

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**PATNA BENCH**

**Original Application No. 397/ 2015**

Reserved on 20.09.2017

Pronounced on 14.11.2017

CORAM :

**Hon'ble Shri A. K. Upadhyay, Member (Administrative)**  
**Hon'ble Shri Jayesh V. Bhairavia, Member (Judicial)**

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1. Smt. ITU Roy Sarkar Daughter of Sri Prafulla Roy Sarkar, Senior Clerk, RPF Post, NJP (P), under Inspector of Railway Protection Force, N.F., Railway, New Jalpaiguri under Katihar Division.
2. Smt. Shila Ghosh Wife of Sri Sanjeev Ghosh, Senior Clerk, RPF Post, NJP (P), Under Inspector of Railway Protection Force, N.F.

**.....Applicants**

**(By Advocate : Shri M. P. Dixit)**

**VERSUS**

1. The Union of India through the General Manager, North Frontier Railway, Maligaon (Gauhati).
2. The General Manager (Personnel), North Frontier Railway, Maligaon (Gauhati).
3. The Divisional Railway Manager, North Frontier Railway, Katihar (Bihar).
4. The Divisional Railway Manager (Personnel), North Frontier Railway, Katihar(Bihar)

**....Respondents**

**(By Advocate : Shri S.K.Griyaghey)**

**ORDER**

**Per Jayesh V. Bhairavia, Member (J):** The applicants have filed this O.A. seeking a relief to quash and set aside the impugned order dated 7.5.2015 together with order dated 23.7.2014 (Annexs. A/1 & A/2] qua the applicants by which the category of applicants from the post of Senior Clerk have been changed and they have been ordered to be absorbed against the post of Fitter Grade – II in Mechanical Department and, further seeking a relief for a direction to treat the applicants as already been screened and absorb them against alternative posts of Senior Clerk with all consequential benefits.

2. The facts giving rise to this application are that the applicants were initially appointed as Lady Constables, Railway Protection Force (RPF) and while working at New Jalpaiguri they were sent before the Medical Board on 29.9.2011 and 3.2.2012 and the Medical Board found them medically unfit for performing the duties of the post of Lady Constables and consequently, they were medically de-categorised accordingly, the Medical Board advised that the applicants can be given sedentary job. Thereupon, both the applicants appeared before the screening committee and on recommendation of it, they were posted as Senior Clerk on 25.01.2012 and 27.3.2012 respectively under the Inspector, RPF, NJP (P) at New Jalpaiguri. For the purpose of permanent absorption, they were called to appear again on 29.5.2014 before the screening committee. It is submitted by the learned counsel for the applicants that identically situated employees had filed OA Nos. 367, 400 and 771 of 2014 filed before this Tribunal and this Tribunal had directed the respondents to keep the result of second screening test in a sealed cover but, despite that the respondents vide order dated 23.7.2014 directed to identically situated staff including the present applicants to be absorbed in Fitter Grade-II. It is contended

that the same is contrary to the findings of the medical board and not only this, the work of Fitter Grade-II is so serious and extremely hard for them and is quite impossible to do.

3. Learned counsel for the applicants also submitted that the applicants of the instant O.A. had filed their representation against the order dated 23.7.2014. The implementation of the letter dated 23.7.2014 was ultimately, kept in abeyance till clarification of headquarter, Maligaon is received as is evident from letter dated 1.8.2014. The respondents issued another order dated 7.5.2015 asking the applicants to join as Fitter Grade - II without informing about the clarification received from the headquarters on the issue. It is thus prayed that respondents should allow the applicants to work as Senior Clerk for which they have already been screened by quashing the orders dated 7.5.2015 and 23.7.2014.

4. The respondents have filed their written statements contravening the stand taken by the applicants. It is specifically submitted that applicants were declared medically de-categorised on 17.10.2011 and 17.2.2012 and not on 29.9.2011 and 3.2.2012 respectively, as stated by the applicants. They were recommended for their absorption in the category of Senior Clerk in RPF by the Screening Committee subject to approval of the GM/MLG for their final absorption. The proposal for applicants absorption were sent to the Headquarters / MLG on 2.4.2012 and 8.6.2012 respectively and, till then they were directed to be continued to work in the post recommended by the screening committee. Accordingly, they were ordered to work as Sr. Clerk in Security Department on utilisation basis vide orders dated 2.4.2012 and 8.6.2012 on temporary basis. It is further contended that subsequently, the GM(P)/MLG advised to explore the possibility to redeploy the medically de-categorised staff in other non-diminishing categories in view of large scale vacancies and as a result, applicants were also called for the screening test on 28.5.2014. The respondents have submitted that the OA No. 367/2014 and other OAs filed on the same issue before this Tribunal has also been dismissed.

