

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1389/2016

Reserved on : 18.01.2018.

Pronounced on :09.02.2018.

Hon'ble Mr. Raj Vir Sharma, Member(J)
Hon'ble Ms.Praveen Mahajan, Member (A)

Mohit, Aged-22 years,
S/o Sh. Jai Bhagwan,
R/o Vill & PO Issapur,
Near Dada Budha Mandir,
New Delhi-110073.

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Applicant

(through Sh. Yogesh Sharma, Advocate)

Versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Assistant Personnel Officer,
Railway Recruitment Cell,
Lajpat Nagar-I, New Delhi.
3. The Chief Medical Director,
Northern Railway, Baroda House,
New Delhi.
4. The Medical Director,
Central Railway Hospital,
Near New Delhi Railway Hospital,
New Delhi.
5. The Chief Medical Supdt.,
N. Railway, Divisional Hospital,
Lucknow(UP).

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Respondents

(through Sh. Shailendra Tiwary, Advocate)

ORDER**Ms. Praveen Mahajan, Member (A)**

Briefly stated, facts of the case are, that the respondent No. 2 vide Employment Notice No. 220-E/Open MKT/RRC/2012 dated 30.08.2012 invited the applications for various Group-D posts including the posts for persons with disabilities (PWD). It is stated in the OA that there were 11 categories of posts and every candidate was required to choose 06 categories of posts and priorities were required to be mentioned in the application forms. From categories No. 5 to 11, some posts were reserved for handicapped persons. These were not the safety category posts and no technical education or qualification was required for these posts. Hence, for these posts, medical standard was also kept low i.e. B-1, C-1 and C-2.

2. The applicant states that he was suffering from a condition "PALATAL FISTULA", which was repaired on 20.06.2015. Medical fitness certificate stating that Palatal Fistula stands repaired from Sir Ganga Ram Hospital and Rao Tulla Ram Memorial Hospital, New Delhi have been placed on record at Annex. A-5.

3. Having fulfilled the eligibility criteria of the advertisement the applicant applied for the same in the prescribed form. He submitted his priority from the categories which included the posts of Khallasi helpers, and other posts, which required medical standard of B-1 &

C-1. He was called for the written exam on 27.10.2013 and the PET (Physical Efficiency Test) on 24.03.2014. After qualifying in both, the applicant was provisionally selected and called for verification/checking of original documents, on 21.05.2014. All his documents were found correct, and he was directed to appear for medical examination for medical category A-2 and below, in Northern Railway, Divisional Hospital, Lucknow. He submits that though he was found fit in all respects, but he was declared failed in A-two & below categories by stating that the applicant is having problem of 'PALATAL FISTULA'.

4. After obtaining the fitness certificate of two hospitals, the applicant represented to the competent authority. Thereupon, the respondent No.3 constituted a Medical Board at Northern Railway, Central Hospital, Delhi on 14.01.2016, which, according to the applicant, found him fit in all respects. However, vide impugned order dated 22.03.2016, the Chief Medical Director, again declared the applicant failed in Aye-two & Below category, by stating that the candidate has Palatal Fistula.

5. The applicant has relied on the following judgments of Central Administrative Tribunal and Hon'ble A.P. High Court in his favour:-

- (i) Order of the Tribunal in OA-1957/2013 (**Ajay Kumar Vs. UOI & Ors.**) dated 31.03.2014.

(ii) Order of the Tribunal in OA-1503/1998 (**Vijay Kumar Vs. UOI & Ors.**) dated 28.06.1999.

(iii) Order of the Tribunal in TA-454/2009 (**Kamal Kumar Vs. Govt. of NCT of Delhi**) decided on 16.07.2009.

(iv) Order of the Tribunal in the case of **A. Sanker Reddy Vs. Chief Medical Officer**, 1989(5)SLR 612.

(v) Hon'ble A.P. High Court, in the case of **Smt. K. Indira Vs. SBI, Hyderabad**, 1983(2)SLR 376.

6. In view of a plethora of judgments being in his favour, the applicant has sought the following relief:-

“(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 22.3.2016 (A/1) declaring to the effect that the same is illegal and arbitrary and consequently pass an order directing the respondent to arrange to have applicant examined by duly consequently medical board in RML Hospital, New Delhi or Safdarganj Hospital or AIIMS or any other Govt. Hospital with specific reference to whether now the applicant is suffering from 'palater fistula' and repaired 'palater fistula' of the applicant is such as to interfere with the efficient discharge of his duties of Khallasi helper and consider the case of the applicant for his appointment in Railway as per fresh medical report with all the consequential benefits.

(ii) That in case of not granting the above prayed relief(i) the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to consider the candidature of the applicant in the category of Physically handicapped persons, with all the consequential benefits.

(iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant with the costs of litigation.”

7. Repelling the averments made in the OA, the respondents state that the applicant was a candidate for the post of Group-D and was sent

for medical examination at Northern Railway Divisional Hospital Lucknow. He was examined and declared medically unfit vide Memo No. 243435 dated 21.05.2014, in A-2 & below medical category.

