

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**O.A.No.395/2008
Dated the 8th day of June, 2009**

CORAM :

**HON'BLE Dr K B S RAJAN, JUDICIAL MEMBER
HON'BLE Ms K NOORJEHAN, ADMINISTRATIVE MEMBER**

T.K.Hamsa,
L.P.(Group D), Palghat Railway Station,
Southern Railway, Palghat,
Residing at Kottayil House, Pullassery P O,
Mannarkad, Palghat. ... Applicant

By Advocate Mr Suraj S

V/s.

- 1 Union of India represented by
General Manager, Southern Railway,
Park town P.O., Chennai-3.
- 2 The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
- 3 Senior Divisional Medical Officer,
Southern Railway, Palghat.
- 4 R Jyotidas, Ticket Collector,
Squad I, CTTE, Southern Railway,
Palghat. ... Respondents

By Advocate Mr Thomas Mathew Nellimoottil (R 1-3)
Mr T C G Swamy (R-4)

This application having been heard on 8th June, 2009, the Tribunal on the same day delivered the following

(ORDER)

Hon'ble Dr K.B.S.RAJAN, Judicial Member

The applicant as aspirant to the post of Ticket Examiner in the



scale of Rs.3050-4590 against the 1/3rd promotional quota from Group 'D' Employee of Commercial Department. The said post warranted 50% mark in the Test and medical category of Bee Two. The applicant secured 58 marks in the prescribed test vide Sr No.128 of Annexure A-10. Thus, from the point of view of marks, he had qualified. However, according to the respondents, vide Annexure A-2, the applicant having been declared as medically unfit as per Sr DMO/Admn/PGT's letter dated 6.9.2007, he was not promoted to the post and the vacancy was filled up by promoting respondent no.4. The applicant has challenged the said order alongwith letter dated 25.1.2007 which is the panel for selection to the post of Ticket Collector. The applicant has also challenged the Annexure A-9 order dated 4.5.2007 which is the promotion order wherein in General quota, respondent no.4 happens to be the juniormost promoted individual.

2 In his OA, the applicant had Annexed Annexure A-3 medical certificate which has been issued by Sr Divisional Medical Officer(Hospital), Southern Railway Hospital, Palakkad on 6.12.2006 wherein it indicated that the applicant is fit for service in Bee One with Glass. The applicant relies upon the aforesaid certificate to challenge the impugned order dated 18.6.2008 whereby the aforesaid certificate was cancelled.

3 Respondents have contested the OA. According to them, the applicant was declared unfit for holding such post for which medical standard is "Aye Two" to "Bee Two". In this regard, they relied upon the medical certificate issued by the Senior Medical Officer, Railway Hospital, Palakkad issued on 12.11.1997 vide Annexure R-4. They have also relied

[Handwritten signature]

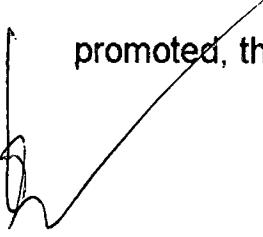
upon the DPO/PGT communication dated 12.11.1997 (Annexure R-3).

The said letter is also on the same lines as the certificate referred to above.

4 On completion of pleadings, when the case was heard, counsel for applicant submitted that the respondents have acted arbitrarily by cancelling the medical certificate dated 6.12.2006 without subjecting the applicant to any further medical test. It has been stated by the counsel that the cancellation of this certificate by the respondents is around the time of declaration of the panel and result and the same is on an extraneous situation, with a view to eliminating the applicant from being included in the promotion list.

5 Counsel for the respondents submitted that, cancellation of medical certificate is by the medical department only.

6 Arguments were heard and documents perused. True, as early as in 1997, the applicant's medical standard was less than Bee Two. It is after about nine years, that the applicant subjected himself to further medical examination when the Railway Medical authority had opined that the applicant is fit for holding the post for which Bee Two is the medical standard and where use of glass is permitted. This certificate is stated to have been cancelled but there is absolutely no indication as to what prompted the department to unilaterally cancel the certificate without subjecting the applicant for re-examination. This is thoroughly inappropriate and illegal. The applicant's counsel is not wrong when he alleges that it is a calculated move to distance the applicant from being promoted, that the respondents have indulged in such arbitrary action. It is



not the case of respondents that once a medical certificate certifying a particular standard of medical fitness is issued, , the same cannot be changed in future. In all expectations, the applicant would have improved his health to come up to Bee Two standard. Cancelling the certificate given without subjecting the applicant for another test, is an arbitrary action. As such, the same cannot be allowed.

7 In view of the above, this OA is allowed. It is declared that on the basis of medical certificate vide Annexure A-3 and the performance of the applicant in the test vide Annexure A-10, the applicant is entitled to be considered for promotion to the post of Ticket Collector. The Department at the same time are well within their rights to subject the applicant to such medical examination. If the applicant's medical standard meets the requirement for the post of Ticket Collector, the appointment of the applicant shall be from the date his junior stands promoted. He is not however entitled to any backwages for his promotion on retrospective basis but his pay shall be fixed notionally and he is eligible for future pay taking into account the notional fixation of pay. In so far as the respondent no.4 is concerned, counsel for respondent 4 submitted that no relief has been claimed against the said respondent. The counsel for the private respondent is right when he argues that no relief has been sought against the said respondents. The said respondent is otherwise eligible and has to be posted as Ticket Collector. In the event of the applicant being accommodated, if there is no vacancy to accommodate private respondent, it is for the official respondents to create a supernumerary post if need be

[Signature]

and further continue the respondent no.4 in the promotional post, against any other vacancy.

8 Promotion of the applicant in the event of his fulfilling the medical standard and fixation of pay shall be completed within a period of four months from the date of communication of this order. No costs.


K NOORJEHAN
ADMINISTRATIVE MEMBER


K B S RAJAN
JUDICIAL MEMBER

abp