

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.2785/2017

This the 7th day of April, 2021

(Through Video Conferencing)

**Hon'ble Mr. A.K. Bishnoi, Member (A)
Hon'ble Mr. R.N. Singh, Member (J)**

Sukhdev Chobdar, Aged 33 years
S/o Mohanlal Chobdar
R/o Bajrang Basti, Kishorepura,
Kota (Raj.) ... Applicant

(through Advocate: Shri Yogesh Sharma)

Versus

Ministry of Railway & others : through

1. Union of India, through the Secretary,
Railway Board, Rail Bhawan,
New Delhi
2. The General Manager,
Western Railway
Churchgate, Mumbai
3. The Chief Medical Director,
Western Railway,
Churchgate, Mumbai
4. The Chief Medical Superintendent/
Chief Health Officer,
Jagjivan Ram Railway Hospital,
BCT, Mumbai
5. The Senior Divisional Medical Officer,
Divisional Railway Hospital
Vadodara.
6. The Divisional Railway Manager (E)
BRD, Vadodara.

... Respondents

(through Advocate: Shri Shailendra Tiwary)



ORDER (Oral)



Hon'ble Mr. R. N. Singh, Member (J):

In the present OA, the applicant has challenged the order dated 21.03.2017, Annexure A-1 vide which he has been intimated of the re-medical result for the post of Assistant Loco Pilot (hereinafter referred to as 'ALP'), scale Rs. 5200-20200+1900(GP). The impugned order reads as under:-

"With reference to the above your remedical was held on 09.02.2017 at JRH-BCT in which you have been declared UNFIT for Aye-One Category.

For your information."

2. The applicant has prayed for the following reliefs in the present OA:-

"(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned Medical certificate dated 31.03.2016 and the letter of intimation informing Medically unfit dated 21.03.2017 and all other orders and medical reports on the basis of which the applicant has been declared medically unfit for his appointment to the post of Assistant Loco Pilot, declaring to the effect that same are illegal and arbitrary.

(ii) that the Hon'ble Tribunal may graciously be pleased to pass an order of directing the respondent to get the applicant medically examined by an independent medical board at AIIMS or Dr. R.M.L. Hospital, New Delhi, or Safdarjung Hospital New Delhi or in any other



Govt. Hospital on the issue whether the applicant is suffering from any problem in his eyes or not and the case of the applicant maybe considered of his appointment to the post of ALP on the basis of the medical report given by the independent medical Board.

(iii) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents in case the applicant is found fit, he may be appointed with all the consequential benefits from the date when the similarly situated persons of the batch were given appointment.

(iv) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant with the cost of litigation.”

3. Pursuant to notice, the respondents have filed their counter reply. The applicant has also filed rejoinder.

4. The precise fact of the case as contended by the learned counsel for the applicant is that the applicant had participated in the selection process initiated by the respondents for the post of ALP. However, the applicant has been declared medically unfit for the said post finally vide impugned order dated 21.03.2017 which is a cryptic order. Shri Yogesh Sharma, learned counsel for the applicant, has argued that the applicant has not been informed about the reports given by the medical board constituted by the respondents on his appeal against the medical report submitted by the doctor.

5. On 21.01.2021, the following order was passed:-



"In the present OA, the applicant has challenged the medical certificate dated 31.03.2016 vide which he has been declared unfit for the post referred to in the OA. The applicant has also challenged an order dated 21.03.2017, (Annexure A-1) vide which the respondents in one line have informed the applicant that he has been declared unfit for AYE-I category on re-medical held on 09.02.2017. The respondents have neither supplied a copy of the findings of the re-medical held on 09.02.2017 with the impugned order dated 21.03.2017 nor have incorporated the findings of the re-medical in the impugned order dated 21.03.2017.

Shri Shailender Tiwari, learned counsel for the respondents submits that the respondents have referred to the unfitness certificate given on the basis of re-medical of the applicant held on 09.02.2017. However, a copy of the same inadvertently could not be enclosed with the counter reply. He seeks a week's time to bring on record a copy of the findings of the Doctor/Board of Doctors about on re-medical of the applicant held on 09.02.2017.

The applicant may file his response by way of an additional affidavit, if so advised, within one week thereafter.

List on 17.02.2021 as 'part-heard'."

6. Pursuant to the said order dated 21.02.2021, the respondents have filed an additional affidavit enclosing therewith the report of three Members Standing Medical Team, (Annexure A-1).

7. Learned counsel for the applicant has argued that there is in consistency and contradiction in reports furnished by the Doctor and one furnished by the Team of



doctors on the appeal of the applicant and in the circumstances, the applicant was entitled to make a representation in view of the circular dated 31.12.2015 (Annexure A-14).

8. Learned counsel for the applicant submits that the applicant shall be satisfied, if the present OA is disposed of with liberty to the applicant to make a comprehensive representation to the Chief Medical Director (CMD) under the respondent No.2 to consider the grievances of the applicant and with a direction to the CMD to consider such representation of the applicant in a time bound manner on merit. He further submits that as the report of the medical team has been furnished to the applicant only by way of an additional affidavit dated 13.02.2021, the respondents should not reject such representation on the ground that the same is barred by limitation.

9. Mr. Tiwary, learned counsel for the respondents does not dispute the factual matrix. However, he submits that medical team has considered the claim of the applicant in accordance with the relevant instructions on the subject and have given their finding about unsuitability of the applicant for the post under reference.



10. We have perused the pleadings on record and we have also considered the submissions made by the learned counsels for the parties. The impugned order, as precisely noted herein above, does not disclose any reason and it is also an admitted fact that as along with the said impugned order, the applicant has not been provided a copy of the report furnished by the medical team.

11. In view of the aforesaid, we find force in the submission of the learned counsel for the applicant to grant liberty to the applicant to make a representation to the Competent Authority and for a direction to such competent authority to reconsider the grievances of the applicant on merit and not to reject the same on the ground of the same being barred by delay.

12. In view of the aforesaid facts and circumstances, without going into the merit and/or the applicant's medical fitness and suitability for the post under reference, the present OA is disposed of with liberty to the applicant to make a comprehensive representation before the competent authority under respondent No.2 within 30 days of receipt of a copy of this Order and with a further direction to such competent authority to consider such comprehensive representation and to dispose of the same by passing a



reasoned and speaking order on merit as expeditiously as possible and in any case within a period of 60 days of receipt of a copy of comprehensive representation from the applicant.

13. It is further clarified that competent authority shall not reject the claim of the applicant on the ground of such comprehensive representation, being barred by delay.

14. The OA is disposed of in the aforesaid terms. However, in the facts and circumstances, no order as to costs.

(R.N. Singh)
Member (J)

(A. K. Bishnoi)
Member (A)

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