

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ERNAKULAM BENCH**

**Original Application No. 180/00207/2014**

**Wednesday, this the 7<sup>th</sup> day of January, 2015**

**CORAM:**

**Hon'ble Mr. U. Sarathchandran, Judicial Member**

1. A.T. Omana, aged 54 years, W/o. (late) U.A. Jose,  
(Ex-Technician/I/Loco/Ernakulam(G)/Southern Railway),  
Residing at : Ukkar House, Manakody PO,  
Nadumury, Trichur District, Pin – 680 017.
2. U.J. Rinson, aged 33 years, S/o. (late) U.A. Jose,  
(Ex-Technician/I/Loco/Ernakulam(G)/Southern Railway),  
Residing at : Ukkar House, Manakody PO,  
Nadumury, Trichur District, Pin – 680 017. .... **Applicants**

**(By Advocate – Mr. T.C. Govindaswamy)**

**V e r s u s**

1. Union of India, represented by the General Manager,  
Southern Railway, Headquarters Office, Park Town PO,  
Chennai – 600 003.
2. The Chief Medical Superintendent,  
Southern Railway, Railway Hospital, Pettah,  
Trivandrum – 695 014.
3. The Divisional Personnel Officer, Southern Railway,  
Trivandrum Divisional Office, Trivandrum – 695 014.
4. The Chief Medical Director, Office of the Chief Medical Director,  
Southern Railway, Headquarters Office, Park Town PO,  
Chennai – 600 003. .... **Respondents**

**(By Advocate – Mr. Thomas Mathew Nellimoottil, Sr. Panel Counsel)**

This Original Application having been heard on 26.11.2014, the Tribunal on 07.01.2015 delivered the following:

**ORDER**

The two applicants in this OA are dependents of the deceased Railway employee i.e. the late Sri. U.A. Jose, Ex-Technician/I/Loco/Ernakulam(G) /Southern Railway. The 2<sup>nd</sup> applicant's request for appointment on compassionate grounds was considered by the Railway. Applicants are aggrieved by the rejection of his request on the ground that on medical examination he was found to be medically unfit in all classes. Annexure A1 is the communication issued by the respondent No. 3 to the 1<sup>st</sup> applicant informing the medical disqualification of applicant No.2. Thereupon the 1<sup>st</sup> applicant sent Annexure A2 representation enclosing Annexure A3 report of medical examination (Cardiology) issued by a Board consisting of Dr. Karunadas C.P., Additional Professor in Cardiology, Dr. Cibu Mathew, Additional Professor in Cardiology and Dr. R. Mahadevan, Superintendent of Medical College Chest Hospital, Mulangunnathukavu, Trichur. Applicant No. 2 had also sent another representation i.e. Annexure A4 stating that Annexure A3 report of medical examination by the Board of Doctors was issued by the said Board on his own request. Thereafter respondent No. 3 sent Annexure A5 communication informing applicant No. 2 that as per paragraph 522(1)(i) of Medical Manual the representation should have been submitted within one month and that the medical board has not stated that they were aware that the applicant has been medically unfitted by the Railway Medical Authorities and hence the appeal is not within the rules. According to the applicants Annexure A5 communication suffers from errors of law and fact apparent on the face of the records and it is totally arbitrary, discriminatory and violative of Articles 14 & 16 of the Constitution of India.

Applicants contend that the provisions in the paragraph 522(1) of Indian Railway Medical Manual Volume-I are only directory in character and not mandatory as can be seen from a reading of the same and hence Annexure A5 has been issued without application of mind and therefore, the same has to be set aside. The applicants pray for the following reliefs:-

- “(i) Call for the records leading to the issue of A5 and quash the same;
- (ii) Direct the respondents to subject the 2<sup>nd</sup> applicant for a re-medical examination by a duly constituted Board and direct further to grant all consequential benefits thereof;
- (iii) Award costs of and incidental to this application;
- (iv) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.”

2. Respondents contested this matter stating that applicants have rushed to this Tribunal immediately on receipt of Annexure A5 communication without making any representation to the higher Railway authorities subsequent to the said communication. When the applicant No.2 was considered for appointment on compassionate grounds, on medical examination he was found unfit for all classes of employment. It is further stated by the respondents that the applicants have not proved that they were informed by the respondents that applicants unfitness was due to some cardiac problems. There is nothing on record to show that the medical board who examined and issued Annexure A3 report has been informed of the fact that the applicant No. 2 had been rejected as unfit for service by the medical authority. If a candidate has been examined and declared unfit by an Additional Divisional Medical Officer/Divisional Medical Officer, the next appellate authority is the Chief Medical Superintendent/Medical

Superintendent In-charge of the Division who is the competent authority to order re-examination of the case. Respondents state that the scheme of appointment on compassionate grounds nowhere says that appointment is mandatory. It is only on fulfilling the conditions of appointment that the ward is liable to be appointed under the scheme. Respondents pray for rejecting the OA.

3. The short point to be decided in this OA is whether the rejection of Annexure A2 representation for re-medical examination of Applicant No.2 was unjustified and whether Annexure A5 calls for interference by this Tribunal.

4. Heard both sides. Smt. Sreekala representing Mr. T.C. Govindaswamy, learned counsel for the applicant and Mr. Varghese John, representing Mr. Thomas Mathew Nellimoottil, learned Senior Panel Counsel for the respondents argued the case in detail.

