

CENTRAL ADMINISTRATIVE TRIBUNAL**PATNA BENCH, PATNA****O.A. No. 050/00713/2014****Reserved on : 21.11.2017****Date of Order: 08.12.2017****C O R A M****HON'BLE MR. A.K. UPADHYAY, ADMINISTRATIVE MEMBER****HON'BLE MR J.V. BHAIKAVIA, JUDICIAL MEMBER**

1. Prabhat Kumar son of late Nageshwar Ram, Chief Controller, East Central Railway, Sonpur, District- Saran (Bihar).

..... Applicants.

By Advocate :- Shri M.P.Dixit.

-Versus-

1. Union of India through the Chairman, Railway Board, Rail Bhawan, New Delhi.
2. The General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar)
3. The General Manager (Personnel), East Central Railway, Hajipur, District- Vaishali (Bihar)
4. The Deputy Chief Personnel Officer (Gazetted), East Central Railway, Hajipur, District-Vaishali (Bihar)
5. The Chief Operations Manager, East Central Railway, Hajipur, District-Vaishali (Bihar)
6. The Chief Medical Director, East Central Railway, Hajipur, District-Vaishali (Bihar)
7. The Chief Medical Superintendent, East Central Railway, Sonpur, District-Saran (Bihar)

..... Respondents.

By Advocate :- Shri Mukundjee.

Shri S.K. Ravi**O R D E R****Per J.V. Bhairavia, M (J) :-**

In the present case, the applicant is aggrieved by the medical certificate-physical fitness dated 17.10.2013 issued by the respondent no.7 i.e The Chief Medical Superintendent, East Central Railway, Sonpur, District-Saran (Bihar) whereby the applicant has been declared unfit for promotion to the post of Assistant Operation Manager (Group-"B") safety category due to Heart Disease, and seeks the relief(s) for quashing and setting aside the said medical certificate dated 17.10.2013 and also for a direction to the respondents to

declare the applicant fit for promotion and thereafter hold the via voce test of the applicant for the post of Assistant Operation Manager (Group 'B') under 70% quota with all consequential benefit including arrear with statutory interest retrospectively effect.

2 The brief facts of the case as submitted by the applicants are as below:-

[i] The applicant in this O.A belongs to Scheduled Caste Community and presently the applicant is working in operating department of E.C. Railway, Sonapur as Chief Controller in the pay scale of Rs.9300-34800 with Grade pay Rs.4600/-.

[ii] The respondent no.4 issued a notification on 31.05.2013 (Annexure A/1) for holding selection for the post of Assistant Operations Manager Group 'B' under 70 % quota for the serving eligible employee and eligible employees were asked to submit willingness/option in a prescribed format on or before 21.06.2013. Later, respondent no.4 vide notification dated 03.06.2013 (Annexure A/2), issued the break up of 14 post out of which 11 were for General Category and 3 were for Scheduled Caste Category.

[iii] After the closure of cut off date, the respondents have issued a list of 45 persons under 70% quota in which the name of applicant was at sl.no.42 (Annexure 'B' refers). The date of examination was scheduled to be held on 17.08.2013 in which applicant appeared and declared successful in the written test on 20.09.2013. His name find place in the successful candidate list at sl. No.3. He further submitted that out of three post only 02 persons have been declared successful in SC category.

[iv] Thereafter, as per schedule, written examination was held on 17.08.2013 in which applicant appeared and subsequently result was declared on 20.09.2013 in which altogether 08 persons including applicant was declared successful and his name appeared at sl no.3.

(Annexure A/4 refers) Thereafter, as per the prescribed procedure, the successful candidates were sent for medical test before the respondent no.7 vide letter dated 25.09.2013 whereby the applicant was declared unfit for AON Group-B safety category because of heart disease on 17.10.2013 (Annexure A/6 refers) and on this ground the applicant was not allowed to participate in viva-voce test.

[v] The I/c for applicant submitted that the applicant has been examined on 15.10.2013 in Indira Gandhi Institute of Cardiology, Patna whereby he was found fit. (Annexure A/7 refers). However, the Chief Medical Superintendent, Sonpur (Respondent no.7) had declared the applicant unfit for the post of AOM, Grade-'B', safety category which is not proper and contrary to the certificate issued by the other reputed medical institute.

[vi] Thereafter, the applicant had submitted a representation dated 22.10.2013 followed by 28.10.2013 for constitution of Medical Board and thereafter the applicant was sent to Institute for Cardiac Treatment and Research, Southern Railway Hospital Perambur where he was examined on and found medically fit for the post of AOM. (Annexure A/11 series).

[vii] Thereafter, the report was placed before the respondent no.6 who constituted Medical Board at Danapur Railway Hospital but without any finding the Medical Board sent the same to respondent no.6 who did not accept the paper and respondent no.6 advised the Medical Board Danapur to give their finding but till date no finding has been sent.

