

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

OA No.451/2013

Jodhpur, this the 25th day of April, 2014

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial)
Hon'ble Ms Meenakshi Hooja, Member (Administrative)

Vijay Hatwal s/o Late Shri Navratan, aged 24 years, r/o Near Chuna Bhatta, Ward No.10, Near Chokhuti Phatak, Bikaner (Raj.)

.....Applicant

By Advocate: Mr. Rajeshwar Vishnoi

Versus

1. Union of India through the General Manager, Northern Western Railway, Jaipur
2. The Senior Divisional Personnel Officer, Northern Western Railway, Bikaner.
3. The Divisional Railway Manager (Personnel), Northern Western Railway, Bikaner.
4. Chief Medical Director, Central Hospital, Northern Western Railway, Jaipur.

.....Respondents

By Advocate :Mr. Vinay Jain

O R D E R (ORAL)

Per Justice K.C.Joshi, M(J)

The present OA has been filed by the applicant against denial of appointment on compassionate grounds vide order dated 3.9.2012 (Ann.A/1) and the applicant has prayed that the respondents may be directed to give compassionate appointment to him on the post of Sweeper w.e.f. the date he applied for compassionate appointment in

the light of medical examination certificates Ann.A/11 and A/12. In the alternative, it has been prayed that the respondents may be directed to constitute a Medical Board to determine the suitability of the applicant for the light job i.e. Sweeper.

2. Brief facts of the case, as stated by the applicant, are that applicant's father was working as Sweeper in respondent department and he died on 21.9.2010 while in service. After his death, the applicant applied for appointment on compassionate grounds and since wrong date of birth has been mentioned in the form, therefore, candidature of the applicant was not considered. Thereafter the applicant approached the respondents and the request of the applicant was accepted and he was called for working as trainee. Subsequently, medical test was conducted but the applicant was declared unfit, therefore, the applicant approached the respondent-department and also filed representation dated 12.11.2011 to consider him for appointment on compassionate grounds. He also filed appeal before the respondents but his appeal was also dismissed by the respondents. It is submitted by the applicant that recently he has got medically checked up from Kothari Medical and Research Institute wherein he was declared fit for light job. According to the applicant, though he was operated in childhood for bypass surgery but now he is young and doing labour job but he is being deprived of the appointment on compassionate grounds, which is illegal and against the services rules and settled law. Therefore, he has filed this OA.

3. The respondents by way of filing reply to the OA submitted that the medical certificate placed by the applicant was duly considered by the authority, as is evident from letter dated 17.12.2012. It has been further submitted that at the time of appointment, a candidate has to be free from any defects likely to interfere with the effective performance of the duty of his appointment and should not be suffering from constitutional disorder commonly deemed progressive or likely to have complications increasing morbidity or mortality. As per the report, submitted by CMS/Bikaner, the applicant has been operated for open heart surgery with replacement of mitral valve. He is on continuous anti coagulant treatment and can perform only limited physical exertion. Even the certificate submitted by the applicant and issued by Cardiologist of Kothari Medical and Research Institute, Bikaner stated that candidate is having PHV and also mild MR and AR. It has also been submitted that as the applicant is not medically fit for any of the job in Railways as he had been declared medically unfit for all the categories and since the applicant's candidature was considered but he was declared medically unfit, therefore, his case was rejected.

4. Heard both the parties. Counsel for the applicant contended that after the rejection order dated 17.12.2012 (Annex R/1), the applicant has undergone treatment in Govt. PBM Hospital, Bikaner and a certificate dated 5.2.2013 was issued by Haldi Ram Moolchand, Govt. Centre of Cardiovascular Science & Research, PBM, Bikaner as Annex. A/12. As per the certificate issued by the medical expert, the

applicant can do his job and therefore, counsel for the applicant contended that declaration of the applicant unfit by the medical authority as well as the higher/appellate authority is not correct and the respondent-department should reconsider the case of the applicant in the light of the certificate A/12 and the treatment which he has undergone after 17.12.2012.

5. Per contra, counsel for the respondents contended that the medical authority as well as the higher authority examined the applicant and found that the applicant is unfit for appointment, therefore, he is not entitled to get any relief.

6. After considering rival contentions of both the parties and pondering over the documents submitted by both the parties, we propose to dispose of this OA with certain directions.

The applicant is directed to file a detailed representation alongwith certificate dated 5.2.2013 (Annex. A/12) to the competent authority in the respondent-department within a month from the date of receipt of a copy of this order and the competent authority of the respondent-department shall sympathetically consider the representation of the applicant in the light of averments made in the OA as well as earlier representation filed by the applicant, because he is the only person whom his mother is dependent. For the purpose of reconsideration, if required, the respondent-department may

send the applicant for medical re-examination and shall consider the representation of the applicant in the light of relevant rules and decide the same within three months from the date of receipt of the representation. The OA stands disposed of accordingly with no order as to costs.

Meenakshi Hooja
(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER

K.C.Joshi
(JUSTICE K.C.JOSHI)
JUDICIAL MEMBER

R/SS

Copy Recd.
Rajiv
2/5/14
(for Vinay Jain)
Adv.

Copy received
for Rajeshwar Vichauji
Shankaradev
5/5/14