

Order on Interim Relief Reserved on 11.01.2021

Pronounced on 19.03.2021

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

Present:

Hon'ble Mrs. Justice Vijay Lakshmi, Member-J

Hon'ble Mr. Devendra Chaudhry, Member-A

Original Application No. 330/00092/2020

(U/S 19, Administrative Tribunal Act, 1985)

Vijay Dwivedi son of Prakash Chandra, resident of 30/32/6A, Nawab Yusuf Road, Civil Lines, Post Office High Court, Allahabad.

.....Applicant.

By Advocates – Shri Anil Kumar Singh.

V E R S U S

1. Union of India through Chairman Railway Board, Rail Bhawan, New Delhi.
2. General Manager, North Central Railway, Allahabad.
3. Divisional Railway Manager, Allahabad.
4. Senior Divisional Personnel Officer, D.R.M. Office, Allahabad Division, Allahabad.
5. Chief Medical Superintendent, Central Hospital NCR, Allahabad.

.....Respondents.

By Advocates :ShriShesh Mani Mishra.

ORDER ON INTERIM RELIEF

Delivered By Hon'ble Mr. Devendra Chaudhry, A.M.

The present original application (OA) is second round litigation regarding medical examination of the applicant concerning an examination regarding recruitment to the post of Assistant Loco

Pilot(ALP). Through this original application the applicant has challenged the order passed by Chief Medical Superintendent, North Central Railway, Allahabad dated 15-5-2019 and the forwarding letter thereof by the Divisional Personnel Officer,(Admin), North Central Railway, Allahabad dated 30-5-2019.

2. Following relief has been prayed for:

“(i) To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 15.05.2019 passed by the Chief Medical Superintendent North Central Railway, Allahabad and order dated 31.05.2019 passed by the Divisional Personnel Officer (Admin.) North Central Railway, Allahabad.

(ii) To direct the authorities concerned for reconstitution of medical board for medical examination of the applicant in the light of Hon’ble Court judgment dated 6.2.2019 barring the Lasik Surgery.

(iii) To issue a writ, order or direction in the nature of mandamus directing the respondents to issue the appointment letter to the applicant in pursuance of the judgment passed by the Hon’ble Tribunal dated 6.2.2019 in O.A. No. 330/01161/2017.

(iv) To issue any other writ, order or direction as deemed fit in the circumstances of the case.

(v) To award costs to the applicant.”

In addition, Interim relief (IR) prayer is as follows:

“It is prayed that this Hon’ble Tribunal may be pleased to stay the effect of operation of the impugned order dated 15.05.2019 passed by C.M.S. North Central Railway, Allahabad (Admin.).

It is further prayed that one post of the Asst. Loco Pilot-2014 North Central Railway, Allahabad is stayed by the Hon’ble Tribunal which has not been filed up till now against that the applicant’s candidature may be considered in pursuance of the judgment passed by this Hon’ble Tribunal.”

3. Brief facts of the case *per* the applicant are that he wrote the examination concerning post of ALP advertised by the respondents vide notification dated 18-01-2014 and the applicant successfully passed the written examination whereupon, he was directed to appear for the medical examination. The applicant was accordingly examined at the Central Hospital, North Central Railway Allahabad, on 26-8-2017 onwards. After due examination, the applicant was declared medically unfit vide medical report dated 06-9-2017 (Annexure A-7) for category A-1 post which is the mandatory level required for recruitment to the post of ALP on the grounds of his having undergone Lasik surgery with regards to his eye for vision correction.

3.1 The applicant challenged the medical examination report through an original application No.1161/2017 in which this Tribunal vide its order dated 06-02-2019 directed a medical re-examination. The applicant was again examined and vide medical examination report dated 15-05-2019 (Annexure A-1) declared unfit again. The same was communicated by the respondents through the letter dated 28/31-05-2019 (Annexure A-2) which is also impugned. The applicant has challenged the aforesaid medical examination report on the ground that the disqualification is against the guidelines of the Railways contained in the Indian Railway Medical Manual (IRMM) and even otherwise as per the advertisement. Therefore, the impugned medical report is unlawful and liable to be quashed and hence the OA.

