

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

OA-4470/2015

Reserved on : 06.02.2018.

Pronounced on : 21.02.2018.

Hon'ble Mr. Raj Vir Sharma, Member (J)

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. Rahul Kumar, aged 26 years
S/o Late Sh. Ram Sewak Safi,
R/o Vill. & PO Khirhar,
Distt. Madhuvani (Bihar).

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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. Chief Medical Director,
Northern Railway, Head Quarter
Office, Baroda House,
New Delhi.
3. Chief Medical Superintendent,
Northern Railway, Divisional Hospital,
Lucknow (UP).
4. The Divisional Railway Manager,
Northern Railway, Lucknow Division,
Lucknow (UP).

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Respondents

(through Sh. R.N. Singh, Advocate)

O R D E R

Ms. Praveen Mahajan, Member (A)

Briefly stated, the facts of the case are that in 2013, the Railway Recruitment Board, Allahabad invited the applications for the post of Assistant Loco Pilot for the year 2013-14. The applicant applied for the same and was selected for the post of Assistant Loco Pilot. He was given offer of appointment and allotted Lucknow Division. He was sent for medical examination and was informed verbally that he has been medically declared unfit due to some eye problem. The applicant made a request for re-medical examination. The competent authority accepted his request and sent him for re-medical examination. It is submitted that the applicant was medically re-examined by the same doctor and was again declared medically unfit as "Refractive eye Surgery" vide certificate dated 17.09.2014. The applicant submitted an appeal to the competent authority along with the medical certificate issued by the Govt. Hospital by which he has reportedly been declared fit and no surgery of any type has been performed on his eyes. This request of the applicant was accepted by the competent authority and an appeal was forwarded to the Chief Medical Director (CMD). It is submitted that the CMD rejected the appeal of the applicant in a routine

manner by saying that there is no merit in the appeal. The applicant submits that the whole action of the respondents is totally arbitrary and needs Tribunal's intervention.

2. The applicant has relied upon various judgments of the Tribunal, some of which are cited below. In OA-531/2013 (**B. Suryaprakash Vs. UOI & Ors.**) dated 09.12.2013, the following directions were given:-

"5. Considering the facts and circumstances of the case and the voluminous evidence presented by the applicant in his favour, we are inclined to allow this O.A. and direct the respondents to request constitution of independent Medical Board either in AIIMS or in Safdarjung Hospital or in RML Hospital for conducting medical re-examination of the applicant. In view of the averments of the respondents that the earlier certificate obtained from the applicant from AIIMS was false, we also direct that a responsible employee of the respondents be present at the time of medical re-examination of the applicant by the independent Medical Board. A copy of the report of the Medical Board will be collected directly by the employee of the respondents and submitted to the respondents for consideration of the case of the applicant for appointment to the post of Asstt. Loco Pilot. In case the applicant is found fit he will be offered appointment and will also be entitled to the benefit of pay fixation and seniority. This exercise will be completed by the respondents within eight weeks from the date of receipt of a certified copy of this order. No costs."

3. The applicant cited the decision of this Tribunal in TA-454/2009 dated 16.07.2009 wherein the following has been held:-

"3. In our considered view, when the reputed hospital, like AIIMS, has rendered an opinion, which is categorical that the applicant had no history of incisional hernia, the complete justice between the parties would be met if the respondents refer the applicant for a medical examination by the Board at AIIMS and on the basis of their opinion, they are directed to process the case of the applicant for appointment as Driver in DPC. Such a request has to be made by the respondents to

the AIIMS within a period of one month from the date of receipt of a copy of this order. No costs."

4. The applicant has also relied on the decision of Hon'ble Rajasthan High Court in the case of **Manish Kumar Jain Vs. BSNL & Ors.**, 2009(3)AI SLJ 471 wherein it has been observed that the medical report must be clear and unambiguous and carrier of a young man should not be marred by an ambiguous report.

5. Aggrieved by the action of the respondents, the applicant has filed the current O.A. seeking the following reliefs:-

- “(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order 30.9.2015 (Annex.A/1) passed by respondent No.2, Medical unfit certificate dated 22.7.2014 (Annex.A/2 & A/3), declaring to the effect that same are illegal and arbitrary.
- (ii) That the Hon'ble Tribunal may graciously be pleased to pass an order of directing the respondent to get the applicant medically examined by an independent medical board at AIIMS or Dr. R.M.L. Hospital, New Delhi, or Safdarjung Hospital New Delhi or in any other Govt. Hospital on the issue whether the applicant has undergone any Surgery and is having any other problem as per Medical Requirement of the Railway for the post of Assistant Loco Pilot and the case of the applicant may be considered of his appointment to the post of Assistant Loco Pilot on the basis of the medical report given by the independent medical Board.
- (iii) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents in case the applicant is found fit, he

may be appointed with all the consequential benefits from the date when the similarly situated persons of the batch were given appointment.

- (iv) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant with the cost of litigation."

6. Short reply has been filed on behalf of the respondents in which they have averred that the applicant was a candidate for the post of Assistant Loco Pilot and was examined by the nominated Medical Authority and was declared unfit in A-one category due to the finding that "Corneal opacities (Both Eye) Paracentral suggestive of Refractive Surgery & Fundus (Both Eye) Temporal crescent". On appeal, the applicant was again sent for medical examination to Northern Railway Divisional Hospital Lucknow for re-medical examination and was again declared medically unfit in A-one category due to the finding that "Corneal opacities (Both Eye) Paracentral suggestive of Refractive Surgery & Fundus (Both Eye) Temporal crescent". They further aver that Indian Railway Medical Manual (IRMM) Para-502 (1) 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."

7. We have heard both the counsels and perused the record.

7.1 In our view, this is a fit case which needs a re-medical examination. The applicant categorically states that he has not undergone any eye surgery. In all fairness, the respondents should have ensured that a 'second opinion' should be taken by another eye doctor and not by the same doctor against whose finding the appeal was preferred. Especially since the applicant has also submitted a medical certificate issued by a Government Hospital, in support of his categorical submission that he has been undergone an eye surgery.

7.2 Needless to add that sensitive posts like Loco Pilot warrant thorough medical scrutiny/fitness of the applicant, but an inadvertent error in medical assessment, might cost the applicant an opportunity of a life time, which should not be allowed to happen.

7.3 We, therefore, direct the respondents to get the re-medical of the applicant done from either AIIMS/ RML/Sardarjung Hospital by requesting the Medical Superintendent to constitute a Medical Board for examining the case of the applicant. The brief history and background of the case may be supplied to them so that a fair and objective assessment is made about the fitness or otherwise of the applicant for the post that he has applied for. Depending

upon the results of the re-medical, respondents may take necessary action and pass orders as per law.

8. The O.A. is accordingly disposed of. No costs.

(Praveen Mahajan)
Member (A)

(Raj Vir Sharma)
Member (J)

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