5. The applicants have also filed a rejoinder reiterating their stand and further pleaded that the persons who have been medically de-categorised but not approached before this Tribunal, have been absorbed against the ministerial cadre posts as is evident from the letters dated 3.8.2015, 2.2.2016 and 21.4.2016 (Ann.P-3 series) whereas, the applicants have already been absorbed against the ministerial post way back in the year 2012/2013. However, the applicants have been intentionally directed to be absorbed against the post of Fitter Grade-II or other technical post. The said action of the respondents is not only contrary to the provisions laid down in Rule 11.1 of the Master Circular No. 25 but also in violation of Railway Board's order dated 12.6.2016 circulated by the General Manager (P) wherein, it has been clearly held that the RPF employees have to be absorbed against the ministerial category posts. Apart from that, in various cases respondents themselves admitted that many persons have been absorbed against the ministerial posts, as is clear from the Annex. P-3 series as stated above. During the course of arguments, the learned counsel for applicants produced a copy of the order of Hon'ble High Court of Patna passed in CWJC No. 11691 of 2017 dated 12.09.2017 and submitted that the applicants' case ought to be considered for absorption in consonance

with the order passed by the Hon'ble High Court as well as directions issued in para 16 of OA No. 367 of 2014 by this Tribunal.

6. We have heard the learned counsel for both the parties and perused the records of the case.

7. The only point which falls for consideration by this Tribunal is about the second screening held for giving alternate posting to the applicants after the medical de-categorisation, as according to the applicants the second screening was not at all required to be convened. In this regard, it is pertinent to mention here that applicants were given alternative post of Senior Clerk temporarily in the security department after their medical de-categorisation. The said benefit under the medical decategorisation are always subject to periodical medical examination otherwise, the said benefit could not be extended in the case of staff belonging to the categories not requiring periodical medical examination. The alternative post offered to the applicants were temporary as the approval from the GM(P) / MLG for permanent absorption was sought for. It is not in dispute that the competent authority i.e. GM did not accede to the recommendation dated 8.6.2012 (Annex.A/4 refers) of the screening committee for the absorption of the present applicants as Sr. Clerk in the Security Department, instead advised /recommended issued by the G.M. to explore other non – diminishing category to absorb the medically decategorised staff. Thereafter, the second screening test was held and the applicants were found fit to work in B-I medical category, and were accordingly absorbed in the post of Fitter Grade-II which falls under B-I medical category. It is also not in dispute that the applicants gave their consent before the screening committee (Second) vide declaration dated 28.5.2014 (Annex.R/2 refers), for their permanent absorption to the post of Fitter Grade-II. Therefore, the grievance raised by the applicants in the present O.A with respect to second screening test lacks merits.

8. With respect to submission for consideration of the applicants' claim to consider them for absorption against ministerial cadre and accordingly absorb under the said cadre, it is suffice to mention that this Tribunal in OA No. 367 of 2014 concluded that the medical decategorised staff of the respondent department have no right to claim absorption against ministerial cadre posts. The said order was under challenge before the Hon'ble High Court of Patna and the Hon'ble High Court in CWJC No. 1161/2017 by its order dated 22.9.2017 passed an order which is reproduced as under :

***"Perused the order dated 04.08.2017 passed by Central Administrative Tribunal, Patna Bench, Patna in OA No. 367 of 2014.***

***The Tribunal has rightly concluded in paragraph 16 as under :-***

***"16. Now we come to the last question, we have already determined that the applicants have no right to claim absorption against ministerial cadre. However, we take note that in spite of treating it as a diminishing category, the respondents on their own have absorbed several such persons against ministerial posts. We trust that the respondent authorities would treat all these applicants fairly and if there are no administrative difficulty in acceding to the applicants' request for absorption in ministerial cadre, they would keep in mind that they have done so on their own in several other cases."***

***The respondent authorities are directed to consider the claim of the petitioner in consonance with the direction contained in above noted paragraph-16 of the Tribunal's order. Such decision must be taken within a period of four months from the date of production of a copy of this order."***

9. In view of what has been discussed above, the OA has no merit so far as it raises grievance against the second screening. However, in view of the order and directions issued by this Tribunal in OA No. 367 of 2014 and also in view of the orders passed by the Hon'ble Patna High Court (supra), the respondent-authorities may treat the applicants fairly, and if there is no administrative difficulty, consider the applicant's request for absorbing her in ministerial cadre [by offering alternative posts]. Accordingly, the O.A. is disposed as above. No order as to costs.

**[Jayesh V. Bhairavia]**  
Member(J)

**[A. K. Upadhyay]**  
Member (A)

Jrm