

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.383 OF 2016

New Delhi, this the 19th day of January, 2018

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

AND

HON'BLE MS. PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER

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Somvir,
aged about 25 years,
s/o Sh.Abhay Singh,
R/o Village Mumtazpur,
Rewari
(By Advocate: Mr.P.S.Khare)

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Applicant

Vs.

1. Union of India, through the General Manager,
Northern Railway,
Baroda House,
New Delhi 110001
2. The Chairman (Dy.C.P.O.),
Railway Recruitment Cell,
Lajpat Nagar, New Delhi.
3. The Chief Medical Director,
Northern Railway,
Baroda House,
New Delhi
(By Advocate: Mr.Satpal Singh)

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Respondents

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

Brief facts of the case, which are not disputed by either side, are that in response to the Employment Notice No.220-E/Open Mkt./RRC/2013, dated 30.12.2013, issued by the Railway Recruitment Cell of Northern Railway, New Delhi, inviting applications from eligible candidates for selection and recruitment against 5679 posts in Pay Band-1 Rs.5300-20200 with Grade Pay of Rs.1800/-in different Divisions/Workshops/Units of the

Northern Railway, the applicant submitted his application as a Physically Handicapped (PH) candidate, along with all the requisite documents, including the Physical Disability Certificate issued in his favour by the prescribed Medical Board. As per Rules, 170 vacancies, i.e., 3% (1% OH, 1% HH, 1% VH) of total vacancies of 5679, were notified as reserved for PWD/PH. Having qualified the written examination conducted by the Railway Recruitment Cell on 23.11.2014, the applicant was called for verification of documents on 22.7.2015. After verification of his documents, the Railway Recruitment Cell sent the applicant for medical examination. His medical examination was conducted on 26.8.2015. On 30.10.2015 the applicant downloaded his final result from the website of the Railway Recruitment Cell wherefrom it came to his notice that he was found to be “Medically Unfit for all categories”, vide Annexure A/1.

2. It is stated by the applicant that an application dated 20.11.2015 was made by him requesting the authorities of the respondent-Railways to inform him of the reason for declaring him “Medically Unfit for all categories”. He also submitted appeals/representations on 3.11.2015 and 5.12.2015 requesting the authorities of the respondent-Railways for his re-medical examination. There being no response from the respondent-Railways, the present O.A. was filed by him on 28.1.2016 seeking the following reliefs:

“8.1 to allow the OA and quashed the impugned order dt.30.10.2015 (Ann.A-1) with all consequential benefits;

and further direct the respondents to conduct re-medical examination by the Medical Board and consequently release the appointment as per merit.

8.2 to pass any other or further order or direction which the Hon'ble Tribunal deem fit and proper in the interest of justice.”

3. In support of his case, it is contended by the applicant that as per the Railway Board's circular No.2014/H/5/8(Policy), dated 5.6.2014/Advance Correction Slip No.1/2014 to Paragraph 522(1) of the Indian Railways Medical Manual, 2000, the respondent-Railways ought to have immediately examined by a three-member standing medical team of the respondent-Railways even without an appeal being made by him for such medical re-examination. Even otherwise, when he made appeals/representations on 3.11.2015 and 5.12.2015 for his medical re-examination, the respondent-Railways ought to have got him medically re-examined and acted on the report of such medical re-examination. Thus, it is contended by the applicant that the respondent-Railways have acted arbitrarily and illegally in not getting his medical re-examination and in declaring him unfit for selection.

4. Resisting the O.A., the respondents have filed a counter reply. The respondents have asserted, *inter alia*, that the Railway Board's circular dated 5.6.2014 (ibid) has been superseded by the Railway Board's circular dated 31.12.2015. Therefore, in the absence of any appeal being made by the applicant for his medical re-examination by the three-member standing medical board within one month from the date of his medical examination,

the question of his medical re-examination did not arise. On medical examination, the applicant's physical disability having been found as less than 40%, he has rightly been declared as medically unfit for selection against PH quota. Therefore, there is no infirmity or illegality in the decision taken by them declaring the applicant as medically unfit for selection against PH quota, and the O.A. is liable to be dismissed.

5. We have carefully perused the records and have heard Mr.P.S.Khare, learned counsel appearing for the applicant, and Mr.Satpal Singh, learned counsel appearing for the respondents.

6. From the pleadings and the rival contentions of the parties, the only point that arises for consideration in this case is as to whether the provisions contained in the Railway Board's circular No.2014/H/5/8 (Policy) dated 5.6.2014 would apply to the applicant and the respondent-Railways were justified in declaring the applicant as medically unfit for selection against PH quota in any category of posts advertized under Employment Notice dated 30.12.2013(ibid).

7. Guidelines I, II and III mentioned in paragraph 3 of the circular dated 5.6.2014(ibid) read thus:

"I. Medical Examination – Medical examination of candidates will be done by a Medical officer with adequate experience in doing medical examination who will be specially nominated by the CMO/ CMS/ MD/ ACMS in charge for this purpose.

II. If a candidate has been found to be unfit on grounds of acuity of vision/ defective colour vision/

hypertension/diabetes or any other condition/ disease, the medical examiner will not issue any certificate and will put up his/her findings to the CMO/MD/CMS/ACMS in charge of the Unit/Division/Sub-division/ Production Unit.

- III. The candidate, without having to submit any appeal, will then be immediately examined by a three member standing medical Board consisting of 1) a specialist in the field; however if the specialist is not available within the Unit/Division/ Production Unit, a senior doctor would be nominated in place of a specialist 2) the medical officer who has conducted the first medical examination and 3) the third being a senior medical officer specially nominated by the CMO/ CMS/ MD/ ACMS in charge.”

The above guidelines make it clear that when the medical examiner found the applicant as unfit, the respondent-Railways ought to have immediately got the applicant examined by a three member standing medical Board consisting of (1) a specialist in the field, (2) the medical officer who had conducted the first medical examination, and (3) the third being a senior medical officer specially nominated by the CMO/ CMS/ MD/ ACMS in charge, and there was no requirement of any appeal being made by the applicant for his medical re-examination by the designated three-member standing medical board within one month from the date of his medical examination. In view of the fact that the applicant's medical examination was conducted by the medical examiner on 26.8.2015, we are of the considered view that the Railway Board's circular dated 31.12.2015 (copy of which has not been produced before us by the respondent-Railways) was not applicable to the case of the applicant. Therefore, Guideline III laid down in

paragraph 3 of the Railway Board's circular dated 5.6.2014 (ibid) was squarely applicable to the case of the applicant, and the respondent-Railways ought to have immediately got the applicant re-examined by a three-member standing medical team in accordance with the said Guideline III. The respondent-Railways not having done so, we have found considerable force in the contention of the applicant that the respondent-Railways have acted arbitrarily and illegally in acting upon the medical report dated 26.8.2015 and in declaring the applicant as medically unfit for all categories.

8. In the light of our above discussions, we quash Annexure A/1 and direct the respondents to conduct medical re-examination of the applicant in accordance with the provisions contained in the Railway Board's circular dated 5.6.2014 (ibid) and process the candidature of the applicant as per the terms and conditions of the Employment Notice(ibid).

9. It is pertinent to mention here that by interim order dated 19.2.2016, the Tribunal made it clear that any selection made by the respondents would be subject to the outcome of this O.A.

10. Resultantly, the O.A. is partly allowed to the extent indicated above. No costs.

(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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