

**Central Administrative Tribunal
Patna Bench, Patna.
[Circuit Bench at Ranchi]
OA/051/00660/2018**

**Reserved on : 15.10.2019
Pronounced on: 17.10.2019**

C O R A M

**HON'BLE SHRI JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Niranjan Kumar Shaw, S/o Shri Ram Prasad Shaw, aged about 51 years resident of Ward no. 11, Dandasai, PO & PS- Chakradharpur, Dist.- Singhbhum West, Jharkhand.

.... Applicant.

By Advocate: Mrs. M.M. Pal, Sr. counsel with Mrs. Ruby Pandey

Vs.

1. The Union of India, through the General Manager, South Eastern Railway, Garden Reach, Kolkata- 43 (W.B.).
2. Divisional Railway Manager (P), South Eastern Railway, CKP Division, PO- Chakradharpur, Dist.- Singhbhum (West), Jharkhand, PIN- 833102.
3. Sr. Divisional Personnel Officer, South Eastern Railway, Chakradharpur Division, PO & PS- Chakradharpur, Dist.- Singhbhum (West), PIN- 833102.
4. Asstt. Personnel Officer, South Eastern Railway, Chakradharpur Division, PO & PS- Chakradharpur, Dist.- Singhbhum (West), PIN- 833102.
5. State Disability Commissioner (Under the person with Disabilities), Office at Project Building, Dhurwa Ranchi, Jharkhand, PIN- 834002.

..... Respondents.

By Advocate : Mr. Prabhat Kumar

O R D E R

Per Mr. Dinesh Sharma, A.M.:- In the instant OA, the applicant has prayed for directing the respondents to give employment to the petitioner

on the basis of disability certificate issued by the Medical Board as done in case of similarly situated person. The applicant has alleged that following Employment Notice issued by DRM (P), CKP Division dated 10.02.1999 for recruitment in Group 'D' category against physically handicapped quota the applicant had applied and on being found qualified for the post in question an appointment letter dated 11.10.2001 was issued to the applicant. Following this appointment order the applicant was sent for medical fitness examination. He was examined but no fit certificate was given to him and he was assured that necessary letter will be sent to him as his case was referred to the CMO office GRC. However, till date no order whatsoever has been communicated to him. There were many others such as Shri Ayodhya Pradhan, Raju Mitra, Vidya Sagar Mahto and a number of others who were declared medical unit in the medical test just like this applicant. Following various OAs filed before different Benches of this Tribunal and subsequent orders of Hon'ble High Courts a number of persons amongst these have been given appointment and allowed to join this post. The applicant came to know that recently in the month of June, 2018 one Ayodhya Pradhan moved before this Tribunal and this Tribunal had directed the respondents to consider his case as was done in case of similarly situated persons. Following this decision, the applicant has made a detailed representation dated 11.07.2018 before the Chief Personnel Officer, referring to his previous representations made to the respondents from time to time, and requested to provide him employment as per the similarly situated persons. However, no action has been taken and hence, this OA.

2. The applicant also filed an MA (No. 481/2018) requesting for condonation of delay quoting various judicial pronouncements and claiming similarity of treatments with similarly situated persons. The MA was allowed vide order dated 27.11.2018 since the Tribunal found the reasons stated in the MA sufficient for condonation of delay.

3. A written statement has been filed by the respondents on 13.02.2019 in which they have denied the claim of the applicant. They have stated that though the applicant was provisionally empanelled it was subject to his academic certificates, PHP certificate, caste certificate etc. and eligibility in all respects and was also subject to his passing prescribed medical examination by authorized medical officer. The applicant was initially examined by DMO/ENT/CKP on 14.02.2001 and thereafter he was referred to Senior DMO/ENT/GRC but the candidate neither turned up to CMS/CKP nor to Sr. DMO/ENT/GRC. The applicant had himself submitted handicapped certificate dated 16.03.1999 issued by Civil Surgeon, Sadar Hospital, Chaibasa where the percentage of hearing handicap was adjudged as 30% which is far below the required percentage, i.e. 40%, to be considered as handicapped. The respondents have also categorically denied that the case of the applicant is similar to the other persons mentioned in the OA since the other candidates had from the beginning submitted handicapped certificate with 40% and more disability issued by Civil Surgeons of different places whereas, the applicant had submitted a disability certificate (dated 16.03.1999) with 30% disability. Regarding the case of Ayodhya Pradhan which was decided by this Tribunal by judgment

dated 18.12.2017 the respondents have stated that following direction of this Tribunal the Department did consider his case and since he did not come within the purview of the Persons With Disabilities Act, his application was rejected by a reasoned speaking order dated 20.07.2018. The written statement also gives details about other cases mentioned in the OA and gives details of how in some cases appointment were given while in some others the appointments could not be given for specified reasons.

