

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

**O.A. No.65/2018
M.A. No.526/2020**

Reserved on: 16.08.2021
Pronounced on: 26.08.2021

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Akansh Vaishnav s/o Nathu Lal Vaishnav, aged 27 years, r/o Dwarka Nagar, Gali No.1, Chorsiyawas Road, Ajmer, Applied for Assistant Loco Pilot (Group-C) in RRB, Ajmer.

...Applicant.

(By Advocate: Shri Sunil Samadaria)

Versus

1. Union of India through it's General Manager, North Western Railway, Head Office, Jawahar Circle-Jaipur.
2. Divisional Railway Manager (DRM), Bikaner.
3. Chief Medical Director, Head Office, Jawahar Circle, North Western Railway, Jaipur.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

ORDER

Per: Dinesh Sharma, Member (A):

In this OA, the applicant has prayed for quashing the letters dated 30.01.2017 and 21.04.2017 (Annexures A/1 and A/2 respectively) and to restore the appointment of applicant as Assistant Loco Pilot with all consequential benefits. He has also prayed for directing the respondents to hold re-medical examination of the applicant in terms of Para 522 of the Indian Railway Medical Manual (IRMM) and

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in terms of Railway Board Instructions dated 07.07.2017. Applicant claims that he has got his eyes medically examined at Govt. Hospital where his vision is indicated as 6/6 (Annexure A/13). This is the required vision for Category A-1 posts under the Railways. He had also got his eyes tested at a private prominent eye care centre in Jaipur which also shows conformity with the standards of the Railways required for A-1 category (Annexure A/14). In view of these, he had requested for a re-examination by the Medical Board and had also deposited the requisite fee, but no medical re-examination has been done. This is against Para 522 of the IRMM (Annexure A/12) and is a serious illegality. It is also against the detailed instructions of the Railway Board dated 07.07.2017, and hence this OA.

2. The respondents have filed a reply stating that as per Railway Board Policy dated 31.12.2015, once a decision has been taken at the level of Division/Production Unit In-charge and a candidate has been declared fit/unfit by a Three Member Board, no appeal shall normally lie with any higher authority. The provisions (Advance Correction Slip to Para 522 of IRMM 2000 No 1/2014, annexed as Annexure R/1) provides that the representation /appeal are to be dealt with on the basis of records and findings of the committee and the candidate will not be subject to re-examination. In the

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present case, the applicant was subjected for initial medical examination. The adverse findings recorded against him were put to the Chief Medical Superintendent who nominated a Three Member Medical committee. The appeal of the applicant has been dealt with in accordance with the aforementioned rules by Respondent No.3. The said respondent, after going through the records and findings of the Medical Board, did not find any need for the re-examination. The applicant has been informed accordingly. The reply further states that the post of Assistant Loco Pilot comes under public safety category. The methodology and procedure adopted by various non-railway doctors are not known to Railway medical authorities. Their reports cannot be made binding on the Railway authorities. Mere depositing of fee does not give any right for re-examination. As per the policy directives, the Three-Member Medical Board was to write their detailed findings and record their recommendations in the form of speaking order based upon with a fit/unfit certificate is issued. This Three Members Board's decision is accepted as final and no appeal normally lies against it. Whether to conduct a medical re-examination (on any appeal against the findings of a Three Member Medical Board) lies at the sole discretion of the Appellate Authority, and there is no obligation to conduct such medical re-

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examination. The challenge to that decision in this OA is not sustainable on the grounds mentioned in the OA.

3. A rejoinder has been filed denying the averments (some of them) of the respondents in their reply. The impugned orders do not give detailed findings of the Three Member Committee. A candidate should be first declared as 'temporarily unfit' and should be advised to get treated (unless in cases of specified illness). The rejoinder also gives cases where re-examination was done in view of orders passed by this Tribunal (Annexure RJ/1 colly). The rejoinder re-stresses the rule position which permits re-examination of candidates who have been declared unfit by medical officer or board.

4. The matter was finally heard on 16.08.2021. The learned counsels of both the parties reiterated the arguments contained in their respective pleadings.

5. After going through the pleadings and hearing the arguments of the learned counsels of both the parties, we find that the only issue before us is whether the applicant can legally claim to have his eyes medically re-examined, in view of the facts of this case and the position of the Railway rules/instructions in this regard. The relevant rule (Rule 522)

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is reproduced here (from Page 105 of the Paper Book, part of Annexure A/12, filed by the applicant):

"(i) Ordinarily, there is no right of appeal against the findings of an examining medical authority, but if the Government is satisfied, based on the evidence produced before it by the candidate concerned, of the possibility of error of judgement in the decision of the examining medical authority, it will be open to it, to allow re-examination. Such evidence, should be submitted within one month of the date of communication in which the decision of the first medical authority is communicated to the candidate. The appellate authority may entertain the appeal within a reasonable time after the expiry of said period, if it is satisfied that the appellant had sufficient cause for not proffering an appeal in time. Consultation and investigation charges will be recovered for appeal

(ii) If any medical certificate is produced by a candidate as evidence about the possibility of an error of judgement in the decision of the first medical authority, the certificate 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."

