

(Q)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00816/2014

Date of Decision : 21.12.2014

Reserved on: 20.11.2014

**CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER
HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER**

1. Gaurav Kumar, aged about 28 years, S/o Sh. Anand Swaroop, r/o Gujratiyan, Near Lallu Bhagat Ji, Town, Dhampur, District Bijnor, U.P.
2. Maneesh Kumar Yadav, aged about 32 years S/o Sh. Sita Ram Yadav, r/o Khojanpur, P. O. Rikabganj, District Faizabad, U. P.
3. Shankar Kumar, aged about 27 years, S/o Sh. Vishwnath Parshad Gupta, r/o At New Chowk Kursela, P.O.A.G. Bazar; District Katihar, Bihar.
4. Atam Parkash Sharma, aged about 32 years, S/o Sh. Harish Chandra Sharma, R/o C/o Rajesh Kumar, Moh Kanhai Purw, near Agriculture Farm Hardoi, District Hardoi, U.P.
5. Ritesh Patel, aged about 23 years, S/o Shiv Shankar Verma, r/o Village Baraha, P. O. Rambaba, District Ambedkar Nagar, U. P.

Applicants

Versus

1. Union of India, through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Senior Divisional Personnel Officer, Northern Railway, Divisional Office, Ambala Cantt.
3. Chief Medical Superintendent, Northern Railway, Ambala Cantt.

Respondents

Present: Mr. Balwinder Singh, counsel for the applicants
Mr. Lakhinder Bir Singh, counsel for the respondents

AS

9

ORDER

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

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

"8 (1) Quash the orders dated 13.12.2013 convey on 18.02.2014 qua applicant no.1 (Annexure A-1), vide which the applicant has been declared as medical unfit on examination as well as on re-examination by the same Medical Authorities who had declared them as unfit earlier and despite the fact that prestigious medical institutes / Doctors have declared the applicants as fit for appointment and in such a situation the only viable option was to refer the case for medical examination to a neutral party like AIIMS or PGIMER as one cannot expect the Railways Doctors' to change their opinion.

(2) Issue direction to the respondents to get the applicants medically examined from a neutral Medical Board of PGIMER or AIIMS etc or by a 3 Doctors medical Board, and if found medical fit to the prescribed level, offer them appointment to their respective posts from due dates, with all the consequential benefits."

2. Averment has been made in the OA that the applicants applied for the post of Assistant Loco Pilot in the pay scale of Rs.5200-20200+1900 Grade Pay in response to advertisement issued by the Railway Recruitment Board, Chandigarh (Annexure A-2). The applicants were informed by the Divisional Railway Office, Ambala Cantt. vide letters dated 23.05.2013, 24.05.2013 and 28.05.2013 addressed to each applicant respectively that his name had been kept in the provisional panel and before appointment the applicant was required to pass Category A- One Medical Examination (Annexure A-4 Colly.) . Vide letter dated

14 -

16.07.2013, addressed to each of the applicants, they were informed that they had been declared medically unfit for the post of Assistant Loco Pilot in medical classification Aye-1 due to Sub Standard Visual Acuity and in terms of Para 522 (1)(i) of IRMM, they were given a chance to appeal against the possibility of error of judgment in the decision of the examining medical authority (Annexure A-5 Colly.).

3. The applicants got themselves examined by other Government as well as Private Doctors and they were certified to be fit for the post of Assistant Loco Pilot in medical classification Aye-1. Copies of medical certificate of some of the applicants are marked as (Annexure A-6 Colly.). The applicants preferred appeal against the order of unfitness passed by the Doctor and sought re-medical examination. The applicants were referred for re-medical examination. However, the re-medical examination was conducted by the same doctor and the applicants were declared fit for appointment (Annexure A-1) qua applicant no.1. Hence this OA.

4. In the grounds for relief it has, inter-alia, been stated as follows:-

- i) The issue stands settled by the Allahabad Bench of this Tribunal in O.A. No.644 of 2005 titled "Abdul Rasheed Vs. UOI ect.", decided vide Judgment dated 09.02.2007, wherein the respondents were directed for re-medical of the applicant therein by the Board of three Doctors. In pursuance of the

M _____

direction of the Tribunal, the Medical Board was constituted by the respondents and by the Medical Board, the applicant was declared fit in the medical test. In view thereof, the claim of applicants in this case also merits acceptance.

- ii) The Railway Doctor has already taken an opinion and he is not likely to change the same. Thus, it would be in the interest of justice to direct the respondents to constitute a three Doctors Panel or get the medical done from an independent and impartial authority like PGIMER or AIIMS.
- iii) The fact remains that the applicants got themselves re-examined from Private Prestigious Hospitals / Doctors who have certified that they are eligible for appointment and, therefore, the Railways have no authority whatsoever to reject the applicants by re-examination.
- iv) The Hon'ble Punjab and Haryana High Court constituted a medical board in CWP No. 16594 of 2009 for re-medical.