[viii] The learned counsel for the applicant submitted that applicant had already rendered 31 years of service and also performed his duty efficiently as a Chief Controller in operation department in East Central Railway, Sonapur without any complaint whatsoever till date. As such the applicant has no serious disease as declared by the respondent no.7.

[ix] It is further submitted that, his case was not considered by the concerned authority in the light of para 501 (i) of Indian Railway Medical Mannual-Volume-I.

[x] The learned counsel for applicant submitted that the applicant had rendered 31 years of service and passed the requisite written examination and though he was empanelled to be considered for the further selection process. However, with a view to accommodate some other employee, though the applicant is fit and presently working and performing his duty efficiently even though the applicant has been declared unfit and deprived his right to be considered for promotion. Therefore, the relief(s) sought in the O.A be granted.

3. The respondents have filed their written statement and opposed the contention of the applicant. The respondents further submits that :-

[i] The l/c for respondents submits that this application has been filed under section 19 of Administrative Act is not maintainable nor on fac.

[ii] L/c for respondents further submitted that the Railway Administration, E.C.Railway had decided to hold a selection for formation of the panel to the post of AOM (Gr.'B') against 70% quota. For this 14 vacancies (UR=11, SC-03 & ST-Nil) had been notified vide letter dated 31.05.2013. For this vacancy two selection periods ie 2008 & 2011 had been clubbed. In reference to the above zone of consideration for selection had been fixed as 45 and a list of 45 candidates and another list i.e standby list consisting 45 candidates had been published.

[iii] After receipt of willingness a final list containing 45 candidates had been published for appearing in written examination which was scheduled on 17.08.2013. In the written examination 31 candidates out of 45 had appeared and 14 had submitted their unwillingness. In the meantime one Shri Ajit Kumar Pandey, TI/Sonepur had submitted

a representation stating that some junior to him had been allowed to appear in the selection whereas he had been deprived. On examination it was found that some of the juniors were erroneously figured senior to Shri Pandey. As such, the integrated seniority list had been corrected and Shri Pandey and Shri Satyendra Kumar Singh were incorporated at sl. No. 66 & 67 respectively consequently the notification dated 31.05.2013 had been corrected and the name of Shri Pandey and Shri Singh have been placed at sl. No. 21 & 22.

[iv] The l/c for respondent further submitted that the candidates who were declared successful in the written test were sent for medical test before the respondent no.7 vide letter dated 25.09.2013 whereby the applicant was declared unfit for AON Group-B safety category because of heart disease on 17.10.2013 and on this ground the applicant was not allowed to participate in viva-voce test.

[v] L/c the respondents further submitted that the report submitted by the applicant was of Southern Railway H.Q Hospital, Chennai. On the basis of records of Southern Railway Headquarter Hospital, Medical Board of three Doctors were constituted at Divisional Railway Hospital, Danapur whereby the applicant was examined by on 26.02.2014 and the opinion of the Medical Board is as under "

"On the basis of above findings the medical board unanimously decide that the employee Sri Prabhat Kumar, CTNL/SEE is unfit as AOM."

In view of the facts and circumstances that none of the grounds mentioned are sustainable in the eyes of law and the claim of the applicant is baseless and misleading to court, hence the O.A is liable to be dismissed.

4. We have heard the parties and perused the records of the case. It is noticed that the applicant had cleared the written test, conducted by the respondents for the selection to the post of AOM, Group-'B'. The said selection process for promotion from Grade 'C' to Grade 'B' is governed as per the procedure

laid down in master circular no.68 issued by the Railway Board and the instructions issued time to time.

5. It is apt to note that according to the procedure laid down by the respondent Railway Board for selection for the post of AOM Group-‘B’ , after candidates secured qualifying marks in the written examination, the successful candidates required to undergo medical fitness test and on being found medically fit for the post of AOM Grade-‘B’ will be considered to be eligible for viva –voce test. In the present case, the applicant was referred for medical examination to the Government Hospital and for further examination referred to Southern Railway Headquarter Hospital, Chennai. The learned counsel for both the parties has Annexed the copies of medical certificates and according to the said certificate, it has been opined by the Medical Board and Surgeon of Railway Headquarter Hospital that the applicant is unfit for promotion to the post of AOM Group-‘B’ safety category.

6. The submission of the applicant the above stated medical certificate are not correct and required to be ignored. This submission is not tenable. The Tribunal cannot examine the correctness and genuineness of the opinion of the Medical Board with regard to fitness of employee. As stated above, after thorough examination, the Medical Board has declared the applicant unfit the said decision of the Medical Board cannot be interfered under the limited jurisdiction of this Tribunal therefore, the prayer sought in this O.A are denied and accordingly the O.A is dismissed with no order as to costs.

[J.V. Bhairavia]/M(J)
mks/

[A.K. Upadhyay] M(A)