8. The respondents contend that on appeal, the applicant, was again re-examined by the nominated 3 member Medical Board at Northern Railway Central Hospital, New Delhi, on the basis of a medical certificate issued by a private doctor. The applicant was found medically unfit in A-2 & below medical category, due to the following findings:-

“Sh. Mohit S/o Sh. Jai Bhagwan, Candidate for the post of Group ‘D’ Post is FUC cleft lip & cleft palate deformity operated in two stages (on dates 10.01.2009 & 20.06.2015). Even after two stages operation, the candidate has palatal fistula. He underwent second stage of operation for repairs of cleft palate on 20.06.2015. He has been declared unfit for appointment in the Medical categories Aye two & below”.

9. The respondents submit that the Indian Railway Medical Manual (IRMM) Para 511 sub para (1) & (i) stipulates that:-

“to be passed as fit for appointment, candidate must be in good mental and bodily health and free from any physical defect likely to interfere with the efficient performance of his duties of appointment.”

The respondents contend that an organization like the Railways cannot compromise with the safety aspects of numerous commuters

at any cost, and a person cannot be deputed for certain categories of jobs related to operation of the train.

10. We have gone through the facts of the case and considered rival contentions of both sides. We observe that the IRMM provides list of following posts where safety is involved:-

- a. Any duty which will entail the charge of a locomotive or a moving vehicle, for example Driver, Shunter, Guard etc.
- b. Any duties connected with locomotives or moving vehicles where interference by the employee in charge may result in disaster.
- c. Any duties connected with signaling.
- d. Any duties in connection with running trains which would subject the individual to great mental strain for example.
- e. Any technical duties involving more than ordinary strain and self control.
- f. Any duties connected with the travelling public which demand a firm control over temperament for example. Platform inspector, Assistant Station Master, Booking Clerk, Ticket Collector etc.
- g. Any duties which involve a higher financial responsibility than ordinary electrical duties, for example pay clerk, Cash witness etc.
- h. Any duties in which loss of control or a relapse of the disorder may result in loss of life and damage to the property.
- i. Any other employment in the Railways, which although not specified above, is considered by the head of the department or the Divisional Railway Manager to be unsuitable for the Railway employee who has been subject to mental instability and is quite possibly liable to recurrence."

11. There can be no quarrel about the strict adherence to these parameters in areas, where safety or sensitive operations of the respondent department are involved. However, the applicability of these norms to the current case by the respondents is totally out of context. Firstly, the applicant has opted for posts which are

specifically meant for handicapped persons extending the benefit even to visually challenged. Secondly, the posts for which the applicant has applied are not the safety category posts, hence the medical standards for these posts have deliberately been kept low. The applicant, reportedly, has FUC cleft lip & cleft palate deformity. It has been reported by the respondents that despite having undergone two stages of operation (10.01.2009 & 20.06.2015), the candidate still has palatal fistula i.e. speaking problem. It has not been mentioned anywhere that the candidate is not in a good 'mental' or 'physical health'. Nor has it been explained as to how this defect in speech, is likely to interfere with efficient performance of his duties if he is appointed to the post that he has applied for.

12. In an almost identical situation, the Hon'ble A.P. High Court in the case of **Smt. K. Indira** (supra) has observed that :-

"9. An employee required to apply a special skill may be required to prove higher standards of medical fitness. If the state refused the employment if any person suffers from eye sight using glasses, a large number of citizens have to be disqualified but if a special talent is necessary and a particular eye sight is required for a special employment the state may be justified in insisting higher standards of eyes sight. **Similarly if the employment requires a policy making and a special drive, there may be justification for insisting the higher standards of medical fitness. The insisting of 100 percent medical fitness without referring the nature of job constitutes clearly abuse and arbitrary exercise of the power of employment inhered in the state. After all it is the duty of the state to provide employment even to the disabled and unless the nature of job entrusted to a particular person disqualifies him to hold the said post, the state cannot justify such denial. A complete denial of employment to person having some problems make them a dead weigh on the society and the state should be loath to adopt such course."**

13. We have no hesitation in concluding that the respondents have grossly erred in applying the safety parameters of IRMM to the applicant, and by inferring that a speech defect is likely have an adverse impact on efficient or safety aspect of Railways/Passengers!! We are convinced that the applicant cannot be declared unfit for this defect and must be considered for the post applied for under reserved category for handicapped persons. We are in agreement with the contention of the applicant that if a handicapped or blind person can perform the duties of Khallasi, then, an applicant, with a speech impairment, should be equally fit to perform the same duties.

14. The respondents are directed to consider the applicant for the posts that he has applied for. In case, he is found fit for any of these categories, he may be appointed on the same. If he is found fit for more than one category of posts, he may be considered against the post of highest preference given by him. Since he has been deprived of the job opportunity at the appropriate time due to erroneous interpretation of IRMM on safety standards by respondents, if appointed, he may also be given seniority and pay fixation at par with his immediate junior. No costs.

(Praveen Mahajan)
Member (A)

(Raj Vir Sharma)
Member (J)

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