

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA No. 3353/2012

Order Reserved on: 02.09.2015

Pronounced on: 14.09.2015

Hon'ble Mr. V. Ajay Kumar, Member (J)

Hon'ble Mr. V.N. Gaur, Member (A)

Shri Tilak Raj

Son of Shri Leela Singh,

R/o M-103, Mangol Puri,

New Delhi-110083.

- Applicant

(By Advocate: Sh. Anuj Aggarwal)

Vs.

1. The General Manager,
Northern Railway,
Head Office, Baroda House,
Kasturba Gandhi Marg,
New Delhi-110001.

2. The Secretary,
Railway Recruitment Board,
Madhya Marg, Sector-7-C,
Chandigarh-160019.

- Respondents

(By Advocate: Sh. Kripa Shankar Prasad)

ORDER

Hon'ble Shri V.N.Gaur, Member (A)

The applicant was a successful candidate in the selection test held for Assistant Loco Pilot. His candidature was rejected on account of medical fitness. The present application has been

filed with a prayer (i) to direct the respondents to revoke the letter dated 13.08.2012 whereby his request for re-medical examination for the post of Assistant Loco Pilot had been rejected, and (ii) to medically re-examine him for the post.

2. Learned counsel appearing for the applicant submitted that applicant had been examined by the Medical Board at Ambala on 20.10.2011 and declared “unfit for medical category Aye One”. According to the provision of the Indian Railway Medical Manual (IRMM) – 2000 the Government had power to order medical re-examination if it was satisfied on the basis of the evidence produced by the candidate of the possibility of error of judgment in the decision of the medical authority. The Manual further provides that if any such medical certificate is produced it can not be taken into consideration unless it contains a note by the medical practitioner concerned that he had full knowledge of facts that the candidate had been rejected as unfit for service by the medical authority appointed by the Government. The applicant had submitted certificates from Dr. Ram Manohar Lohia (RML) Hospital; Eye Hospital & Post Graduate Institute Glaucoma Research Centre, Noida; Guru Nanak Eye Centre, New Delhi and All India Institute of Medical Sciences (AIIMS), New Delhi. All had declared him fit in the eye test. The certificates from the Dr. RML Hospital and AIIMS had taken note of the fact that he had been rejected by the Railway Medical Board earlier.

Despite producing such evidence as per the rules, the respondents have rejected his request for re-medical examination on the ground that medical certificate submitted by him were from private hospital. Learned counsel stated that there was a grave error on the part of the respondents in treating the certificates of Dr. RML Hospital and AIIMS as certificates from private hospital. It was well known that these two are prestigious Government hospitals. In this regard, learned counsel for the applicant has relied on the case of **Kamlesh Kumar Kamal vs. Union of India and ors.**, WP (C) no.1252/2010 decided on 30.07.2010 by Hon'ble High Court of Delhi.

3. Learned counsel for the respondents submitted that medical fitness, particularly eye sight, was very important for the post of Assistant Loco Pilot. Life and safety of general public would be affected by any error on the part of Assistant Loco Pilot due to medically unfit eye of the incumbent. Learned counsel agreed with the submission of the applicant with regard to the provision contained in the IRMM-2000 but has submitted that the applicant has failed to submit medical certificates containing a note by the medical practitioner concerned, to the effect that the certificate had been given in full knowledge of the fact that the candidate was earlier rejected as unfit for service by the Medical Board of the Railways. The certificate issued by Dr.

RML Hospital only mentioned “made unfit for the post in Railways”. The certificate issued by AIIMS also is not accepted as it did not contain a note as mentioned earlier. It also ignored the important finding of the Railway Eye Surgeon that detected “two spots of lenticular opacity left eye and fundus WNL both eye except pin point two black spots in central part of lens on distant direct ophthalmoscope.” It also does not mention whether the vision R-6/6 and L-6/6 given is with or without glass. Learned counsel concluded that authority could not compromise with medical fitness of Assistant Loco Pilot in the interest of public safety.

4. We have heard the learned counsels and perused the record. The objection of the respondents to re-medical examination of the applicant is two fold:

- (i) the certificates submitted by the applicant were not from by Government hospitals.
- (ii) It did not contain a certificate by medical practitioner that he had full knowledge of the fact that applicant had been rejected by the medical authorities of the Railway Department.
- (iii) The certificates are not clear with regard to the vision being with or without glass and silent on other technical findings of the Railway Eye Surgeon.

