

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 406 of 2014

Present: **Hon'ble Mr. Gokul Chandra Pati, Member (A)**
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Ajoy Rajbhar, aged about 33 years, S/o Rajendra Prasad Rajbhar, At/PO-Chandua, Via-Kanchrapara, Dist-24 Parganas (N), West Bengal – 743145. At present working as Chief Booking Supervisor, Keshinga Railway Station, East Coast Railway, At/PO - Keshinga, Dist-Kalahandi.

.....Applicant

VERSUS

1. Union of India, represented through its General manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist.- Khurda.
2. Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist.- Khurda.
3. Chief Commercial manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist.- Khurda.
4. Divisional Railway Manager (Comml), East Coast Railway, Sambalpur, At/PO/Dist-Sambalpur.
5. Jayant Kumar Pipla, Chief Commercial Inspector, O/o the Chief Commercial manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist.- Khurda.
6. Hrushikesh Tripathy, CCI, O/o the Chief Commercial manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist.- Khurda.
7. Arijit De, TTI/Sambalpur, East Coast Rly., Sambalpur Division, At/PO/Dist-Sambalpur.

.....Respondents

For the applicant : Mr.P.K.Mohapatra, counsel

For the respondents: Mr.T.Rath, counsel

Heard & reserved on : 29.11.2019

Order on : 03.01.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has prayed for the following reliefs in this OA :

- “(i) Quash the order dated 22.5.2014 as at Annexure A/4 and direct the respondents to allow the applicant to appear in the viva voce test for promotion to Group B (ACM) in view of sub sec (2) of sec 47 of the Act.
- (ii) Pass such other orders/directions as may be deemed fit and proper in the bonafide interest of justice.”

2. The applicant was initially appointed as Junior Booking clerk on 3.5.1999 and has been promoted as Senior Booking clerk in 2001 and Head Booking Clerk in 2004. In 2011 he was promoted to the post of Booking Supervisor and as Chief Booking Supervisor in 2013. On 12.7.2013, a notification was issued by the respondent No.2 for filling up of Group 'B' post of Assistant Commercial Manager (in short ACM) and the case of the applicant was recommended for the said test. He appeared on 9.3.2014 for the written examination and cleared the said examination by securing more than 60% marks along with three other candidates. Then he was asked to appear in the medical test which was conducted on 5.5.2014. He was declared 'Unfit' in medical test due to defective colour vision, but the decision of the Medical Board was not communicated to him as stated in the OA. When the matter came to the knowledge of the applicant, he submitted a representation on 9.5.2014 (Annexure A/3), on which, the Respondent No.2 passed an order dated 22.5.2014 debarring the applicant from appearing in the viva voce test. The applicant is aggrieved by the fact that the respondents are going ahead with the selection to fill up the post of ACM ignoring the applicant.

3. Being aggrieved by the action of the respondents, the applicant has filed the present OA mainly on the ground that as per the Railway Board's circular dated 8.8.2013 (Annexure A/5) and 21.8.2013 (Annexure A/6), the post of ACM is a non-safety post/non-technical post, for which the testing of colour vision was not required. It is also contended in the OA that as per the Section 47 of the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 (in short referred to as 'Act'), no promotion will be denied to the person merely on the ground of disability. The case of the applicant is that the said provision has not been followed in this case. The applicant has also cited the judgment in Civil Appeal No. 5178 of 2004 in which Hon'ble Supreme Court has laid down the law applicable to this case vide judgment dated 11.8.2004 (Annexure A/8).

4. The respondents have filed a counter stating that as per the existing rules only the medically fit candidates will be allowed to appear in the viva voce test. 71 candidates have appeared in the written examination, out of which 4 candidates including the applicant had qualified. It is stated that as per the guidelines of the Railway Board in Master Circular No. 68, candidates selected for the post of Group 'B' should be fit in all respects including physical fitness. It is also stated in the said circular that Group 'C' employees qualifying in written test for Group 'B' post but not been medically fit as per the rules, are not to be called for the viva voce test. It is stated that the medical examination of the applicant shows that his colour vision was defective vide the certificate

dated 7.5.2014 (Annexure R/3). Regarding the judgment of the Hon'ble Apex Court relied on by the applicant, it is stated in the counter as under :

"While going through the said judgment in the case of UOI -vs- Sanjay Kumar Jain of Hon'ble Apex Court, it is observed that the Hon'ble Apex Court in a subsequent judgment i.e. in the case of Union of India -vs- Devendra Kumar Pant And Ors. on decided 9 July, 2009, has further expanded and clarified applicability Sub-section (2) of Section 47 of the Act and has laid down the position of law as follows :

'12. Sub-section (2) of section 47 provides that no promotion shall be denied to a person merely on the ground of his disability. 'Disability' as per the definition in section 2(i) of the Act, means blindness; low vision; leprosy-cured, hearing impairment, locomotor disability, mental retardation and mental illness,. 'Person with disability' is defined in clause (t) of section 2, as a person suffering from not less than forty percent of any disability as certified by a medical authority. What is significant is all persons with disability are not treated equally or similarly, under the Act. The benefits extended under the Act depend upon the nature of disability and extent of disability...."

