

02.04.2025.
Item Nos. 5 & 6.
Court No. 13
pk/ap

(Assigned)

**R.V.W. No. 15 of 2025
With
I.A. No. CAN 1 of 2025
With
W.P.C.T. No. 324 of 2024**

**Pran Krishna Biswas
Versus
The General Manager,
South Eastern Railways & Ors.**

Mr. Pran Krishna Biswas.
...For the Petitioner (in person).

Mr. Dipanjan Sinha Roy.
...For the respondent nos.1, 2 & 3.

1. Review is sought of the order dated 03.12.2024 passed by a Co-ordinate Bench in WPCT 324 of 2024. The said Bench heard the said writ petition filed against an order of the Central Administrative Tribunal (CAT) at Kolkata. It had released the review application when the applicant sought to appear-in-person and address the Court in the Bengali Vernacular.

2. The facts relevant to the instant case are that the applicant/petitioner applied for the post of Clerk cum-Typist, recruitment to which was conducted by the Railway Recruitment Cell (RRC) of the Railways on 4th October, 2013 in the PWD category. After provisional appointment the Railways conducted a

medical examination for the applicant/petitioner on 26th October, 2013 wherein he did not qualify as visually challenged. The same was communicated to the applicant on 12th January, 2014 by the RRC of the Railways.

3. Challenging the said order dated 12.01.2014 the applicant/petitioner moved the CAT by way of OA 37 of 2014. The said application was disposed of by directing the applicant/petitioner to be examined independently as regards his visual disability either by the Medical College and Hospital (Ophthalmology Department), Kolkata or the SSKM Hospital (Ophthalmology Department), Kolkata and produce the same before the Railways. The said opinion of either of the aforesaid two hospitals was to be considered by the Railway Board Hospital and the applicant/petitioner was to undergo a further examination by the Medical Authorities of the Railways. The applicant/petitioner challenged the said order dated 03.11.2015 before this High Court in WPCT 37 of 2016. A Co-ordinate Bench of this Court confirmed the order of the Tribunal by its order dated 27th July, 2016.

4. The applicant/petitioner thereafter approached the Medical College Hospital at Kolkata. It was written on the OPD Prescription Card in detail dated 25.08.2016, 28.08.2016 and 29.08.2016 that the applicant/petitioner was 40 per cent visually

challenged. The applicant/petitioner was therefore entitled to a visual disability certificate to the extent of 40 per cent. Despite repeated requests the Head Clerk of the said Medical College Hospital did not issue a 40 per cent disability certificate to the applicant. The refusal appears to be for collateral purposes.

5. Be that as it may, armed with the medical opinion recorded on his OPD Card, the applicant/petitioner approached the Railway Authorities for further examination at their end. The Railway Authorities declined, insisting on a formal 40 per cent disability certificate, issued by the concerned Hospital. The rejection of the applicant/petitioner's case, as above, was communicated to him on 16.02.2016 by the Railways.

6. The applicant/petitioner thereafter filed M. A. 472 of 2016 before the CAT for a direction upon the Railways to implement the Tribunal's earlier order. The said M. A. 472 of 2016 was disposed of by the Tribunal holding that there is nothing to be complied with by the respondents unless a medical certificate is placed before the concerned Authorities.

7. A review petition being R. A. 12 of 2017 was also filed by the applicant/petitioner before the Tribunal that was also rejected on 07.03.2017.

8. The applicant/petitioner thereafter filed a fresh O. A. before the Tribunal being O. A. 350/88/2018

challenging the actions of the respondents in rejecting the applicant/petitioner's application in mechanical manner. The said O. A. was also dismissed by the Tribunal on 3rd July, 2024 on the sole ground that the applicant/petitioner could not produce a medical certificate of being physically handicapped. The Tribunal, however, did not question the medical examination reports contained in the OPD Card of the Medical College and Hospital at Kolkata, holding that the applicant/petitioner was 40 per cent disabled.

9. Challenging the order of the Tribunal dated 3rd July, 2024 passed in O.A. No. 350/00088/2018, the applicant filed a writ petition before this Court being W.P.C.T. No. 324 of 2024. The said writ petition was dismissed by the subject order dated 3rd December, 2024.

10. In essence, the Co-ordinate Bench of this Court had upheld the contentions of the Railways that in the absence of any formal certificate declaring the applicant to be visually handicapped to the extent of 40%, his claim for employment under the Person with Disability Category to the post of Clerk-cum-Typist could not be considered.

11. This Court has found error apparent on the face of the order dated 3rd December, 2024 passed by a Co-ordinate Bench. The Co-ordinate Bench of this Court failed to notice that it was not the applicant's fault

that despite a clear medical opinion holding that the applicant was 40% visually disabled, the absence of a formal Medical Certificate ought not to have stood in the way of the applicant's employment in the (PWD) Category with the Railways. A formal certificate of disability is, but a ministerial act. It is based on the opinion of the Doctors in the OPD Card.

12. The request by the Railways to the Director of Health Services, Government of West Bengal for constituting an independent Medical Board for re-examining the applicant at the NRS Medical Board was totally unnecessary given the Medical opinion signed by the three Doctors on three several dates, namely, 25th August, 2016, 28th August, 2016 and 29th August, 2016 issued by the Ophthalmology Department of the Medical College Hospital at Calcutta. Copies of the OPD Diagnosis Cards are taken on record.

13. Counsel for the respondent Railways has submitted that the Railways are only bound by the text of the orders passed by this Court and the Central Administrative Tribunal which directed a certificate to be produced by the applicant and not an OPD Card. It is only on this ground that the OPD Card, containing the diagnosis and certifying that the applicant was 40% visually disabled, was declined by the Railway Authority.

14. This Court finds that the earlier Bench may not have considered the details of diagnosis of the applicant on the actual OPD Card which has been produced before us today. This is an error apparent on the face of record.

15. In those circumstances, this Court directs the Railways to accept the OPD Card certifying that the applicant is 40% disabled.

16. The applicant shall, therefore, without any further ado, be entitled to join the Railways as a Clerk-cum-Typist as per the recommendation already issued by the Railways dated 26th October, 2013.

17. This Court is compelled to direct as such and without further reference to the Medical Authorities of the Railways, given the fact that the applicant has been running from pillar to post since the year 2013 (about 12 years now). The applicant cannot be harassed or made to wait any further.

18. The appointment of the applicant shall take effect from 1st January, 2014. He shall however not be entitled to any pay or allowances for the period from 1st January, 2014 till the date he joins the actual service. The said period shall only count for the purpose of, and be included in, the length of the petitioner's service as also for any salary or revision of pay and other allowances. In other words, the said period from 1st January, 2014 till the date the

petitioner joins service, shall be reckoned only notionally, by the employer, i.e. the Railways.

19. The order dated 3rd December, 2024 passed by a Co-ordinate Bench of this Court shall stand reviewed in terms of the order passed hereinabove. The applicant shall join his post and shall report to the Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata – 700 043 by 8th April, 2025.

20. With the aforesaid directions, R.V.W. No. 15 of 2025 is hereby allowed and disposed of.

21. In view of disposal of the review application, the connected application being CAN 1 of 2025 shall also stand disposed of.

22. There will be no order as to costs.

23. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)