

Central Administrative Tribunal
Principal Bench: New Delhi

RA No. 99/2015
In
OA No. 171/2012

Order reserved on: 30.05.2006
Order pronounced on: 12.07.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B. K. Sinha, Member (A)

Nishant Ranjan
S/o Sh. Nanhak Singh
R/o H.No.2H/52, Near T.V. Tower,
Bahadurpur Housing Colony,
Patna (Bihar). ...Review Applicant
(By Advocate: Mr. Avadh Kaushik)

Versus

1. Government of India
Ministry of Railway,
Railway Board through
Secretary, Rail Bhawan,
New Delhi – 1.
2. Union Public Service Commission
Through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi – 110 069. ...Respondents

(By Advocates: Mr. Amit Kumar for R-1
Mr. Ravinder Aggarwal & Mr. Amit Yadav for R-2.

O R D E R

By Hon'ble Dr. B.K. Sinha, Member (A):

The instant Review Application is here before us in terms of the directives of the Hon'ble High Court in WP(C) No.8271/2014, which was disposed of vide order dated 28.11.2014 in the following terms:-

“Having regard to the submissions made, and considering that the petitioner’s candidature was rejected on the ground that he suffers from “flat-foot” – an impermissible medical disqualification according to the Railways, the Court is of the opinion that the petitioner should approach the CAT with the relevant rules. The CAT shall consider the issues before it in the light of this submission and

render its order after duly granting opportunity of hearing to the parties. All rights of the petitioner – in the case of an adverse order, to challenge the same, including upon the grounds urged in support of the present petition are expressly reserved. Petition stands disposed of.” [Emphasis added].

2. The applicant had approached this Tribunal in OA No.171/2012 with the grievance that he was declared unfit for all services by the medical board and the medical appellate board on account of bilateral flat foot in violation of the Regulations attached to the Engineering Services Examination Rules, 2010 [hereinafter referred to as ESE Rules, 2010]. The Tribunal on due consideration of the facts declined to interfere with the action of the respondents vide order dated 01.05.2014 finding the same to be valid. Aggrieved, the applicant approached the Hon'ble High Court of Delhi contending that the Rules, as placed by the Railways and relied upon by the Tribunal apply to non-gazetted posts. The Rules *ibid* are contained in Chapter-V (Medical Examination) while the applicable Rules for gazetted posts are Rules 501-508 [Annexure A-3 of the RA].

3. In this regard, what the applicant contends is that it does not act as a bar to joining Indian Engineering Service either. Moreover, the medical report of the Railway Board has merely stated that the applicant is suffering with bilateral flat foot but has not rejected his claim on the ground that the performance of the applicant would be hampered by the condition of bilateral flat foot.

4. The sole issue to be decided is as to whether Section-A of Chapter-V of Indian Railway Manual i.e. Rules 501-508, which apply to the Medical Examination of candidates for Gazetted Railway Service, does not act as a bar for the candidates suffering with bilateral flat foot to joining the Indian Engineering Service.

5. Since we have already noted the arguments of both the parties in our order dated 01.05.2014 passed in OA No.171/2012, the same need not be repeated as they would simply add to the bulk of the order.

6. The respondents have submitted that the aforesaid general instructions provide that a candidate must be in good mental and bodily health and free from any physical defect which may likely to interfere with the efficient performance of his duties of appointment (Rule 502). The respondents further relies upon condition no.6 (h) which provides that limbs, hands and feet should be well formed and developed and that there is free and perfect motion of all joints. It was the argument of the respondents that the Engineering Service involves field duties and both these conditions do not get fulfilled in case of persons suffering with bilateral flat foot.

7. The respondent no.2 i.e. UPSC has filed a counter affidavit to the review application washing its hands of the entire matter by stating that it is only a recommendary body and the applicant was clearly declared medically unfit on grounds of bilateral foot by the medical board and thereafter by appellate

medical board. These findings were subject to challenge in OA No.171/2012. It further finds mention in the affidavit that the applicant had not applied as PH candidate but as OBC candidate. Therefore, the status of the applicant as a PH candidate could not be considered.

8. The scope of our enquiry is in narrow focus. The Tribunal had declined to interfere in this case principally on two grounds i.e. on the ground of Condition no.6 (h) which provides that limbs and feet of the candidate should be well formed and developed and there is free and perfect motion of the joints. The other condition as contained in Rule 511 (9) (b) (iii) which lists flat foot or knock knees, sedentary occupations as a disability. The Tribunal in its order under review had arrived at the conclusion that the medical board was to be guided primarily by the consideration to secure continuous effective service and to ensure that the recruitment does not impose any life time disease burden resulting in lower efficiency of the organization. As such, the adage time honoured principle of 'greatest good of the greatest' particularly in context of organization involving public services like railway must prevail. However, we find in the instant case that there is a difference in the requirements for workmen and executives. For workmen, it is to be noticed that the standards are far more rigid as compared to the executive. Rule 511 (9) provides infective conditions and other disorders for

workmen implying that presence of any of the conditions would have the effect of invalidating the candidature of the applicant. For the sake of clarity, we extract Rule 511 (9) as under:-

“(9). Infective conditions and other disorders:

Candidates: Candidates exhibiting the under noted conditions will be rejected irrespective of the employment sought:

(a) Contagious and infective disorders: provided that the condition of the candidate having ceased to be contagious or infectious, the sequelae arising from such disorder will not be regarded as disqualifying, unless they are in themselves likely to interfere immediately or later with the efficient performance of the duties of their appointment. The following conditions fall inter alia under the above category:-

- (i) Pulmonary tuberculosis.*
- (ii) Venereal infection.*
- (iii) Trachoma and other infectious ocular diseases.*
- (iv) Leprosy.*

(b) Conditions commonly predisposing to invalidity or seriously enhancing the candidate's liability to occupational risks, eg:-

- (i) Hernia, and well marked hydrocoele, various veins or piles; provided that such conditions having been satisfactorily treated by operation, the evidence of their previous existence shall not disqualify;*
- (ii) Un-descended tests, intra-abdominal in position, and un-associated with an inguinal hernia, should not be a cause for rejection. Ectopic tests, located in the inguinal canal, abdominal wall or high, being more liable for trauma/torsion, should be passed fit only after the xaminee has undergone surgical treatment;*
- (iii) Flat foot, or knock knees, except in sedentary occupations;*
- (iv) Epilepsy;*
- (v) Asthma;*
- (vi) Otorrhea.*

(c) *Conditions rendering the association of the candidates with other objectionable, e.g:-*

- (i) *Repulsive inveterate skin diseases.*
- (ii) *Ozoena*
- (iii) *Foetor associated or otherwise with pyorrhea alveolaris.*

(d) *Constitutional disorders commonly deemed progressive and chronic disorders liable of recurrent exacerbation of a disabling kind.*

Employees: In the case of serving employees, if there is reason to believe that any such defect can be remedied early by treatment or operation, the Railway employee should be advised to undergo necessary treatment or operation, prior to final decision.”

9. To the contrary, we find that in the case of executives, list of such infective conditions have not been given. The only two points that could go against the applicant are that contained in Rule 502 (6) (h) & (j) which provide as under:-

“(h) his/her limbs, hands and feet are well formed and developed and that there is free and perfect motion of all joints.

(j) That there is no congenital malformation or defects.”

Rule 504 further provides as under:-

“Relaxation of condition:- It shall be open to Government to relax any of the conditions in favour of any candidate for special reasons.”

10. In other words, it is clear that different medical standards have been provided for the workmen and the executives. The idea being that while workmen are required to put in hard physical labour, the input of executives is more in the form of ideas and supervisory skills. Therefore, we are of the opinion that an error in judgment has arisen because of failure on part of the applicant to produce the

correct rules and part submission of the rules by the respondents. However, that having been recognized and the correct rules being considered, we are of the opinion that in review, it transpires that flat foot is not acting as much of a disability. Of course, the first part i.e. Rule 502(6)(h) relates to limbs, hands and feet should be well formed and there should be free and perfect motion of joints but this defect has not been listed as any of the infective conditions and further that it could be condoned by the Government.

11. In view of our above discussion, we allow the instant Revision Application which has the effect of reviewing our order dated 01.05.2014 passed in OA No.171/2012 which has also been heard during the course of hearing in the review application. In fact, the effect of the High Court's order dated 28.11.2014 was also to review our order passed in the OA. As such, we pass the order in the following manner:-

- (i) *The impugned Railway Board's orders dated 11.08.2011 and 14.09.2011 are quashed and set aside;*
- (ii) *The respondents, in view of the observations contained within the order, are, therefore, directed to consider the applicant for*

appointment to the post in Indian Engineering Services as per his position in the merit list;

(iii) There shall be no order as to costs.

(Dr. B.K. Sinha)

Member (A)

(V. Ajay Kumar)

Member (J)

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