5. In the short reply filed on behalf of the respondents it has been stated that the applicant candidates were selected by the Railway Recruitment Board, Chandigarh for the post of Assistant Loco Pilot (Medical Category A-1). They were medically examined by the Additional Chief Medical Superintendent, Ambala & Kalka, but were found unfit (Sub Standard) in Medical Category A-1 due to Sub Standard Visual Acuity. This was conveyed to them vide Annexure A-5 Colly. dated 16.7.2013. They were given an opportunity to Appeal within a month against the decision of the Examining Medical Authority under Para 522 (1) (i) & (ii) of the Indian Railway Medical Manual Annexure R-1. The Standard of Acuity of Vision for candidates for initial Railway Recruitment provided in Para 512 of the Railway Medical Manual, 2000, Annexure R-1 reads:

As —

(R)

“512. Vision Tests:-

(1) Acuity of vision:- The following are the tables of standards of visual acuity requirements:-

(A) Standards at examination on appointment:

Class	Distant vision	Near vision
A-1	6/6, 6/6 with or without glasses with fogging test (must not accept +2D)	Sn. 0.6, 0.6 without glasses

6. In Re-examination on Appeal, none of the applicants were found to satisfy the above Standard of 6/6 without glasses in both eyes for Medical Category A-1 prescribed for the post of Assistant Loco Pilot, which is a Safety Category and requires stringent medical examination. The appeals of the applicants were considered by the Appellate Authority, i.e. Chief Medical Superintendent, Northern Railway, Ambala and rejections were communicated to the applicants vide Annexure A-1 Colly. Decision on the appeal is final under the Rules and there was no further right of appeal under the rules for the candidates for Railway posts. There is no provision for a Medical Examination by a Non Railway Medical Authority like the AIIMS or PGIMER. It is further stated that the Certificates Annexure A-6 from different private and other unrecognized Clinics in P.P. and Bihar being in conflict with the actual findings of the Appellate Authority on re-examination, cannot be considered. *1s —*

7. In the rejoinder filed on behalf of the applicants, again copies of medical certificates issued by different health institutions have been attached to show that the applicants have perfect Vision and are fit as per Medical Category Aye-1.

8. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicant pressed that in view of the various certificates that had been obtained by the applicants to show that their vision was normal while the Railway Authorities had rejected them in the medical test, directions be issued to have medical examination conducted by an independent Agency. Learned counsel also cited the following judgments in support of his request for medical examination by independent Agency:-

- i) In CWP No.23294 of 2011, titled "Balwinder Singh Vs. UOI & Ors.", decided on 31.05.2013, 2014(2) RSJ 143.
- ii) in OA No.718 of 2008 titled "Abdul Rasheed Vs. UOI & Ors.", decided on 22.02.2011.
- iii) in CWP No.16594 of 2009, titled "Anil Kumar Vs. UOI & Ors.", decided on 10.09.2010.
- iv) in WP No.68 of 2011, titled "UOI & Ors. Vs. Rajendra Singh Kushwah", decided on 10.02.2012.

9. Learned counsel for the respondents stated that there was no provision in the IRMM for medical examination to be conducted by a Private Agency. In case a candidate failed the medical test at the initial stage there was provision for filing appeal for re-medical examination and this had been held in the case of the applicants but again they had been

Ans _____

(14)

found to be unfit. Learned counsel also asserted that the claim of the applicants that the some doctors had conducted the medical examination at the 1st stage and at the time of re-medical examination was incorrect. He stated that different Railway Staff had conducted the medical examination at the two stages.

10. We have given our thoughtful consideration to the matter and perused carefully the judgments cited by the learned counsel for the applicants. It is seen that none of these judgments fit the present case and the circumstances therein are quite different. As per IRMM, there is no provision for medical examination to be conducted by an Independent Agency while there is of course provision regarding appeal and re-medical examination in case of candidates found unfit in the 1st medical examination. The applicants have availed of remedy, re-medical examination has been held and they have been found unfit. The RRB deals with a large number of candidates for selection in the various examinations conducted by it and the prescribed procedures for selection / medical examination have to be followed. The IRMM Rules are tried and tested and there is no good reason to go beyond these as doing so would upset the whole system of selection. Moreover, the applicants were candidates for the post of Assistant Loco Pilot which is a Safety Category. There can be no compromise with "Safety" and if two stages medical

14 _____

(B)

examination shows that the applicants do not meet the Standard of 6/6 Vision in both eyes of Medical Category Aye-1, their claim for appointment cannot be entertained. OA is rejected. No costs.

**(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER.**

**(DR. BRAHM A. AGRAWAL)
JUDICIAL MEMBER**

Place: Chandigarh
Dated: 2.12.2014

SV: