

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/426/ 2017
Cuttack this the 13th day of February, 2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Prabhat Mohanty, aged about 38 years, S/o. Pitambar Mohanty, At-Mallipur, PO-Seasan, Dist-Kendrapara.

...Applicant
By the Advocate(s)-M/s.S.K.Dash
A.K.Otta
D.P.Dhal
S.Das
N.K.Das
Mrs.A.Dhalasamanta

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Chief Personnel Officer, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
3. Senior Divisional Personnel Officer, East Coast Railway, Office of the Divisional Railway Manager (P), Sambalpur, At/PO/Dist-Sambalpur.
4. Medical Director, Central Hospital, East Coast Railway, Mancheswar, Bhubaneswar, Dist-Khurda.

...Respondents

By the Advocate(s)-Mr.B.B.Pattnaik
ORDER(Oral)

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, applicant has sought for the following reliefs:

- i) Let it be declared that the speaking order dated 26.04.2017 under Annexure-A/2 to the Original Application is bad in law.
- ii) Let the respondents be directed to restore the appointment of the applicant as Goods Guard in terms of his selection and placement by the Railway Recruitment Board or in the alternative respondents be directed to give any other suitable appointment at par with the post of Goods Guard,

with all consequential benefits and including financial emoluments.

iii) Let the application be allowed with cost.

2. The short facts of the O.A. are that the applicant had earlier approached this Tribunal in O.A.No.260/00343/2013 for direction to respondents to declare him eligible in all respects for appointment to the post of Goods Guard and accordingly, direct the respondents to give him appointment in the said post.

3. Grievance of the applicant in that O.A. was that consequent upon his empanelment by the Railway Recruitment Board, he was given provisional appointment as Goods Guard vide order dated 6.8.2012. He was thereafter directed to go through a medical test and after undergoing such test, he was intimated that he has been found unfit in requisite medical classification i.e., A-2 by the concerned medical authorities. However, applicant was asked to make an appeal to the Chief Medical Director, East Coast Railway, Bhubaneswar within a stipulated time, if he suspected any possibility of error by the doctors in the medical examination. The appeal preferred by the applicant was forwarded to the Chief Medical Superintendent, East Coast Railways, Sambalpur vide letter dated 5.10.2012. However, there being dispute in the medical board on 2.2.2013, the case of the applicant was referred to the higher medical centre at Garden Reach, Kolkata and accordingly, the applicant was intimated to report to the respondents' office on 11.2.2013. Aggrieved with the applicant approached this Tribunal in O.A.No.260/00343/2013 and this Tribunal after considering the matter on merit disposed of the said O.A. as under:

"7. However, at the cost of repetition we would say that prescribed medical authorities are only empowered to certify the medical category of the applicant for his

suitability as Goods Guard. It cannot be contested that medical standard at the time of recruitment has to be met and the employer has every right to decide the medical fitness of the applicant who was provisionally selected for appointment. The decision has to be however based upon genuine medical examination and cannot be an arbitrary view of the authorities. However, the applicant having not been found to be fit at various levels of the medical examination conducted by the respondents has not been able to establish his case in the present O.A. It has never been the stand of the applicant that he has undergone Lasik surgery, and that should not be a bar to medical eligibility. Therefore, he can derive no relief from the decision of the Ernakulam Bench of the Tribunal (supra). But the record also reveal that even though some medical information and observation was given on 18.2.2013 in a document marked at Annex.R/9 the final decision of the competent authority giving the grounds for such decision has not been communicated to the applicant as per the records placed before us. Therefore, we would like to direct the respondent authorities to communicate the decision taken by them along with the reasons for such decision to the applicant forthwith within a period of thirty days from the date of receipt of a copy of this order. Ordered accordingly".

