

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

**Original Application No.30/2014
Date of Order : 30.10.2019**

Between :

P.Kamal Raj, S/o Ratna Raj,
Aged 28 years, R/o H.No.53-1-345(C),
Cloughpet, 2nd Lane, Ongole – 523 001,
Prakasam District. ... Applicant

And

1. The Union of India, rep. by its General Manager,
South Central Railway,
Railnilayam, Secunderabad.
2. The Divisional Railway Manager (Personnel),
South Central Railway, Secunderabad.
3. The Chief Medical Director,
South Central Railway, Secunderabad.
4. The Senior Divisional Personnel Officer,
South Central Railway, Secunderabad. ... Respondents

Counsel for the Applicant ... Mr.E.Satheesh Kumar, Advocate
Counsel for the Respondents ... Mr.D.Madhava Reddy, SC for Rlys

CORAM:

**Hon'ble Mr.Justice L.Narasimha Reddy ... Chairman
Hon'ble Mr. B.V.Sudhakar ... Member (Administrative)**

ORAL ORDER

{ Per Hon'ble Mr. Justice L. Narasimha Reddy, Chairman }

The South Central Railway initiated steps for selection and appointment of Junior Engineers (Electrical). The applicant responded for the same and participated in the written test, conducted for that purpose. On the basis of the marks secured by him, he was selected. As required under the IRMM rules, the applicant was subjected to medical test. Through a communication dated 23.08.2013 the applicant was informed that he was found 'unfit' for appointment as Junior Engineer-II Electrical in the requisite medical category. It was also mentioned that the applicant can prefer an appeal against the decision of the Medical Authority.

2. It is stated that the applicant preferred an appeal, and made a request for re-medical examination. Through an order dated 15.10.2013 the Additional CMD/T&A rejected the appeal preferred by the applicant. This OA is filed by the applicant challenging the order of rejection dated 23.08.2013 and 15.10.2013 through which the appeal was rejected.

3. The applicant contends that no particulars, whatever of his so called medical examination were communicated to him and that though he was advised to prefer an appeal, it was rejected without subjecting him to any further medical examination at all.

4. On behalf of the respondents counter affidavit is filed. It is stated that the applicant was found medically 'unfit' in A-III category, which is the requisite medical classification for the post of Junior Engineer (Electrical) and accordingly the impugned order dated 23.08.2013 was issued. It is further stated that the appellate authority considered the appeal preferred by the applicant and rejected the same through an order dated 15.10.2019, on finding it to be bereft of merit.

5. We heard learned counsel for the applicants and the learned counsel for the respondents.

6. It is not in dispute that the applicant fared well in the examinations and he was selected to the post of Junior Engineer Grade II (Electrical). The final step was to ascertain his medical fitness. The applicant offered himself for the test. The Senior DPO passed an order dated 23.08.2013, which reads as under:

*South Central Railway
Division /Workshop*

No.SCR/P-SC/149/Rec/JE-II Elec

Dated 23.08.13

*To
Shri P.Kamal Raj, S/o Ratna Raj
H.No.53-1-34(C), Cloughpet, 2nd lane,
Post Ongole, Dist : Prakasam – 523 001, A.P.*

Sub : Intimation regarding Medical Examination

You are hereby informed that you have been found unfit for appointment as JE-II Elec. In the requisite Medical category of A-III only as per the Indian Railway Medical Manual (IREM) for posting as JE-II Elec.

Ordinarily there is no right of appeal against the findings of an examining Medical authority as per IRMM-2000 Para 522(1)(ii).

In case you feel of any possibility of error of judgement in the decision of the examining Medical authority, you may appeal to the concerned authority (Sr.DPO/DPO/WPO) subject to satisfactory compliance of the following criteria.

1. You should appeal within one month of the date of communication.

2. If you prefer to attach any medical certificate from any other registered Doctor in support of your evidence about the possibility of error of judgement in the decision of the first Medical authority the certificates will not be taken into consideration unless it contains a note by the Medical practitioner concerned to the effect that it has been given in full knowledge of the fact that the candidate has already been rejected as unfit for service by the Medical authority appointed by the Government in this behalf as per Para 522 (1)(ii) of IRMM-2000, in the enclosed proforma.

Sd/-
Sr.DPO/DPO/WPO

7. No particulars of so called defect of the applicant were furnished. A suggestion was made, to that effect the applicant can prefer an appeal. One of the conditions was that the applicant must enclose a certificate, about the possibility of error of judgement of the decision of the first medical authority. When the particulars of the findings of the first medical authority was not communicated at all, it is just understandable as to how the applicant to enclose the fitness certificate, issued by another agency. All the same, the applicant preferred an appeal. The order passed by the appellate authority dated 15.10.2013 reads as under :

No.MD/84/1/Candidates (Sl.No.105-13-14) Dt.15.10.2013

DRM/P/SC

Sub : Appeal for re-medical examination Sri P.Kamal Raj S/o Ratna Raj, JE/Electrical SC Division.

Ref : our Ir.No.SCR/P.SC.149/RRB/JE-II Elec dt. 17.09.13 addressed to CMS/SC

CMD has perused the appeal submitted by the candidate and has rejected the appeal for Re-medical examination. The candidate may be advised accordingly.

Addl.CMD/T&A
for Chief Medical Director

8. A combined reading of the orders dated 23.08.2013 and the one dated 15.10.2013 would only show the gross subjectivity on the part of the respondents. They have virtually rendered the performance and achievement of the applicant in the written test, to nullity. The details of medical examination were not even communicated to the applicant. A public authority like Railways cannot act in such an arbitrary and illegal manner. A right, that had accrued to the applicant, on account of being selected, cannot be taken away on the basis of such un-communicated reasons. The whole exercise smacks of arbitrariness and illegality.

9. We, therefore, allow the OA and set aside the impugned orders dated 23.08.2013 and 15.10.2013. The concerned authority shall subject the applicant by his first Medical Authority, once again and communicate the findings therein to the applicant. If the applicant is found unfit, it shall be open to him to prefer an appeal, duly enclosing the relevant material. We make it clear that it is obligatory on the part of the appellate authority to subject the applicant to further examination. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

(B.V.SUDHAKAR)
MEMBER(ADMN.)

(JUSTICE L.NARASIMHA REDDY)
CHAIRMAN

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