4. *Per Contra* the respondent have filed short instructions in which it is *inter alia* stated that as per requisite medical standards circular dt 11.11.2013 amending para 512(9) of IRMM 2000, the medical condition stated for the post of ALP is that any form of corrective surgery conducted on the eye for vision disqualifies the concerned candidate and that this standard has been prescribed in order to ensure public safety of the highest level which cannot be compromised at any cost given the duties required to be performed on the post of ALP. That as regards the specific mention thereof in the said advertisement notification, the notification clearly states that the medical standard levels/ requirements are indicative in the notification and thereby not exhaustive and that as per the complete medical requirements stated in the circular, the medical standards require that no corrective surgery is admissible for A-1 level post and since the ALP post requires a A-1 level medical standard for eye vision, hence the candidate – applicant is unfit by the said standards and has been accordingly declared unfit. Therefore, the OA is liable to be dismissed.

5. The applicant has sought IR as stated in the earlier part of this Order and accordingly, we have heard the ld.counsels for both the parties at length on the IR only which the ld applicantcounsel has pressed very assiduously.

6. The key issue to be decided at this stage of IR is whether the impugned orders need to be set aside as prayed for and a post be

reserved for the applicant with regards to the ALP examination of 2014.

7. In order to decide the issue, it is important that we examine the advertisement notification conditions for the said examination and the related IRMM guidelines/Circular submitted by the Id respondent counsel as part of the instructions. Firstly the relevant extracts of the advertisement notification dt 18.01.2014 are extracted below:

“ ...

Assista nt Loco Pilot	1	NFR	95	28	14	50	18 7	19	0	0	0	A-1	Not Suitabl e	Matriculation plus course completed Act Apprenticeshi p/ITI approved by NCVT/SCVT in the trades of Fitter/Electric ian/instrume nt Mechanic/Mi llwright Maintenance Mechanic/M echanic Radio & TV/Electronic s Mechanic/M echanic Motor Vehicle/Wire men/Tractor Mechanic/An nature & Coll Winder/Mech anic Diesel/Heat Engine/Tume r/Machinist/ Refrigeration & AC Mechanic OR Diploma in Mechanical/E lectrical/Elect ronics/Autom obile Engineering recognised by AICTE in lieu of ITI.
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															<i>Note: Candidates having higher Educational qualification In Mechanical/E lectronics/Au tomobile Engineering recognised by AICTE are also eligible.</i>
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8. MEDICAL FITNESS

Candidates recommended for appointment have to pass required fitness test(s) conducted by the Railway Administration to ensure that the candidates are medically fit to carry out the duties connected with the post. Visual Acuity Standard is one of the most important criteria of medical fitness of the Railway staff.....

*Note : (i)Before indicating options for categories in the boxes against Item No.1 of the Application Form, the applicant must ensure that he/she fulfil the prescribed medical standards for that category/post . (ii)Candidates qualifying in examination(s) for these posts but failing in prescribed medical examination(s) will not under any circumstances be considered for any alternative appointment. (iii) Candidates who do not fulfil the prescribed medical standards need not apply. (iv) **The above medical standards (Criteria) are indicative and not exhaustive and apply to candidates in general.**(emphasis supplied) (v) For Ex-Servicemen different standards apply....”*

As may be seen under and para 8 of the Medical Fitness test above it is clearly statedin the NOTE TO PARA-8 **that the stated medical standards are indicative and not exhaustive and applied to candidates in general. In any case it is seen that the ALP post requires A-1 level of medical fitness.**

7.1 Now we may examine the relevant circular concerning the detailed medical standard for A-1 level post. Relevant portions are extracted below:

**“..GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)**

No.2011/H/5/7 (VR)

New Delhi, Dated : 11.11.2013

Sub : Revision of Policy Guidelines for medical fitness of candidates and employees of various medical categories who have undergone LASIK Surgery in the past or during service period.