6. We also reproduce here the relevant portion of the Advance Correction Slip to Para 522 of IRMM, 2000, (from page 137 of the Paper Book, from Annexure R/1, filed by the respondents):-

"(b) Only in specific and exceptional cases in which there is an objective record of a disease like an X-ray finding, ECG record, Echo or a permanent defect/deformity, there can be an appeal in regard to the interpretation of such a finding and such cases can be entertained as an appeal by the CMD. CMD of the Zone may order

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for re-medical examination of such candidates if he is satisfied that there genuine grounds for consideration of such an appeal. Such evidence should be submitted within one month of the date of communication of the decision of the CMO/MD/CMS/ACMS in charge of the Unit/Division/Sub-division/Production Unit to the candidate. However, such an appeal shall be entertained only if the candidate produces a certificate from a Government/Private doctor of the specialty/specialties in which the candidate has been found unfit. Such a certificate should also contain a note that the Government/Private specialist was aware of the fact that the candidate has already been declared unfit during medical examination conducted by an appropriate medical committee appointed by the Government in this regard. The government/private specialist should also certify that he is fully aware of the physical & vision standards set by the railways, and that he is aware that the candidate has already been certified as unfit according to the standards. In all cases of appeal, consultation and investigation charges as applicable, will however be recovered separately. In case of production units, such powers for consideration of appeal shall be vested in the CMD of the neighbouring/parent zone to which the production unit belonged to earlier.”

7. A plain reading of these rules will leave no doubt about the powers of an appellate authority. It is *open to it* to allow re-examination. The rule start with saying that for candidates, ordinarily, there is no right of appeal. From this, it can be safely implied that when there is not even a right to appeal against a medical examination finding, there cannot be a right to have a medical re-examination done on every appeal. Thus, in this regard, we agree with the contention of the respondents that the applicant has no legal right under these rules to have his eyes re-examined, just

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because the rules permit such re-examination and he has filed an appeal.

8. It is a settled issue under administrative law that even when any authority is vested with discretionary powers, such powers should not be used arbitrarily or unfairly. We have to see whether it has been so in the present case. The applicant's claim is based on the reports of the Medical Doctor of the JLN Medical College Hospital Ajmer (Annexure A/13. The learned counsel for the applicant argued that this report, from a Government Hospital, where it is clearly mentioned that the doctor was aware of the applicant's rejection by the Railway Medical Board, is sufficient for the Railway's appellate authorities to order a medical re-examination. The learned counsel also drew our attention to earlier decision of this Tribunal (Annexure RJ-1/ colly) following which the Railways have ordered medical re-examination in similar cases. Countering this argument, the learned counsel for the respondents argued that the Doctor's report does not fulfil the second condition specified in the Advance Correction Slip quoted above, i.e. about the Doctor being fully aware of the physical and vision standards set by the Railways. Thus, the applicant has not even fulfilled the basic conditions required for consideration of an appeal. After going through these relevant documents, we agree

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with the contention of the learned counsel for the respondents that the applicant did not *prima-facie* fulfil the condition mentioned in the Advance Correction Slip. This could be due to ignorance of the applicant about this additional condition, but it does give a justifiable reason for not allowing the request for re-examination and such decision cannot be called arbitrary or illegal. We have also gone through our earlier decision in **Praphul Kumar vs. Union of India & Others** passed by this Bench in OA No.587/2012 (Annexure RJ/1 colly). We find that we had only directed the respondents therein for consideration of the representation/appeal of the applicant therein. The decision to conduct the re-examination was that of the competent authority of the Railways and not of this Tribunal. In the present case, the respondents have already taken a decision on the applicant's appeal and have decided against medical re-examination. The applicant has not even alleged bias or *mala-fides* in this decision and we have no reason to assume that any such extraneous factor could be the reason behind their decision. We have also gone through the detailed instructions related to medical re-examination cited by the applicant in his OA and the rejoinder (Annexure A/15 and Annexure RJ-2). All these instructions give the discretion to the Appellate Authority about whether to have a medical re-examination or not, and do not make it

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mandatory to have such medical re-examination in all cases when an appeal is filed.

9. The learned counsel for the respondents also strongly argued about the need for maintaining strictest eye-sight standards in a matter involving public safety. The medical officer testing the eye-sight of the applicant found his vision deficient and it was confirmed by a Three Member Medical Board. In such situation, the decision of the Appellate Authority not to conduct a re- examination on an appeal which is not supported by sufficient documentary evidence (as required under relevant instructions) cannot be interfered with. We agree with this argument. We find that the decision of the Appellate Authority not allowing medical re-examination is within the rules prescribed by the Railways in this regard. There is no evidence of arbitrariness, non-application of mind, bias, mala-fides or influence of extraneous factors. Thus, there is no reason for us to interfere with the exercise of discretionary powers vested in an authority (Chief Medical Doctor) which is obviously more competent than us (being an expert medical person) in this particular matter.

10. The OA is, therefore, dismissed. No costs.

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11. MA No.526/2020 for directing medical examination of original applicant or expeditiously deciding the OA is disposed of accordingly.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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