It is stated that the provisions of the Act cannot be applied to all persons with different disabilities as per the principle laid down by the Hon'ble Apex Court in the case of Devendra Kumar Pant (supra). It is stated that the respondents No. 5 & 6 in the OA have been appointed subject to the final outcome of the OA and the benefit of relaxation in the qualifying marks has been extended to respondents No. 5 & 6 who belong to SC category. It is further stated that the applicant was found 'Unfit' due to defective colour vision as per certificate dated 7.5.2014 (Annexure R/3).

5. Rejoinder has been filed by the applicant. The main contention of the applicant in the rejoinder is that as per Indian Railway Commercial Manual, the function of the Commercial Department is not related to the safety work. It is contended that the test of colour vision of the applicant is not as per the existing rules and should be ignored. It is also submitted that the post of ACM cannot have the medical standard applicable for safety category posts. The judgment of Madras Bench of CAT in the case of D.Thangarajan -vs- Union of India & Ors. has been filed at Annexure A/12 to the rejoinder to support the contentions of the applicant. It is stated that the applicant's juniors have been promoted, whereas he was declared medically 'Unfit' by applying medical standard applicable for safety category post.

6. Respondents have filed reply to the rejoinder stating as under :

"As per Para-530 of Indian Railway Medical Manual (IRMM), 1 under Annexure A/10 to the OA, for the purpose of examination of visual acuity of employees for promotion to Group B Gazetted posts have been classified into two categories vide Para 530(a) and Para 530(b). As per the above classification, the post of ACM in Commercial Department being a part of Traffic Department comes under Para 530(a). Further, it is humbly submitted that the next promotional post of ACM is Group-A/Jr. Scale in organized services of Indian Railway Traffic Service (IRTS) post of Traffic, Transport and Commercial (TT&C) Department in Indian Railways. The IRTS post comes under safety category because the same is directly involved with train operations."

7. Heard learned counsels for the applicant and the respondents who reiterated the contentions in their respective pleadings. It is submitted by applicant's counsel that the applicant belongs to SC category and he is entitled to relaxation of qualifying medical standard. It is further submitted that the applicant fulfills the fitness as per para 530(b) of the Indian Railway Medical Manual (in short IRMM) read with para 532(2) of the IRMM. It is submitted that the medical fitness of the applicant for the post of ACM has been wrongly assessed as per para 530(a) of IRMM which is applicable for safety category of post and the applicant's fitness with reference to ACM post should have been assessed as per the para 530(b) read with para 532(2).

8. Learned counsel for the respondents has also submitted a written note of submission that as explained in the reply to Rejoinder the post of ACM in Commercial Department comes under the purview of para 530(a) of the IRMM, copy of which has been filed by the applicant at Annexure A/10 of the rejoinder. It is stated that medical fitness for the post of ACM which is a post under Commercial Department, is to be conducted as per para 530(a) and 532(2) of the IRMM. Hence, the decision has been rightly taken applying the medical fitness criteria laid down under the IRMM.

9. We have considered the pleadings on record as well as submissions made by the learned counsel for the parties. The question to be decided in this case is whether for the purpose of assessing medical fitness of the applicant for the post of ACM, the criteria under para 530(a) of the IRMM is to be followed as claimed by the respondents. The applicant claims that the post of ACM is a non-safety category post, for which the criteria as specified in para 530(b) read with Para 532(2) of the IRMM will be applicable and in that case he fulfills the medical fitness criteria as laid down under above paragraphs. The respondents, on the other hand, have taken the plea that the medical fitness for the post of ACM has to be assessed in terms of para 530(a) of the IRMM.

10. The advertisement for the post of ACM dated 3.7.2013 (Annexure A/1) stipulates that "only medically fit candidates will be allowed to appear in the viva voce test." The applicant relies on the circulars dated 8.8.2013 (Annexure A/5) and 21.8.2013 (Annexure A/6) and also Section 47 of the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 to advance his claim. The circular dated 8.8.2013 (Annexure A/5) has specified as under :

"In the light of instructions contained in Board's letter No. E(GP)2002/2/88 dated 30.4.2009, it is clarified by Board that the Group 'B' post of ACM in the Transportation (Commercial) Department shall be treated as Non-Safety category post when the selections are conducted stream-wise for applicability of the scheme of "Best amongst failures".