Keeping in view the technological changes in the field of various types of refractive surgeries, the need for laying down a uniform policy for medical fitness of candidates and employees of various medical categories has been felt necessary. The issue has been got examined by a committee of 03 doctors. Based on the detailed examination of the issue and the recommendations of the Committee, the following uniform guidelines are being issued for adoption over Indian Railways:-

<i>Procedure</i>	<i>New Recruit</i>	<i>Existing Employee</i>
<i>All surgeries done to correct refractive error (Mandatory declaration from the candidate about such surgeries.</i>	<i>Unfit in A&B Categories</i>	<i>Unfit in A&B Categories</i>
<i>In addition to the declaration the examining medical officer will use all the equipment at his/her disposal and opinion of specialist, wherever available, to come to a reasonable conclusion about the declaration being true or otherwise.</i>		

Accordingly, correction slip to para No.512(9) of IRMM, 2000 is also enclosed herewith.

Sd/-

*(Dr.Praval Pant)
Director Industrial (Health)
Railway Board.*

Correction Slip No.13

Correction slip to para 512(9) of IRMM, 2000 relating to LASIK Surgery :-

Para 512(a) may now be read as under :-

All surgeries done to correct refractive error :-

- I. Candidates – Unfit in categories A and B*
- II. Employees – Unfit in categories A and B*

Note:-

- *Mandatory declaration from candidate about such surgeries.*
- *In addition to the declaration, the examining medical officer will use all the equipment at his/her disposal and take opinion of specialist, wherever available, to come to a reasonable conclusion about the declaration being true or otherwise...”*

A plain examination of the circular above would reveal that the A-1 medical standard required for the post of ALP is that in which any corrective surgery for vision correction is inadmissible for qualifying to a A-1 medical standard post. It is clearly written that at any Lasik surgery or any surgery done for correcting refractive error would be assessed as unfit in A and B category.

7.2 The applicant has applied for the post of ALP which is a A-1 category medical standard which as may also be seen is also the highest vision category required under any of the jobs mentioned. It is also mentioned in the advertisement notification that **Visual Acuity Standard is one of the most important criteria for Railway staff.** This is quite logical because the job of ALP involves piloting a train and quite justifiably therefore, if there is any reduced level of eye-sight as compared to the prescribed standards, the same would put into danger life of hundreds of passengers or thousands of crores of material goods.

Therefore in in highest security interest of human life and goods, the laid down medical standards have to be mandatorily adhered to and if a candidate does not meet the standards then he/she has to be declared as medically unfit. Medical standards of highest level are prescribed for security of life and material which are even otherwise criminal and civil liability of the Railways in case of an accident and mis-happening with regards to proper piloting of the train. Therefore, rightly so, the highest medical standards for vision are prescribed such that even a corrective surgery has been held as being inadmissible with regards to the fitness standard.

7.3 It is also to be made clear here that the medical fitness instructions stated in the para-8 to the notification explicitly state in the “**Note**” - that the stated medical standards are not exhaustive. **In fact, the applicant has attempted to gloss over this line** which is a misconceived attempt even though futile in trying to hustle his case in his favour. In fact the order circular dated 11.11.2013 makes this abundantly clear and the correction slip to para 512(9) of the IRMM is also filed by the respondents which further clarifies this situation. The applicant has not produced any circular which would supersede this correction slip and circular in any manner and therefore the prescribed medical conditions hold the field with respect to the prescribed medical standard. The circular also finds clear mention in the impugned order dated 15-05-2019 extracts of which are reproduce herein below:

“...NORTH CENTRAL RAILWAY

No.205- Med/CAT/ALD/2019
Dated : 15.05.2019

Office of the
Chief Medical Superintendent
N.C. Rly., Allahabad

To,

Vijay Dwivedi
S/o Prakash Chandra Dwivedi
R/o 30/32/6A Nawab Yusuf Road
Civil Lines, P.O. High Court,
Allahabad.

