

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O. A. NO. 356/00049/2019

Bikash Chandra Ray, S/o Late Fanindra Chandra Ray, aged about 55 years, working as Chief Office Superintendent under the overall control of Divisional Railway Manager, Eastern Railway, Sealdah, at present residing at 26, S.M.P. Sarani, J.P. House, Flat No. 2F, Barrackpore, Kolkata - 700120, West Bengal.

..Applicant

- Vs -

1. Union of India through the General Manager,
Eastern Railway, Fairlie Place,
Kolkata - 700001.
2. Chief Personnel Officer,
Eastern Railway,
3. Chief Electrical Engineer,
Eastern Railway, Fairlie Place,
Kolkata - 700001.
4. Chief Medical Director,
Eastern Railway,
14, Strand Road, New Koylaghat Building,
Kolkata - 700001.
4. Divisional Railway Manager,
Eastern Railway,
Sealdah, Kolkata - 700014.
5. Senior Divisional Personnel Officer,
Eastern Railway,
Sealdah, Kolkata - 700014.
6. Senior Divisional Electrical Engineer (TRS),
Eastern Railway,
Sealdah, Kolkata - 700014.
7. Executive Director Health (P19)
Railway Board, Rail Bhavan
New Delhi - 110001

.. Respondents

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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A/350/00049/2019

Date of Order: 22.01.2019

Coram: Hon'ble Mr. A.K Patnaik, Judicial Member

Bikash Chandra Ray -vs- Eastern Railway

For the Applicant(s): Mr. K. Sarkar, Counsel

For the Respondent(s): Mr. B. P Manna, Counsel

ORDER (O R A L)

A.K Patnaik, Member (J):

Heard Mr. C.Sinha, Ld. Counsel for the applicant, and Mr. A.K.Banerjee, Ld. Counsel appearing for Official Respondents, in extenso.

2. This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 with the following prayers:

“ a) To direct the respondents to hold a re-medical examination by constituting a medical Board under the provisions as laid down in the Indian Railway Medical Manual and if declared fit in the said re-medical examination in B-1 category grant posting as Senior Section Engineer, be the post which the applicant was holding prior to medical decategorisation with immediate effect.

b) That in alternative to prayer (a) above direct the respondents to hold re-medical examination of the applicant in terms of Para 522 of IRMM 2000, Correction Slip No. 01/2014 circulated under CPO Sl. No.82/2014 on producing a certificate from a Registered Medical practitioner Government /Private Specialist containing a note that the Government/ Private Specialist was aware of the fact that the candidate has already been declared unfit during medical examination conducted by the Govt. in this regard. The Government/Private Specialist should also certify that he is fully aware of physical and vision standard set by the Railways and that he is aware that the candidate has already been certified as unfit according to the standard and if declared fit in the said re-medical examination in B-1 category grant posting as Senior Section Engineer i.e the post which the applicant was holding prior to medical decategorisation with immediate effect.

Wd

c) To set aside and quash impugned letter No. E-1/ELECT/G/MISC/12 dated 20.03.17 issued by Sr. Divisional Personnel Officer, Eastern Railway, Sealdah.

d) To set aside and quash impugned Speaking Order dated 05.11.2018 issued by Principal Chief Electrical Engineer, Eastern Railway as communicated vide letter dated 14.11.2018.

e) To set aside and quash impugned Railway Board's letter No. 2011/H/59 dated 07.03.2012 as regard the time period of three months from date of certification at Para (d) of the said letter is concerned.

f) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

3. The case of the applicant in nutshell, as narrated by the Ld. Counsel for the applicant, is that the applicant, while working as Sr. Section Engineer, was sent for special medical examination as he was suffering from hearing difficulties. In the said medical examination, he was declared fit in B-1 category with glasses from eyes point of view but due to hearing defect he was declared fit in C-1 category and, on being medically decategorised, he was posted as Chief Office Superintendent. The applicant underwent a surgery and after regaining his hearing ability, he submitted representation to the authorities for re-medical re-examination to be declared fit in B-1 category, which having been rejected, the applicant filed one O.A bearing No. 407/2018 in this Tribunal which was disposed of on 20.04.2018 with liberty to submit a comprehensive representation, which the applicant submitted on 13.08.2018 after obtaining a Certificate of Fitness dtd. 18.6.28 from the concerned Doctor. The representation was rejected vide speaking order dated 05.11.2018 (Annexure-A/14). Mr. Sinha, Ld. Counsel for the applicant, by drawing my attention to the order passed by this Tribunal on 20.04.2018 in O.A. No. 407/2018 (Annexure-A/11), submitted that the speaking order passed under Annexure-A/14, which has been impugned in the instant O.A., is not as per the direction of this Tribunal under Annexure-A/11.

4. On a cursory reading of the order passed by this Tribunal, which was

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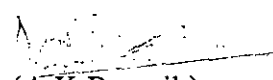
disposed of on 20.04.2018, I come across the concluding portion, which reads as under:

"8. Accordingly, without entering into the merits of the case, we grant the applicant liberty to make a comprehensive representation with relevant documents to the respondent NO.3, who is the competent authority, within 16 weeks of the date of receipt of this order. Once respondent No.3/competent authority receives such representation, he will dispose it of according to rules and regulations of the respondent authority. At the same time, as the applicant concerned has undergone a surgical treatment leading to reported improvement of his hearing faculties, this Tribunal would expect that the respondent authorities would treat the representation with the due consideration that it deserves, particularly in view of amelioration of his hearing defects."

5. By drawing my attention to the speaking order under Annexure-A/14, Mr. Sinha submitted that the above order has not been properly followed before issuing the impugned order. I am quite convinced with the submission of Mr. Sinha. Therefore, while quashing Annexure-A/14, speaking order, I remand the matter back to Respondent No.4, i.e. Chief Medical Director, Eastern Railways, to follow the orders passed by this Tribunal in O.A.No. 407/2018 dated 20.04.2018 and after going for a proper medical examination, decide the case of the applicant as per merit within a period of eight weeks from the date of receipt of copy of this order.

6. With the aforesaid observation and direction, this O.A. stands disposed of.
No costs.

7. Copies of this order be handed over to the Ld. Counsel for the parties.
Applicant is at liberty to bring this order to the notice of Respondent No.4.


(A.K. Patnaik)
Member(J)