5. It appears from Annexure A5 communication sent by respondent No. 3 to applicant No. 2 that the respondents rejected Annexure A2 representation for re-medical examination of applicant No. 2 relying on the provisions of paragraph 522 of the Indian Railway Medical Manual, Volume-I. It reads as follows:-

“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 letters No. 91/H/5/1, dated 23.8.1991 and No. 87/H/5/18, dated 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."

6. Smt. Sreekala, learned counsel for the applicants argued that the above provision is only a compilation of various Railway Board orders and that it does not have statutory force and hence it is only directory in character. She further argued that paragraph 522(1)(i) does not totally foreclose the right of appeal even after it was made beyond the period of one month. It appears that the communication about the medical unfitness of the applicant No. 2 was given to the applicant No. 1 for the 1<sup>st</sup> time in Annexure A1 dated 3.9.2013. Annexure A2 representation for re-medical examination was made on 10.10.2013 i.e. after one month and seven days after getting Annexure A1 communication. Therefore, by virtue of the afore quoted provisions in paragraph 522(1)(i) the appellate authority may still entertain the appeal even after the expiry of the one month if it is satisfied that the appellant had sufficient cause for not preparing the appeal in time. There is nothing in record to show that there was wilful delay on the part of applicants in making Annexure A2 representation. It has to be noted that the applicants

have been in dire need of getting appointment for applicant No. 2 on compassionate grounds and therefore, no wilful laches can be attributed to them in the matter of preferring Annexure A2 request for re-medical examination.

7. The next ground on which the respondents have rejected Annexure A2 representation was that the Board of Doctors in the Medical College, Trichur who issued Annexure A3 do not seem to have been informed about the fact that the applicant No. 2 had been rejected by the Railway Medical authorities for employment in all classes. It is true that Annexure A3 report has been prepared by a team of Doctors in the Medical College Hospital, Trichur from the angle of Cardiology. However, in Annexure A3 the Board of Doctors do report that the applicant does not require any treatment and that he can lead a normal life and can do the work as helper in Railway.

8. It was not clear from Annexure A/1 as to which category of employment applicant No. 2 was considered for appointment on compassionate grounds. There is no hard and fast rule that when appointment is given to a dependent of a deceased Railway employee on compassionate grounds, that he should be posted in a vacancy which requires total robust physical fitness. There are different categories of employment in the Railway which require different levels of medical fitness. It is quite unfair on the part of the Railway to consider a person for compassionate appointment based on rigorous medical standards expected of an employee for hard work like Gangman who have to do work in the open line. There are other jobs in the

Railway which require lesser physical/medical fitness, like Helper as indicated in Annexure A3. Putting a candidate for compassionate appointment to rigorous standards of medical fitness appears to be not in tune with the object and scheme of appointment on compassionate grounds because such appointments are given to the dependents of the deceased employee to tide over the financial crises arising out of death of the breadwinner of the family. Therefore, if the seekers of compassionate appointment are expected to be medically fit for all categories of employment under the Railway, such a requirement would be too far-fetched of the respondents. If such a requirement is insisted on, it has to be viewed as an inarticulate strategy employed by the concerned authorities only to stymie a prospective candidate from getting appointment on compassionate grounds.

9. It appears to this Tribunal that the pleadings in the reply statement filed by respondent No. 3 also contain the intonations of such intentions. In last paragraph of the reply filed by respondent No. 3 unwittingly divulges the intimidating intention as the bottom line of his contention as follows:

“13) ..... The Scheme of compassionate grounds appointment nowhere says that appointment is mandatory. Only on fulfilling the conditions for the appointment, ward is liable to be appointed under the scheme.”

Similarly the contentions in paragraph 10 of the reply it is stated:

“10) ..... It is also submitted that there is nothing on record to prove that the Medical Board concerned has been informed of the fact that the candidate had been already rejected as unfit for service by the medical authority appointed by the Government.....”

10. Under normal circumstances a candidate or appointment on compassionate grounds will be sent for medical examination only at the last stage of the recruitment process. Here, applicant No.2 was declared medically disqualified without specifying the post to which he was considered for selection . As per the scheme of compassionate appointment usually candidates are considered for the lowest category of group D posts. There are several posts in the lower category which do not require high standard of medical fitness. All these indicate that the Railway has employed an arbitrary approach in rejecting the case of applicant No. 2 for appointment on compassionate grounds.

11. In the circumstances this Tribunal hereby quashes Annexures Nos. A1 and A5. Respondents Nos. 1 to 4 are directed to conduct a re-medical examination of the applicant by a Board of competent Doctors of whom one <sup>shall</sup> should be the Superintendent of Government Medical College, Medical College PO, Trivandrum. Such a Board shall not include the railway doctors who have already examined applicant No.2 for assessing his medical fitness. The medical board shall then determine the different categories of work for which applicant No. 2 is medically fit. Respondents Nos. 1, 3 and the Divisional Manager of Trivandrum Division shall thereafter consider applicant No. 2 for appointment in a suitable category of employment by way of appointment on compassionate grounds. This exercise shall be completed within three months from the date of receipt of a copy of this order. Ordered accordingly.

12. Original Application is allowed in the above terms. No order as to costs.

**(U. SARATHCHANDRAN)**  
**JUDICIAL MEMBER**

**“SA”**