

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 295 OF 2010

Wednesday, this the 28th day of September, 2011

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

L.Paul
Residing at Nadeeparambil House
Pathirappally P.O
Alleppey District ... Applicant

(By Advocate Mr.Martin G Thottan)

versus

1. Union of India represented by the
General Manager, Southern Railway
Headquarters Office, Chennai
2. The Senior Divisional Personnel Officer
Southern Railway, Trivandrum Division
Trivandrum ... Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

The application having been heard on 28.09.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant is a licensed Porter of Cherthala Railway Station of Alleppey District coming under the Trivandrum Division of Southern Railway. He had been working in that capacity for the last 20 years. The Ministry of Railways based on a policy decided to consider the licensed Porter as a one time measure for appointment as Trackman. The applicant applied and he was directed to attend before the Screening Committee held on 02.05.2008. Annexure A-1 is the copy of the said letter. Subsequently he was subjected to a medical examination. The applicant



did not receive any offer of appointment to the post of Trackman. According to him, many of whom who appeared for the Screening test were appointed. The applicant came to know that he has not given the fitness certificate as he is having a divergent squint of right eye. The applicant does not dispute that fact. According to him, this is a disqualification. He consulted a Eye Surgeon and underwent operation at Angamaly Little Flower hospital and thereafter the defect stood rectified and a medical certificate Annexure A-2 is also produced. He made a representation for a re-medical check up to consider his case for appointment to the post of Trackman. Annexure A-3 is the copy of the representation. But the same has not been responded to and he continues as a Licensed Porter only. Hence he has approached this Tribunal for a direction to consider him for appointment as Trackman.

2. In the reply statement filed by the respondents it is stated that the applicant was unfit as informed by the Medical Officer is correct. Class Aye three and Bee One is prescribed in the Medical Manual. He has exhausted the opportunity of being considered for appointment like others. They have referred to the Railway Board's letter dated 01.04.2008 indicating the process of appointment of Licensed Porters to the post of Trackman is only a one time measure. Hence re-medical examination is not permissible. He has only a right to be considered for appointment which has been done. He has no right to be appointed. If there is any dispute regarding the medical opinion his remedy is to file an appeal and he did not choose any such remedy. The 2nd respondent is not the correct Appellate Authority. The representation was made on 04.09.2008 and there was a delay of 49 days. There is no explanation for the delay. It is further



submitted that the qualification required to be possessed should be considered at the time of consideration for appointment and not afterwards. They have placed reliance in the case of ***P.V.Pathrose v. Kerala Public Service Commission 1984 (2) SLR 26*** wherein it is held that " Qualification stipulated should be possessed by the candidate and evidence thereof should be produced at the time of interview. It is not sufficient if the medical certificate is given at a late point of time at the time of appointment as contended by the petitioner."

3. We have heard both sides. The fact remains that the absorption of Licensed Porters as Trackman done only as a one time measure. The applicant satisfied the required eligibility and he was called for a Screening test. He successfully underwent the test and he was called for a medical examination in which he was found unfit. No doubt the applicant has no grievance at that time and any complaint to the higher authorities would not have improved the situation. Knowing the disqualification, he underwent a surgery and the defect was rectified. By the time there was a delay of filing an appeal against the original order. Admittedly that delay was only four months. Considering the fact that this is only a one time measure and he has already made a representation, the delay cannot be considered fatal. This is a fit case that the delay ought to have been condoned. In the circumstances, we feel that it is appropriate that if the applicant makes a representation within three weeks from today, the General Manager will consider the same and pass appropriate orders within two months thereafter and communicate the same to the applicant.



4. OA is disposed of as above. No costs.

Dated, the 28th September, 2011.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

VS