

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 496 / 2009

Wednesday, this the 25th day of November, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MR. K NOORJEHAN, ADMINISTRATIVE MEMBER

E.Moideen,
Licensed Porter, Badge No.23,
Southern Railway, Ottppalam R.S & P.O.Applicant

(By Advocate Mr TC Govindaswamy.)

v.

1. Union of India represented by the
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.Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

This application having been finally heard on 9.11.2009, the Tribunal on 25.11.2009 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

This is the 3rd round of litigation by the applicant. His grievance is that the Respondents have not subjected him for a second medical examination for absorption as a Group'D' staff by the respondents so far.

2. The applicant has been working as a Licensed Porter of the Southern



Railway, Palghat Division at Ottapalam Railway Station with effect from 5.2.1987 and he holds Badge No.23. By Annexure A-1 letter dated 21.4.2008, he was called for screening test for appointment to the post of Trackman on 5.5.2008. Thereafter, he was directed to attend a medical examination in the Railway Hospital at Olavakkode on 9.6.2008. After attending the same he was waiting for the offer of appointment. When nothing was heard from the Respondents for quite some time, he made enquiries in the office of the 2nd respondent. He was informed that he was not medically found fit because he was suffering from hypertension. He immediately approached the Assistant Surgeon of the Government Hospital at Ottappalam and got himself examined and found that his blood pressure was normal. He has, therefore, sent Annexure A-2 representation dated 28.7.2008 to the 2nd respondent stating the above position and requesting him to send him for a re-medical examination before a Medical Board. There was no response to the aforementioned representation. He again got another medical certificate from a private practitioner at Ottapalam showing his blood pressure as normal and sent the same along with his Annexure A-3 representation dated 15.11.2008 seeking the re-medical examination. In the meanwhile, some others who were also rendered medically unfit requested the authorities for re-medical examination and they were directed to the Chief Medical Director and they were medically re-examined and found fit and later appointed as Trackman. The applicant has given specific example of one Shri Sulaiman, Badge No.6 who was also found medically unfit by the Divisional Medical Officer of the Railway Hospital at the Division on re-examination and found fit and appointed as Trackman.

3. Aggrieved by the inaction on the part of the respondents, the applicant approached this Tribunal earlier by filing O.A.72/2009 inter-alia, praying for a



direction to the respondents to subject him for a re-medical examination by an appropriate medical authority to adjudge his fitness for being absorbed as a Trackman. The said O.A was disposed of by the Annexure A-4 order dated 6.2.2009 directing the 2nd respondent to look into the representations and to take a final decision in accordance with the extant rules and to communicate the same to the applicant within a period of one month from the date of receipt of the order. As the respondents failed to implement the directions in the said O.A, he filed a Contempt Petition (Civil) No.48/2009 alleging wilful disobedience and disregard to the orders of this Tribunal. The 2nd respondent filed a reply stating that he had considered the representation of the applicant and disposed of it by a speaking order on 16.3.2009.

4. In this O.A, the Applicant is challenging the aforesaid letter dated 16.3.2009 (Annexure A-5) wherein it has been stated that pursuant to the announcement made by Hon'ble Minister for Railways in his Budget Speech for the year 2008-09 in the Parliament, as a one time measure, it was decided that all those licensed 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 posts of Gangman subject to their fulfilment of the following conditions:

- i) Only those license porters will be considered for appointment who were possessing a valid license in terms of extant rules as on 6.2.2008 i.e. the date of announcement in Parliament.
- ii) Educational qualification may be kept as read and write
- iii) The appointment will be subject to surrendering the license and badge and right to be a license porter. No subsequent transfer of license would be allowed.
- iv) The license porters should be medically fit for the post of Gangman in B1 medical classification."

Respondents have also stated in the said letter that the applicant was considered for the post of Gangman as per the order of the Railway Board and



the medical authorities vide Medical Certificate No.059583 dated 9/14.6.2008 advised that he was unfit in B1 category, the medical classification prescribed for the post of Gangman and he has not been considered for appointment to the post of Gangman. The applicant has challenged the aforesaid Annexure A-5 letter of the respondents as arbitrary, discriminatory and one which have been issued without application of mind and hence violative of the constitutional guarantees enshrined in Article 14 and 16. According to him, all what is stated in Annexure A-5 is that the 2nd respondent has not found him fit in medical classification B1, as required for the post of Gangman. He has, therefore, sought a direction to the respondents to subject him for a re-medical examination by an appropriate medical authority to adjudge the applicant's fitness for being absorbed as a Trackman and direct further to absorb him as a Trackman within a time limit.