Sub :- Implementation of order dated 06.02.19 passed by CAT/ALD. In O.A. No.1161/17
(Vijay Dwivedi Vs. Union of India & Others).

In compliance of CAT/ALD order dated 06.02.19 passed in O.A. No.1161/17 (Vijay Dwivedi Vs. Union of India & Others) your case was reconsidered and it was found that you were declared unfit for appointment as Asst. Loco Pilot in view of the result of the medical examination for category A-1 conducted in the Central Hospital, North Central Railway, Allahabad. Your candidature was cancelled on the ground that persons who have undergone lasik surgery are not eligible for the post of Asst. Loco Pilot.

It is worth mentioning here that any selection is subject to passing of prescribed medical test for the post irrespective of the fact that medical standards are given in the advertisement or not.

The candidates who are recommended for the appointment have to pass the requisite medical fitness examination conducted by the Medical Officers in accordance with the detailed procedure/ guidelines prescribed in the Indian Railway Medical Manual. The candidate is required to be fit in all parameters as per Indian Railway Medical Manual, as it is in the interest of public safety which cannot be compromised at any cost.

As per Railway Board letter No.2011/H/5/7 (VR) dated 11.11.13 candidates who have under gone surgery to correct refractive error including lasik surgery are unfit as candidates in 'A' classes.

Moreover, any lapse on the part of Loco Pilot will endanger lives of hundreds of persons.

Since lasik surgery persons are prone to vision problem and the nature of job to be performed by Asst. Loco Pilot involves Safety & Security of Railway property and it also involves the safety of lives of thousands of passengers so in case of a clash between individual interest and public interest, specially relating to public security and safety, the public interest would prevail as human lives are most important so it cannot be risked at any cost.

Therefore you cannot be declared as medically fit because it is not only against the Railway Rules but also against the public safety so it is not justifiable.

Superintendent

Sd/-
Chief Medical

North Central Railway
Allahabad....”

7.4 Thus it is clear that it is a rather unambiguous case of the applicant being unable to meet the prescribed medical standards. That it is not for this Tribunal to re-interpret the medical standards prescribed in any manner whatsoever. Moreso where the issue of security of piloting a train which may be full of passengers or goods is concerned the pilot shall have to have the highest medical standards and that too for vision which is the most fundamental requirement by any logical reasoning. Just because corrective Lasik surgery enables correction of vision it does not mean that the respondents should accept the same disregarding the prescribed medical standard wherein any surgery for vision correction is also not admissible for A-1 standards level requirement. Any reinterpretation of this is not possible by the court because this is the condition laid down by the experts and is prescribed as a requisite medical qualifying standard. The courts cannot change the qualification in any measure or be lenient or compassionate for convenience of the applicant.

7.5 It is no longer *res integra* that the courts shall not interpret rules/regulations than as stated and nothing can be read into the same. This is laid down in a galaxy of ruling of the Hon Apex Court also. To cite a few:

(i) Hon Apex Court in the matter of **Indian Railway Construction Co. Ltd. v Ajay Kumar**, AIR 2003 SC 1843 has held that

“...The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires...”

“....The Court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above ; like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient....”

(ii) Similarly in **Bachan Singh v Union of India, 2008 (4) SCT 277**,

Hon Apex court held that:

“...Judicial review under article 226 is not directed against the decision but is confined to the decision-making process. Judicial review is not an appeal but a review of the manner in which the decision is made. The court sits in judgment only on the correctness of the decision making process and not on the correctness of the decision itself...”

