

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 266/2013

Jodhpur, this the 4th October, 2016

CORAM

Hon'ble Ms Praveen Mahajan, Admn. Member

Nilesh Kumar Jyotiyana S/o Late Shri Kishori Lal Jyotiyana, aged about 32 years, resident of Plot No. 38-39, Mahalaxmi Sai Baba Colony, Santpur, Abu Road, his father was last employed on the post of Mail/Ex Guard under SS Abu Road, NWR.

.....Applicant

By Advocate: Mr J.K. Mishra.

Versus

1. Union of India through General Manager, HQ Office, North-Western Railway, Ajmer Division, Ajmer.
2. Divisional Railway Manager, North-West Railway, Ajmer Division, Ajmer.
3. Chief Medical Director, NWR, Jaipur – 302017.
4. Chief Medical Superintendent, HQ Office, North-Western Railway, Malviya Nagar near Jawahar Circle, Jaipur-17

.....Respondents

By Advocate : Mr R.K. Soni.

ORDER (Oral)

The present Original Application has been filed U/s 19 of the

Administrative Tribunals Act, 1985 seeking following reliefs:

- (i) That impugned order dated 13.02.2013 (Annex. A/1) may be declared illegal to the extent declaring him unfit for

appointment to any category of railway service and the same may be quashed, accordingly. The respondents may be directed to consider him fit for appointment for Group "C" posts as per the recommendations of Medical Board of the specialists and consider his case for appointment on compassionate grounds as per rules in force and allow all consequential benefits.

- (ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iii) That the costs of this application may be awarded.

2. The brief facts as averred by the applicant are that the applicant is son of Shri Kishore Lal Ex-Mali/ Ex-Driver, Abu Road, who died in harness due to heart attack on 26.12.2011. The deceased Government servant was survived by his widow, son (applicant) and one married daughter. The mother of the applicant, about 51 years of age, was not in a position to undertake employment due to age and deteriorating health condition. The applicant, who possesses the necessary educational qualifications, could have been the only bread earner. It has been averred that the applicant submitted an application to the respondent for consideration of the applicant on compassionate grounds. The respondent No.2, on finding that the case of the applicant was genuine, asked the mother of the applicant to direct him to undertake the medical examination for group C post vide 13.01.2012. The applicant was found unfit in medical category Annexure-A/1 and below i.e. all categories by the CMS Ajmer vide letter dated 30.01.2012. The applicant

preferred an appeal against this finding on 13.02.2012 to the respondent No.4, and requested for his re-medical. The respondent No.4 was pleased to constitute a medical board consisting of Chairman and three Members of North Western Railway at Divisional Headquarters, Ajmer, as mentioned therein vide letter dated 01.05.2012 (Annexure-A/8). The applicant was duly examined and found fit for group C posts (sic group D) by the medical board. Subsequently, he was again examined by an Appellate Medical Board of Specialists who after examining gave the report that "**Recommendation- We, the members of the medical board, are of the opinion that Shri Nilesh Kumar Jyotiana, 31M, S/o late Shri Kishorilal, candidate on CGA for Group C is suffering from White Coat Hypertension which is likely to progress to sustained hypertension in the future with target organ damage. Hence we consider him unfit for appointment to any category of railway service.**" The applicant was not informed the result of the medical board and the applicant had to resort to obtain the same under RTI. The applicant was supplied with a copy of finding of Medical Board, and Medical Board of Specialists vide letter dated 13.02.2013. The appellate board has impliedly overruled the same and has held the applicant as "unfit" for appointment, in any category of Railway services. Therefore, the applicant has filed the present OA.

3. In reply, the respondents admitted that Medical Board of Specialists held that disease of white coat hypertension is not a serious one and applicant was declared fit for appointment in group C Post. However, as per Railway rules the candidate was declared unfit. As per Indian Railway Medical Manual 2000 para 511 the candidate, as well as serving Railway employee, must be in good mental and bodily health and free from any defect likely to interfere with the effective performance of the duties of his appointment. As such, "White Coat Hypertension" always had increased risk of vital organ damage. Therefore, the stand taken by the Railways is correct.

4. On 11.05.2016, this Tribunal observed that OA was pending since 2013 and none was present on the side of respondents on the said date as well as on last 4 hearings i.e. on 05.05.2016, 04.05.2016, 01.09.2015 and 23.07.2015. Therefore, Tribunal heard the matter in absence of Ld. counsel for respondents and by a detailed order following interim direction was issued:

“I find that the decision of the Appellate Railway Medical Board is based on assumption that patient of While Coat Hypertension, is also associated with an increased risk of target organ damage. Before accepting this finding, such a view needs to be borne out by an undisputed Specialist authority on the subject, since this would effect the livelihood of not just an individual (the applicant) but also his entire family who are dependent on him and waiting for some economic relief for the last so many years. To be able to decide the

case in a fair and just manner, I direct the respondents to get an expert opinion from **All India Institute of Medical Sciences, Delhi**. The respondents are directed to nominate a nodal officer for this purpose, who will send the detailed communication to AIIMS and seek urgent advice / opinion from them. The urgency of the matter may kindly be stressed upon through a self speaking request to the Director, AIIMS, New Delhi or HoD of the concerned department. This process should be completed in the next two months (including medical examination of the applicant, if so needed at AIIMS). The Tribunal should be informed the name of the Nodal Officer, who will send a progress report to the Tribunal in 30 days time. In case of any laxity noticed, the issue will be brought to the notice of the Railway Board for necessary action. ”

5. Today, during course of the hearing, Mr R.K. Soni, Ld. counsel for respondents filed report dated 06.07.2016 of the Medical Board constituted at AIIMS for medical examination of the applicant. The Board of five doctors of AIIMS, New Delhi after a detailed medical examination by a team of experts, have opined that:

“Based on history, physical examination and investigation, Medical Board is of the opinion that the applicant has evidence of mild diastolic hypertension. There is no evidence of target organ damage as per the tests done. In view of these findings, the applicant may be considered fit for employment.”

This report is duly signed by the 5 member committee constituted to study the case of the applicant.

6. In view of the conclusive report of Medical Board of AIIMS, New Delhi impugned order dated 13.02.2013 (Annex. A/1) is quashed. The OA is disposed of with a direction to the

respondents to consider the applicant fit for appointment for Group "C" posts as per the clear cut finding of the specialized and expert opinion of Medical Board of AIIMS, New Delhi. His case for appointment on compassionate grounds already delayed for no fault of his, may be decided urgently, but not later than 02 months from the date of this order.

7. In terms of above direction, OA is disposed of with no order as to costs.


[Praveen Mahajan]
Administrative Member

Ss/-

PC
7/10/16