4. Complying with the aforesaid direction of this Tribunal, the respondents authorities issued a speaking order date 26.04.2017, the relevant part of which reads as under:

"Your case was examined by ACHD (Eye)/Garden Reach vide Memo dated 18.02.2013 and opined that, "BE-Epithelial Scar mark of LASIK Procedure Flap present on Cornea & hence made unfit. Finally, on the basis of the findings of ACHD(Eye)/GRC/Kolkata, the Medical Director, Central Hospital/BBS vide letter dated 12.03.2013 has informed that you are UNFIT in A-2 (Aye-Two) Category for the post of Goods Guard (Trainee). Hence, you have failed in medical test which is pre-requisite for appointment as Goods Guard in Railways, and therefore, you are not eligible to be appointed as Goods Guard in Railway.

5. Aggrieved with this, the applicant has approached this Tribunal praying for the reliefs as mentioned above.

6. On being noticed, respondents have filed a detailed counter opposing the prayer of the applicant.

7. We have heard the learned counsels for both the sides and perused the records. During the course of arguments, learned counsel for the applicant drew our attention to order dated 27.11.2012 in O.A.No.281 of 2012 (Vishnu S.P. vs. Indian Railways) of the CAT, Ernakulam Bench and submitted that the facts of the present O.A. being identical as in O.A. before the CAT, Ernakulam Bench, similar directions may be issued. We have perused the said order of the CAT, Ernakulam Bench.

8. In that case applicant's name had been recommended for appointment to the post of Assistant Station Master in Southern Railways. He was denied appointment on the ground that he was medically unfit in classification 'A2'. His request for re-medical examination was rejected on the ground that he had undergone Lasik Surgery in both eyes and as per Indian Railway Medical Manual, 2000, Paragraph 512(9) candidates who have undergone surgical procedure for changing Corneal Curvature is unfit for A1, A2, A3 & B1 categories. The CAT, Ernakulam Bench after considering the matter on merit, disposed of the said O.A. in the following terms.

"6. Candidates who have undergone Radial Keratotomy may not be considered for recruitment to A1, A2, A3 and B1 categories. Lasik surgery is not stated in paragraph 512(9). Whether Lasik treatment and Radial Keratotomy are one and the same can be decided only by a panel of experts. As per "Annexures A10 and A11 medical certificates his normal colour vision and his eye condition and vision are stable till now after the Lasik treatment on 4.3.2009. It is a non-progressive condition. As per paragraph 512(9) those Railways employees working in category A1, A2, A3 and B1 who have undergone Radial Keratotomy should not be permitted to work on Rajdhani and Shatabdi Express. However, for eligibility to work on other trains, the periodical medical examination of such employees should be conducted at half the prescribed interval.

7. In the conspectus of the facts and circumstances of this case, we are of the considered view that a special medical board may be constituted for the purpose of determining the medical classification of the applicant for the purpose of

appointment to the post of Assistant Station Master taking into account the fact that the applicant has undergone Lasik Surgery, the medical certificates at Annexures A10 and A11 and the stipulation under paragraph 512(9) of Indian Railway Medical Manual in respect of candidates and employees and other relevant aspects. Based on the declaration of the special medical board further action in the matter of appointment of the applicant as Assistant Station master may be taken by the respondents. Ordered accordingly."

9. Admittedly, the examination in question was conducted in respect of the vacancies which were published in the advertisements for the years 2008 and 2010. The applicant had also applied in pursuance of the first and second advertisement for the years 2008 and 2010. He was medically found unfit for A2 category. Just because he had not specifically prayed for appointment to the post of Enquiry cum Reservation Clerk in the earlier O.A. that does not by itself mean that he has forgone his right by way of waiver or acquiescence to claim appointment to the said post if he is otherwise entitled to the same as per law. In the present application, the applicant has prayed for alternative relief. Therefore, this Tribunal is satisfied that there is no legal bar or any other impediment in considering his case for appointment to the post of Enquiry-cum-Reservation-Clerk by taking into consideration the medical certificate already submitted by him. The respondents are accordingly directed to consider the case as above and pass a reasoned and speaking order within a period of ninety days from the date of receipt of this order.

10. In the result, the O.A. is allowed to the extent indicated above. No costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)