(iii) In **Chief Justice of Andhra Pradesh v. L.V.A. Dixitulu (1979**

(2) SCC 34), the Supreme Court observed as under:

"The primary principle of interpretation is that a constitutional or statutory provision should be construed "according to the intent of they that made it" (Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean or evocative or can reasonably bear meanings

more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction, such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light, on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation.

(iv) **In District Mining Officer v. Tata Iron and Steel Co. (JT 2001 (6) SC 183)**, the Apex Court stated as under:

"The legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of thing, it is impossible to anticipate fully in the varied situations arising in future in which the application of the legislation in hand may be called for the words chosen to communicate such indefinite referents are bound to be in many cases, lacking in charity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed".

(v) **In Reserve Bank of India etc. etc. v. Peerless General Finance and Investment Co. Ltd. and others etc. etc. (1987 (1) SCC 424)**

while dealing with the question of interpretation of a statute, the Apex Court observed as under:

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, Clause by Clause, phrase by phrase and word by word. If a statute is looked at in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections,

Clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each Clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

(vi) In Seaford Court Estates Ltd. v. Asher reported in (1949) 2 All ER 155 (CA), Lord Denning, advised a purposive approach to the interpretation of a word used in a statute and observed as under:-

"The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature..... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in this texture of it, they would have straightened it out? He must then do so as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

(vii) As per the Doctrine of Purposeful Interpretation, as the name suggests it means that the court while interpreting the statute or the constitution looks into the purpose for which the provision or the statute in question was enacted. Thus, the court will delve into the purpose of the enactment in order to derive the correct interpretation such that it result in delivery of justice. Thus the Hon Apex Court in the matter of State NCT of Delhi vs Union of India held that:

“...Constitutional provisions are required to be understood and interpreted with an object-oriented approach and a Constitution must not be construed in a narrow and pedantic sense. The judiciary must interpret the Constitution having regard to the spirit and further by adopting a method of purposive interpretation...”

(viii) Then again the Hon Apex Court in a case of **Grasim Industries Ltd. Vs. Collector of Customs, Bombay reported in (2002) 4 SCC 297**, so also in a case of **Abhiram Singh Vs. Commissioner reported in (2017) 2 SCC 629 held that** while interpreting the provision of a statute, it is to be seen that the intention of legislature is not frustrated. The Courts will reject that construction, which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used.

7.6 Thus the rules and guidelines cited by the ld. respondent counsel have to be interpreted in the context and what they read in plain terms. We cannot re-interpret them for the benefit of the applicant inasmuch that the rule concerning medical standard prescribed for ALP is a A-1 standard which lays down that any corrective surgery for vision correction is not admissible for declaring that the candidate concerned as fit just because he/she has 6/6 vision after the corrective surgery. We as court are no one to interpret this. Even the notification provides that the information contained in the notification is indicative and not exhaustive which implies that in case of any dispute arising with respect to the interpretation of a certain statement or information in the notification, the concerned detailed guidelines will have to be looked into and by

doing so we have conclusive proof that the applicant is not fulfilling the required medical condition. It needs to be said in no less uncertain terms that *Dura lex sedlex*- **The law is hard, but it is the law Equity supplements law but cannot supplant it.** Thus it is well settled that law prevails over equity if there is a conflict. Equity can only supplement the law, and not supplant it.

8.0 In the event therefore, it is very difficult for us to render any lawful assistance to the applicant and we cannot interfere with the guidelines prescribing the medical standards or interpret it for the convenience of the applicant. Even the alibi of recourse to the wordings in the notification do not stand scrutiny because as stated above the notification has to be read in conjunction with the detailed medical guidelines as already stated in the said notification itself.

9.0 Thus, on the basis of the foregoing discussions that there is no scope for grant of IR and the prayer for the same is accordingly liable to be dismissed and is dismissed. As regards the filing of detailed counter and rejoinder etc. the same may be done as per directions contained in the order of this Tribunal dated 22-12-2020.

(Devendra Chaudhry)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

/Shakuntala/