5. The provision of IRMM-2000 para 522 (1) (i) & (ii) as quoted in the counter reply of the respondents is reproduced below:

“522 (1) (i) Ordinarily, there is no right of appeal against the findings of an examining medical authority, but if the government is satisfied, based on the evidence produced before it by the candidate concerned, of the possibility of error of judgment in the decision of the examining medical authority, it will be open to it, to allow re-examination. Such evidence, should be submitted within one month of the date of communication in which the decision of the first medical authority has communicated to the candidate. The Appellate Authority may entertain the appeal within a reasoned time after the expiry of said period, if it is satisfied that the applicant had sufficient cause for not proffering an appeal in time. Consultation and investigation charges will be recovered for appeal.

IRMM 2000 para number 522(1)(ii) lays down that “If any medical certificate is produced by a candidate as evidence about the possibility of an error of judgment in the decision of the first medical authority, the certificate will not be taken into consideration unless it contains a note by the medical practitioner concerned, to the effect that it has been given in full knowledge of the fact that the candidate has been rejected as unfit for service by the medical authority appointed by the Government in this behalf.”

6. It is undisputed that there is a provision for medical re-examination of applicant who claims that there is an error in the first medical examination provided he produced evidence from a medical practitioner with endorsement that the medical practitioner had the knowledge of the rejection of the applicant by the Railway medical authorities. In this regard, we find that the certificate issued by Dr. RML Hospital on 24.10.2011 records that “made unfit for the post in Railways. No defect found.” Similarly, in the OPD card of the AIIMS in the summary dated 12.11.2011 it is written as “medical unfit category Aye one N.

Railways.” After that the findings recorded on 15.11.2011 was “Reviewed Railway Medical Certificate. Both eyes seem to be normal. Color yet to be tested.” With regard to the colour the certificate mentions “could read and trace the requisite plates on Ishihara & seems to be WNL.” In our view after two reputed Government hospitals have come to a conclusion that eye sight of the applicant is seems to be normal, the respondents are not justified in insisting on endorsement in exact words that have been mentioned in IRMM-2000 522(1)(ii) reproduced above. If it was so, then the respondents should have prescribed a form for this purpose that would indicate the exact wording of the certificate to the applicant and the medical practitioner. If the intention is to ensure that external medical authority examining the applicant should note that the applicant had been rejected by the Railway Medical Authority, and therefore, should exercise caution, that purpose has apparently been served as can be seen from the endorsements in the certificates issued by Dr. RML Hospital and AIIMS. With regard to the submission by the respondents that there was an important finding by the Railway Eye Surgeon noticing two spots of lenticular opacity left eye etc. which has not been answered in the certificate issued by these two hospitals, we do not find any averment that the applicant had been communicated these details at the time rejecting him on medical ground. To a specific query, learned counsel for the

respondents confirmed that the exact finding of the Railway Eye Surgeon has not been communicated to the applicant, adding that the applicant should have known the defects that were pointed by the Railway Eye Surgeon. We are not persuaded by this logic of the respondents. Let us not be oblivious of the fact that applicant is not asking for letter of appointment on the basis of these certificates. He is only requesting for a re-medical examination by a competent medical board for which there is provision in the rules. The respondents will still have an opportunity to carefully examine the claim of the applicant with regard to his medical fitness keeping in mind the safety of the public.

7. We have considered **Kamlesh Kumar Kamal case** cited by the applicant but do not find it to be relevant as there the controversy related to the applicant therein being declared unfit by a medical board which did not have a specialist in the concerned field.

8. In view of the aforementioned facts and the reasons stated, we direct the respondents to order a re-medical examination of the applicant in the Eye Department of Dr. RML Hospital, New Delhi by a specially constituted board of Eye Specialists by the Medical Superintendent of that hospital, in which the Specialist who examined him earlier shall not be a member. The above

exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. In the event of being declared fit, the applicant shall be considered for appointing as Asst. Loco Pilot in accordance with rules within a period of four weeks thereafter. OA is disposed of with the above direction. No costs.

(V.N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

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