, Thrissur to get a medical fitness certificate in his favour. There is no dispute that if a person is found unfit for employment temporarily it does not mean that he is unfit for Government employment for all the time to come. If the temporary medical infirmities are cured and he has become fit




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for appointment, he cannot be denied the employment on this ground alone, particularly, in view of the fact that the Government has taken a liberal and benevolent attitude towards all the Railway Porters and directed to absorb them on regular basis. We have come across such cases earlier also in this Tribunal. In O.A.496/09 – E.Moideen Vs. Union of India and others – we have directed the respondents to subject the applicant for re-medical examination by an appropriate medical authority consisting of at least 3 doctors including a Specialist to adjudge his fitness for being absorbed as a Trackman. Similarly, in O.A.700/09 – P.Mohanadasan Vs. Union of India and others – also we have directed the respondents for a second medical opinion and if the applicant was found fit he should be considered for appointment as Trackman.

5. In the above facts and circumstances of the case, we allow this case. Consequently, we direct the 2nd respondent, namely, the Senior Divisional Personnel Officer, Southern Railway, Palghat to subject the applicant for a re-medical examination and to assess his fitness and if he is found medically fit, he shall be appointed as a Trackman as in the case of other eligible empanelled persons as per the Annexure A-3 Memorandum dated 12.5.2008. The aforesaid directions shall be complied with, within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 8th April 2010)


K.NOORJEHAN
ADMINISTRATIVE MEMBER
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GEORGE PARACKEN
JUDICIAL MEMBER