

(Reserved on 10.01.2019)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD
Original Application No. 330/01161/2017**

This the **06th** day of **February, 2019**

**HON'BLE MS. AJANTA DAYALAN, MEMBER (A)
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)**

Vijay Dwivedi, a/a 27 years, son of Prakash Chandra Dwivedi, Resident of 30/32/6A, Nawab Yusuf Road, Civil Lines, Post Office – High Court, Allahabad.

.....Applicant

**By Advocate: Shri Anil Kumar Singh
Shri H.P. Pandey**

Versus

1. Union of India through Chairman, Railway Board, Rail Bhawan, New Delhi.
2. General Manager, North Central Railway, Allahabad.
3. Divisional Railway Manager, Allahabad.
4. Senior Divisional Personnel Manager, D.R.M. Office, Allahabad Division, Allahabad.
5. Chief Medical Officer, NCR, Subedarganj, Allahabad.

.....Respondents

By Advocate : Shri Rishi Kumar

O R D E R

DELIVERED BY:-

HON'BLE MS. AJANTA DAYALAN, (MEMBER-A)

The present original application has been filed by the applicant Vijay Dwivedi feeling aggrieved by the order dated 06.09.2017 (Annexure A-1) passed by the Assistant Personnel Office, North Central Railway, Allahabad declaring the applicant as unfit for appointment as Assistant Loco Pilot in view of the result of the medical examination for category A-1 conducted in the Central Hospital, North Central Railway, Allahabad.

2. The case of the applicant is that the applicant applied for appointment to the post of Assistant Loco Pilot in North Central Railway, Allahabad against advertisement published on 18.01.2014. As per this advertisement, for Assistant Loco Pilot, medical standard was A-1 category. The applicant appeared in the written examination and was declared successful in March 2015. He went through psychological aptitude test on 22.12.2015 and was declared successful. Document verification was also completed on 21.05.2016 successfully. Thereafter, he was to appear for medical test on 26.08.2017. He did so on due date at Central Railway Hospital and was medically examined. Later on, vide impugned order dated 06.09.2017, he was informed that he had been declared unfit for appointment in A-1 category based on medical test. The medical test report, which is enclosed at Annexure A-1, clearly states that he is unfit in eye due to lasic surgery. The applicant has challenged his disqualification due to lasic surgery.

3. The case of the applicant is that the advertisement dated 18.01.2014 was detailed and specific. It nowhere contains a condition that persons with lasic surgery will be ineligible for the post. The only criteria that was to be met by the candidates was to meet the standard as laid down for A-1 category. This standard was met by the applicant. Mere fact that his having undergone the lasic surgery cannot be now made a ground for declaring him unfit as he meets all the relevant standards as per advertisement dated 18.01.2014.

4. Learned counsel for the applicant relied on number of judgements of Hon'ble High Court in support of his contention that lasic surgery

cannot be made a ground for declaring a person who is otherwise qualified, unfit for the post of Assistant Loco Pilot.

5. On the other hand, learned counsel for the respondents stated that the post of Loco Pilot is a very crucial post and comes under 'Safety' category in Railways. The vision of the pilot is very important as it involves safety and life of large number of passengers. He stated that any compromise on this standard would be hazardous for the safety and life of the passengers. Learned counsel for the respondents also stated that studies made for the purpose have found that the persons undergoing lasic surgery have vision problem at later stages. They also develop difficulty in night vision over a period of time and these difficulties may not be capable of immediate identification. He also stated that taking cognizance of these findings of the medical experts, the Railways have taken a policy decision and have decided that lasic surgery persons will henceforth not be eligible for the post of Assistant Loco Pilot. After this decision, they have also started making this criteria clear in their later advertisements for this post. Learned counsel for the respondents stated that even while granting the benefit to disabled persons, the Hon'ble Apex Court held that no compromise with safety and security of people should be allowed. He stated that in view of the clear cut stipulation of medical experts as well as the Hon'ble Apex Court's judgment, no case is made out for grant of relief to the applicant and the OA needs to be dismissed.

6. We have heard learned counsels for both sides and have gone through the pleadings. We have also given our thoughtful consideration to the matter.

7. The sole issue before us that whether the lasic surgery person can be declared unfit purely on this ground when he meets all other criteria for the post of Assistant Loco Pilot for which he applied and was selected and found fit in all other respects. It is not disputed even by the respondents department that the advertisement itself only states medical standard to be of A-1 category for Assistant Loco Pilot and does not clearly disqualify the persons who had undergone lasic surgery. The respondents department could not show us any single document under which they had declared lasic surgery persons to be not eligible for the post. This situation changed only at a later stage when, based on medical advice, the Railways have taken a clear stand to make lasic surgery persons ineligible for such posts and have also started mentioning this condition clearly in their subsequent advertisements for these posts. It goes without saying that this policy would have prospective effect and cannot be given retrospective effect. In fact, the Railways own action of starting to indicate the ineligibility of lasic surgery persons in their subsequent advertisements proves that if such candidates were to be considered ineligible, the condition needed to be specified in the advertisement itself. Even from the common point of view, one would think that once a person is fulfilling all the medical standards with regard to the six parameters namely near vision, distant vision, night vision, colour vision, binocular vision and field of vision, he should be considered eligible. That the applicant is meeting all standards prescribed under the parameters of the advertisement is not disputed by the respondents. At the same time, it is also true that the learned counsel for the respondents gave a detailed narration of medical experts' advice whereby it was indicated that lasic surgery persons are liable to

suffer from night vision problems at a later stage. They also have a problem of occurrence of other vision problems in future years. Accordingly, they may not be ideally suited to be considered for appointment to the post of Assistant Loco Pilot.

8. However, keeping in view that in the instant case, the advertisement did not contain any specific indication that basic surgery persons are not eligible for appearing for the post of Assistant Loco Pilot and the applicant thus met all the medical standards specified, we are of the view that it will not be justified to deny him appointment to the post of Assistant Loco Pilot on this ground. For future, the Railways have already changed the policy and have started declaring such persons as unfit and hence, such issue is not likely to arise in future.

9. In view of the observations made in para 7 and 8 above, the impugned order dated 06.09.2017 is quashed and the OA is allowed. The respondents are directed to reconsider the case of the applicant in the light of above observations and as per the medical standards stipulated in the advertisement within a period of three months from the date of receipt of certified copy of this order. No costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(AJANTA DAYALAN)
MEMBER-A

Anand...