4. The applicant has filed a rejoinder in which he has reiterated his claim about the case being similar to the petitioners in OA 280/2012 & OA 263/2009 since they had also applied against the same Employment Notice and their appointment letter was also against the same physical handicapped category. The applicant has also alleged that his case should be considered on the basis of disability certificate dated 06.06.2018 issued by duly constituted Medical Board in terms of direction dated 10.03.2011 of this Tribunal and not on the basis of the alleged certificate date 16.03.1999. Regarding the case of Ayodhya Pradhan, the applicant has stated that “If any adverse order is passed after the direction dated 18.12.2017 it is up to him to challenge the same before the court of law.” The applicant has also given further details of cases where persons were given appointment following prolonged litigation. The common thread of these arguments is that in all these cases the plea of the respondents was that their respective percentage of disability was less than requirement but on the basis of fresh disability certificate issued by the Medical Board

notified by State Disability Commissioner they have been found to have higher percentage of disability and have been appointed.

5. We have gone through the pleadings and heard the arguments of both the parties. The case of the applicant, which has been filed before us almost 18 years after the cause of action arose, is based on the decision of this Tribunal in case of Ayodhya Pradhan in OA/051/00106/2017 dated 18.12.2017 where this Tribunal had disposed of the case with direction to the respondents to consider the grievance of the applicant therein, in the light of decisions cited (supra) (OA 194/2016 and OA 280/2012). This direction was issued on the prayer by the applicant in that case claiming his case to be squarely covered and the counsel for the respondents expressing no objection for issue of such direction. We find that in the case before us the respondents have denied any similarity between the cases decided by this Tribunal before and the one which is subject matter of this case. In all the cases decided earlier the applicants were claiming to possess the required level of disability, had produced certificates supporting their claim and the difference was about whether to accept their certificates or the certificates given by the Railway Doctors. These cases were finally decided with a direction to accept the certificates given by the Medical Board constituted by the State Disability Commissioner. It is also clear that in most of these cases the parties had been agitating their case before the relevant authorities/Tribunals since the very beginning. The learned Sr. counsel for the applicant cited before us the decision of the Hon'ble Supreme Court in AIR 1990 SC 1308 and the decision of the Hon'ble Patna High Court dated

13.08.1999 in CWJC Nos. 8438 & 10751 of 1998 to support her contention that failure to raise this matter before the Tribunal should not be a reason for not granting the applicant a relief which was granted to similarly situated persons. We have gone through these judgments. The request for condonation of delay was allowed by this Tribunal only on specific pleading by the applicant about the case being similar to other cases decided by this Tribunal. However, we find that in the written statement filed by the respondents, they have very clearly shown that the case of the applicant is not similar to the other applicants in the OAs cited in this case. In the instant case, the applicant had himself produced a certificate where his disability was shown to be below 40% and this fact has not been specifically denied by the applicant in his rejoinder. Going by our earlier decisions the only claim which the applicant can now make before us is for directing the respondents to consider his case if the facts were similar to the decision taken in the earlier cited cases. The respondents have denied similarity in facts and the applicant has not even alleged to have produced anything to show his disability to be higher than the required level at the time of his application. Thus, he cannot claim a right to be considered for a job in 2001 on the basis of the certificate which was issued almost 17 years after the relevant date. The argument, that in other cases too certificates issued in the year 2012 were directed to be considered, will not apply to the facts of this case since there were claims supported by certificates issued by different authorities in favour of the applicants in those other cases but not in this case. The applicant in this case did not even appear for examination

when he was referred to by the Railway authorities. This makes the case of the applicant qualitatively different from other cases cited by him.

6. For the aforementioned reasons, we do not find the case of the applicant to be similar to the cases of the other persons cited in his OA. It is also a fact that except for filing representation before authorities, he has not taken any action before any Court/Tribunal for redressal of his alleged grievance for 17 long years, which shows serious lapse and laches on his part and leads to a reasonable presumption about his being aware of the weakness of his claim. We also cannot fail to take notice of the fact that the degree of hearing impairedness grows with age. A certificate showing higher percentage of hearing handicap in 2018 cannot by itself be taken as a proof of applicant having the required degree (above 40%) in the year 2001, especially when the certificate produced by himself at that time showed it to be lesser than that and the applicant failed to appear for further tests. For all these reasons, the prayer of the applicant in this OA cannot be allowed. The OA is, therefore, dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member