

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

**OA. No. 060/00953/2014
(Reserved on 04.12.2014)**

Chandigarh, this the 15th day of December, 2014

**CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER(A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER(J)**

1. Suresh Kumar son of Sh. Dharambir, Village Alampur, P.O. Thilor, Tehsil Tosham, District Bhiwani, Haryana.
2. Vikas, son of Sh. Ram Kishan VPO-Banganwala, Tehsil Tosham, Distt. Bhiwani, Haryana.

...Applicants

Versus

1. Union of India, Ministry of Railways through its Secretary to Government of India, New Delhi.
2. Railway Recruitment Board, Railway Station Road, Gorakhpur-273012 (U.P.) through its Chairman.
3. Railway Protection Force/North Eastern Railway Office of the IG-cum-Chief Security Commissioner, RPF, N.E. Railway Gorakhpur (U.P.)
4. Chief Health Director, Northern Railway, Baroda House, New Delhi.
5. The C.M.S/UMD Sr. Divisional Security Commissioner/R.P.F. Northern Railway, Ambala Cantt.

As — Respondents

Present: Sh. Mohit Nehra, counsel for the applicant.
Sh. Lakhinder Bir Singh, counsel for the respdts.

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

- "i) To quash the impugned action vide which the respondent No. 5 illegally declared the petitioner unfit by examining him from Dr. Suresh (Orthopedic) and till date they have not taken review medical test of the applicants despite direction of the respondent No. 4.
- ii) The application of the applicants be accepted and the direction be given to the respondents for review medical examination of the applicants as early as possible or the time prescribed by this Tribunal, in the interest of justice."

2. Averment has been made in the OA that the applicants filed for the post of Constable in Railway Protection Force(RPF) in response to Employment Notice No. 01/2011 . The applicants qualified the written test held on 20.10.2013, PET held on 10.3.2014 and viva voce held on 27.06.2014. On 24.6.2014, the applicants received medical Memo from the office of R.P.F. Recruitment Committee No. 6, Northern Railway, Ambala for medical examination at Divisional Hospital, Ambala/N.R. On

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01.07.2014, the applicants were declared medically unfit by Doctor of the respondent authorities who orally said that there is less vision in the right eye of applicant No. 2 without issuing anything in writing. Same procedure has been followed in the case of the applicant No.1.

3. Averment has been made in the OA that dissatisfied with the opinion of Doctor, the applicants got themselves examined from renowned institutes/Hospitals on 07.07.2014 and 15.9.2014. As per the report of these examinations, the applicants were found physically fit for selection as per recruitment guidelines. Hence, the applicants filed an appeal dated 18.7.2014 against the impugned oral order of Doctor who was not even an eye specialist. However, vide letter dated 23.7.2014, applicants received communication from Divisional Security Commissioner, R.P.F. Northern Railway, Ambala Cantt to the effect that the appeals dated 18.7.2014 of the applicants were not considered by the Chief Medical Officer, Ambala. Alongwith this communication, the respondents also sent letter dated 21.7.2014 mentioning therein that the applicants had been declared medically unfit. Aggrieved

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by the impugned action of the Chief Medical Officer, Ambala, the applicants approached Chief Health Director, Baroda House, New Delhi on 31.7.2014 in person. The CHD, Baroda House, accepted their appeal and directed the CMO, Ambala to conduct the re-medical examination of the applicants.

4. In the grounds for relief, it has been stated that the Doctor who examined the applicants was an Orthopedic Specialist and not an Eye Specialist. Even in the impugned communication dated 23.7.2014 (with second page dated 21.7.2014), nothing was mentioned about any shortfall in the eyes of the applicants and upto which extent. Hence, the impugned action of the respondents is totally non-speaking, illegal, unconstitutional and violative of principles of natural justice. Aggrieved by the impugned action of the Orthopedic doctor, the applicants got themselves examined from the private renowned Institutes/Hospitals at Hissar and Bhiwani, with the name and style of Manglam Imaging Pvt. Ltd. And Gupta Eye and Dental Hospital and both the applicants have been declared fit. Hence, the action of the respondent is illegal, arbitrary and liable to be set aside.

