

**CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH, CUTTACK,
ORDER SHEET**

COURT NO. : 109/09/2019 O.A./260/290/2016 P C BISWAL

-V/S-

M/O RAILWAYS ITEM NO:41 FOR APPLICANTS(S) Adv. :MR.N.R.ROUTRAY

FOR RESPONDENTS(S) Adv.:MR.S.K.NAYAK

Notes of The Registry	Order of The Tribunal
	<p>Heard learned counsel for the applicant who submitted that the case of the applicant for selection for the post of Junior Trackman and Helper-II under the respondents has been rejected. Earlier his candidature was rejected by the respondent no. 2 vide the order dated 30.10.2013, which was challenged by the applicant in the OA No. 909/2013. This OA was disposed of by the Tribunal vide order dated 29.9.2015 (Annexure-A/4) with the directions to the respondents as under:-</p> <p>"Therefore, we are of the view that the decision of the railway vigilance authorities is based on ipse dixit and, therefore is liable to fall flat. In view of the above, we quash the impugned order dated 30.12.2013 in so far as finding fault with the applicant and thereby discarding him from railway service and in so far as appointment of the applicant is concerned, we leave it to the respondents to examine the eligibility of the applicant for getting the appointment with the fitness in B-1 category and communicate the decision to him in a well reasoned order within a period of sixty days from the date of receipt of a copy of</p>

this order".

2.In compliance of the order dated 29.9.2015 of the Tribunal, the respondent no.2 has passed the speaking order dated 19.11.2015 (Annexure-A/5) which is impugned in this OA by the applicant. Learned counsel for the applicant submits that the applicant's case has not been considered for the post with B-1 medical category for which he had given his option in the recruitment test in question. Learned counsel pointed out to the para 2(a) of the Counter in which it was mentioned that for the post of the Trackman and Helper-II, the medical standard of B-1 has been prescribed.

3.Learned counsel for the respondents submitted that the recruitment in question has been closed long back since 25.6.2014 as mentioned in the Counter and hence, there is no post vacant for the examination to consider the case of the applicant. It was further submitted by the learned counsel for the respondents that the order dated 29.9.2015 was passed by this Tribunal with the assumption that no action was taken against the concerned Doctor who was misled by the applicant according to the vigilance inquiry and in that background, the direction to consider the case of the applicant was given in the order dated 29.9.2015 of this Tribunal. It was pointed out that as stated in the speaking order dated 19.11.2015, action has already been taken against the concerned Doctor.

Learned counsel for the respondents further submitted that the applicant's case for a post cannot be considered in view of his attempt to mislead the Railways to get a wrong medical certificate.

4. Learned counsel for the respondents filed copy of judgment of Hon'ble Apex Court in U.O.I. & Anr. vs. Sarwan Ram & Anr. in Special Leave to Appeal (C) No.706/2014 in which it was held that compliance of the conditions stipulated in the Employment Notice by the applicant cannot be avoided. In the cited case, the requirement was to paste Photograph of the applicant in Military Uniform, but the applicant in that case had pasted a Photograph in civil dress for which his application was rejected. It was held that the application filed by the applicant cannot be scrutinized while considering the matter under Articles 226 & 227 of the Constitution of India. In the present O.A., there is no condition in the Employment Notice which has been violated as the dispute pertains to the type of medical fitness of the applicant, for which there was a discrepancy. The medical fitness for which the medical authorities of the Respondents were found to be responsible and action has been taken against the concerned Doctor as stated in the speaking order dated 19.11.2015 (A/5). There is nothing on record to show that the applicant has violated any of the conditions stipulated in the Employment Notice by the applicant. Hence, the judgment cited by the learned counsel for the respondents will be of no

assistance.

5. We have considered the submissions and perused the records. There was a clear direction in the order dated 29.9.2015 to consider the case of the applicant for the post as per the B-1 medical fitness and to communicate the decision through a speaking order. It is seen from the impugned order dated 19.11.2015 (A/5) that his case has not been considered for the Category for B-1 post on the ground that he had committed impropriety in the medical examination at Divisional Railway Hospital, Khurda Road. Same contentions were placed before the Tribunal at the time of consideration of the OA No. 909/2013 filed by the applicant as may be seen from the order dated 29.9.2015. the reasons mentioned in para 2 of the order dated 29.9.2015 for rejecting the candidature of the applicant are similar to the reasons mentioned in the impugned speaking order dated 19.11.2015 (A/5). Such grounds and reasons were not accepted in OA No. 909/2013. It was not correct on the part of the respondents not to consider the case of the applicant for B-1 category post on similar grounds which were rejected earlier by the Tribunal. Further, the contentions of the respondents in the Counter that the recruitment in question has been completed and there is no post, were not mentioned in the speaking order dated 19.11.2015 (A/5), for which, such grounds cannot be taken now to prevent the applicant from being considered for a post as per the

order dated 29.9.2015.

6. In the circumstances as discussed above, the OA is disposed of with a direction to the respondents/competent authority to reconsider the case of the applicant for a post of B-1 medical category if he had applied for the same and if his name can be included in the merit list as per the marks secured by him provided all posts as per the advertisement had not been filled up in the recruitment. It is made clear that the case of the applicant cannot be rejected for the ground that he had tried to mislead the medical authorities in view of the discussions earlier. The decision taken by the respondents is to be communicated to the applicant through a speaking order within three months from the date of receipt of a copy of this order.

7. The OA is disposed of accordingly with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)