5. The applicant's counsel has relied upon Para 522 of the IREM Vol.I which is reproduced as under:

"522. Provision for reconsideration of adverse reports:

The following provisions shall apply in regard to the reconsideration of adverse reports of Medical Examination:

(1) Candidates:

(i) Ordinarily, there is no right of appeal against the findings of an examining medical authority, but if the Government is satisfied, based on the evidence produced before it by the candidate concerned, of the possibility of error of judgment in the decision of the examining medical authority, it will be open to it, to allow re-examination. Such evidence, should be submitted within one month of the date of communication in which the decision of the first medical authority is communicated to the candidate. The appellate authority may entertain the appeal within a reasonable time after the expiry of said period, if it is satisfied that the appellant had sufficient cause for not preferring an appeal in time. Consultation and investigation charges will be recovered for appeal.

(Ministry of Railway's letter No.91/H/5/1 dt. 23/08/1991 and No.87/H/5/18 dt. 26.10.1988).



(ii) If any medical certificate is produced by a candidate as evidence about the possibility of an error of judgment in the decision of the first medical authority, the certificate will not be taken into consideration unless it contains a note by the medical practitioner concerned, to the effect that it has been given in full knowledge of the fact that the candidate has already been rejected as unfit for service by the medical authority appointed by the Government in this behalf.

(2) Railway Employees:

(i) The Railway employee may himself, on receiving the notice of failure to pass the examination, lodge an appeal within seven days from the date of adverse report, for reconsideration by the Chief Medical Director. This appeal will be directed through the Divisional Officer/District Officer of the employing Branch or the department concerned and CSS/MS in charge of the Division, who will respectively attach a report of the examination.

(ii) A principal Divisional or District Officer of the Branch or department concerned may submit a requisition for reconsideration by the Chief medical Director of the case of a Railway employee concerning whom an adverse certificate has been issued by an examiner authorised to do so. The requisition will include a statement of any special circumstances that appear worthy of consideration, and will be sent through the CMS/MS of the division who while forwarding it to the Chief Medical Director will attach a report of the examination.

(iii) On receipt of an appeal under para (i) above, or a requisition under para (ii) above, the Chief Medical Director will after perusal of the papers, either issue summary orders or arrange at his discretion of such further special examination of the Railway employee as the circumstances of the case may require. The decision of the C.M.D will be final.


(iv) A Railway employee who having been examined by a competent medical authority, has been certified by the authority to be unfit to continue to discharge the duties formerly assigned to him, shall not be permitted to discharge such duties or the duties of any other class, competence for which has not been certified by the examiner; and the adverse certificate shall hold irrespective of the submission of an appeal under sub para (i) above, or the submission of a requisition under sub para (ii) above, until such time as under the instructions of the Chief Medical Director, the adverse certificate has been formally withdrawn or replaced."

6. The respondents in their reply have submitted that the Railway Administration has set certain medical standards required for persons working



against various posts based on safety and non-safety aspects and for the categories coming under safety posts like Driver, Guard, Permanent Way Inspector, Gangman etc the medical classification is fixed as A-1, A-2, A-3 and B-1 respectively. For the non-safety post of Office Clerk, the standard of medical fitness is fixed as C-2. In addition to the above, there is medical classification of B-2 and C-1 in which certain other categories are included. They have also submitted that the issue regarding the course of action to be adopted in the case of licensed porters who were found medically unfit, was considered by Railway Board and it was clarified vide letter dated 24.9.2008 that those licensed porters who have failed in B-1 medical for the post of Gangman are permitted to go back as licensed porters. They have denied the allegation that in some other cases of medical unfitness of licensed porters, re-medical examination was done subsequently whereas the applicant was singled out. They have also submitted that the case of Shri T.K.Sulaiman referred to by the applicant was different. He was kept pending due to conflicting declaration pertaining to his date of birth and not because he was found medically unfit. Since the name of T.K.Sulaiman has not been cleared by the screening committee in view of the aforesaid reason, he has not been sent for medical examination at all.

7. We have heard the learned counsel on both sides. The applicant was declared medically unfit only because he was having high blood pressure and, therefore, he could not get the B1 categorisation. Para 522 of the IREM Vol.I says that originally there was no right of appeal against the findings of the examining medical authority. However, the Government has the discretion to allow re-examination in cases in which they are satisfied that there was possibility of error in the medical examination already conducted. In the present



case, the medical authorities have found the applicant having high blood pressure and, therefore, found not fit to be categorised as B1. However, the applicant got himself examined by another government medical authority. He has got a certificate to the effect that he is fit. In such circumstances, the justice and fair play demand that the respondent shall subject such candidates for a second medical examination.

8. We, therefore, do find merit in the contention of the applicant and accordingly we allow this O.A. We direct the respondents to subject the applicant for a 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 within a period of two months from the date of receipt of copy of this order. There shall be no order as to costs.


K NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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