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5. In the written statement filed on behalf of the respondents, it has been stated that in accordance with the Railway Board Circular (Annexure R-1) dated 5.6.2014, the applicant Sh. Suresh Kumar, who was medically examined by the Sr. Divisional Medical Officer, Northern Railway Hospital, Ambala Cantt. was not found medically fit for appointment in medical category Bee-One as constable in RPF due to mild Tricuspid regurgitation and mild Mitral regurgitation. He put up his findings to the Chief Medical Superintendent, Divisional Railway Hospital, Ambala who constituted a committee of three doctors consisting of Dr. Pitamber Prasad ACMS/Ambala an Eye Specialist, Dr. Ateek Ahmed, Sr. DMO (Physician)/Ambala the medical officer who initially examined the candidates and Dr. Bharat Lal, ACMS/Ambala a senior medical officer specially nominated by the C.M.S. to examine the candidates. The detailed findings of the Medical Committee were put up to the Chief Medical Superintendent, Ambala who accepted their findings vide Annexure R-2A. The same was conveyed by the Senior

Divisional Security Commissioner, Ambala vide Annexures A-4 & A-5 dated 23.7.2014 to the applicant that the medical unfitness is not appealable. Similarly Sh. Vikas who was examined by Sr. Divisional Medical Officer, Northern Railway Hospital, Ambala Cantt, was not found medically fit for appointment in medical category Bee-one as constable in Railway Protection Force due to sub-standard visual acuity. He put up his findings to the Chief Medical Superintendent, Divisional Railway Hospital, Ambala who constituted a committee of three doctors consisting of Dr. Pitamber Prasad ACMS/Ambala an Eye Specialist, Dr. Rakesh Kumar, Sr. DMO/Ambala the medical officer who initially examined the candidates and Dr. Bharat Lal ACMS/Ambala a senior medical officer specially nominated by the C.M.S. to examine the candidate. The detailed findings of the medical committee were put up to the Chief Medical Superintendent, Ambala, who accepted their findings vide Annexure R-2 B. The same was conveyed by the Senior Divisional Security Commissioner, Ambala vide

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Annexures A-4 & A-5 dated 23.7.2014 to the applicant that the medical unfitness is not appealable.

6. It is further stated that the applicants have no legal right to challenge Annexures A-4 & A-5 dated 23.7.2014 nor their appeal dated 18.7.2014 was maintainable before the Chief Medical Director, Northern Railway in view of para VII of the Railway Board circular Annexure R-1 dated 5.6.2014 which reads as under:-

“VII. Once a decision has been taken at the level of the Division/Production Unit in Charge and the candidate has been declared fit/unfit by three member committee, no further appeal shall lie with any higher authority including the Railway Board.”

It is apparent that the direction (Annexure A-7) on the appeal of the applicants by the Chief Medical Director for re-medical examination is contrary to Annexure R-1 as no appeal was maintainable. Even if a representation/appeal is preferred, it shall be dealt with only on the basis of records and findings of the committee without a re-examination.

7. No rejoinder has been filed on behalf of the applicants.

8. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicants reiterated the content of the OA and stated that although the re-medical examination had been ordered by the Chief Health Director,

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Baroda House, the CMO Ambala was not conducting the re-medical examination of the applicants. It is also stated that the impugned order dated 21.7.2014 (Annexure A-4) was quite unclear as to why the applicants had been declared medically unfit in Category Bee-one.

9. Learned counsel for the respondents stated that the Chief Medical Health Director had no powers to issue directions for a re-medical examination as this action was not in accordance with the Railway Board Circular (Annexure R-1) dated 5.6.2014 and hence, re-medical examination had not been held by the CMO Ambala.

10. We have given our thoughtful consideration to the matter. The respondents are relying on a recently issued Circular dated 5.6.2014 (Annexure R-1) to assert that re-medical examination cannot be held in the case of applicants who have been declared unfit after their appeal regarding medical examination had been considered and decided. While the applicants have taken the plea in the OA that they were examined regarding visual acuity by a person who was not an Eye Specialist, but an Ortho Specialist, the written statement and the copies of the medical examination reports filed as Annexure R-2A make it clear

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that the applicants have been examined by a Committee of three doctors that included an Eye Specialist and a Physician. In respect of the candidate Sh. Suresh Kumar, while his vision appeared to be satisfactory, but the observation is "Short systolic murmur present at pulmonary area with split P2". Regarding candidate Sh. Vikas, his distant vision (without glasses) was right eye - 6/9 and left eye - 6/24. Hence, both these persons were considered unfit in the Bee-One category

11. In view of the above position and the fact that the decision of the three-member Committee is not appealable as per the Railway Board Circular dated 5.6.2014, re-medical examination cannot be ordered. The OA being without merit, is rejected. No costs.

(RAJWANT SANDHU)
MEMBER(A)

(DR. BRAHM A.AGRAWAL)
MEMBER(J)

Dated: December/5, 2014.
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