The circular dated 21.8.2013 (Annexure A/6) has laid down the following additional provisions regarding the ACM post :

“Accordingly, the competent authority has decided that the post of ACM should henceforth be treated as “**Non-Safety category of post**” for the selections (70% quota and 30% quota) including the current ACM selections against 70% quota & 30% quota vacancies for the assessment period of 2013-15, already initiated vide this office Notifications dtd. 07.06.2013 & dtd. 03.07.2013 respectively under reference.”

11. The applicant has referred to the circulars dated 8.8.2013 and 21.8.2013 at Annexures A/5 & A/6 respectively in para 4.2. In reply, the respondents in their counter have stated as under :

“Further, it is admitted that the post of ACM is a non-safety category post. But, it is not meant that a medically unfit candidate due to defective colour vision will be allowed to be promoted to the post of ACM at the cost of efficiency. As the applicant found medically unfit, he was not allowed for viva-voce test in terms of Para 18.2 of the Master Circular No.68/2007.

Since, Group-B/ACM is a non-safety category post and no one found qualified to appear in the viva voce in SC category in the subject selection, the SC candidates who secured 3/5th of the qualifying marks in written test prescribed for general candidates were called for to appear in the viva voce test in terms of Rule 17.1 of the Master Circular No. 68/2007 to fill up the 1 vacancy reserved for SC category.”

12. Regarding the contentions about Section 47 of the Act the respondents in their Counter have mentioned that as per the judgment of the Hon’ble Supreme Court in the case of Devendra Kumar Pant (supra), it is held that if rejection of selection to a particular post is made on the ground of safety, security and performance, then it cannot be considered to be denial of promotion by reason of disability alone. It is submitted that the Section 47 of the Act will not be bar on the respondents from taking such decision.

13. The submissions in the Counter regarding the judgment of the Hon’ble Apex Court in the case of Devendra Kumar Pant (supra), have not been contradicted by the applicant in his rejoinder in which he has reiterated that his case should have been assessed as per para 530(b) of IRMM since the post of ACM is a non-safety category post. It is also noticed that the applicant has not produced any medical certificate to show that he suffered from any physical disability as defined under the Act. Hence, we are unable to accept the contention of the applicant that Section 47 of the Act has been violated in his case.

14. Regarding the applicability of para 530(b) of IRMM as claimed by the applicant, it is seen that para 530 of the IRMM has the following provisions :

“530. Classification of gazette posts for the purpose:- For the purpose of examination of visual acuity of Railway employees promoted from non-gazetted to gazette posts, the gazette posts should be divided into two categories as follows:-

- (a) All posts in Mechanical, Electrical, Civil and S&T Engg. And Traffic (Transportation and commercial) Department.
- (b) All posts in other departments which are not connected with train working or use of trolley on open line.”

From the above, it is clear that all posts in Traffic (Transportation and Commercial) Department are covered under the para 530(a) of the IRMM, irrespective of whether the posts are in safety or non-safety category. The medical fitness requirements for posts covered under para 530(a) have been specified under Para 532(1) of the IRMM, specifying certain provisions for colour perception. The applicant has been tested applying the criteria applicable to Para 530(a) and 532(1) of the IRMM as stated in respondents' reply to the rejoinder which states as under :

“Accordingly, the applicant was medically examined as per Para-532(1) of the IRMM which is for the category 530(a).”

15. The applicant's contention that circulars at Annexure A/5 and A/6 clearly stipulate that ACM is a non-safety post. The circulars at Annexure A/5 & A/6 do not provide for the criteria for assessment of the medical fitness for the post of ACM as per Para 530(b) of the IRMM as claimed by the applicant. The post of ACM has been treated as non-safety category vide circular at Annexure A/5 and A/6, without changing the medical fitness requirement as stated under Para 530 & 532 of the IRMM. Further, there is nothing in Para 530(a) of the IRMM to state that it is not applicable for non-safety category of posts. No rule or document has been furnished by the applicant in support of his contention that for the post of ACM, medical fitness is required to be assessed as per para-530(b) read with para 532(2) of the IRMM.

16. In view of the above discussions we are unable to accept the applicant's contentions that the medical fitness for the post of ACM is to be assessed as per Para 530(b) and 532(2) of the IRMM, The contentions of the respondents that medical fitness for the post of ACM is to be assessed as per Para 530(a) and 532(1) of the IRMM are found to be in order. The issue at paragraph 9 of this order is decided accordingly. The applicant has failed to furnish adequate justification for the Tribunal to interfere in the matter. The OA is accordingly dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)