

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/468/2014

Date of Reserve:08.04.2019

Date of Order:14.05.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Surya Kant Kumar, aged about 30 years, S/o. Bindheswari Singh, Vill/PO-Prasadi English, Arwal, Bihar, PIN-804 041.

...Applicant

By the Advocate(s)-M/s.N.R.Routray
Smt.J.Pradhan
T.Ku.Chaudhury
S.Ku.Mohanty

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Chairman, Railway Recruitment Cell, East Coast Railway, 2nd Floor, Rail Sadan, Chanrasekharpur, Bhubaneswar, Dist-Khurda.
3. Chief Medical Director/E.Co.Rly/Rail Sadan, Chandrasekharpur, Bhubaneswar-17, Dist-Khurda.
4. Senior Divisional Medical Officer (PME), Visakhapatnam, Andhra Pradesh.

...Respondents

By the Advocate(s)-Dr.C.R.Mishra

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application applicant has prayed for the following reliefs:

- i) To quash the order of cancellation of candidature vide speaking order dated 19.05.2014 under Annexure-A/12.
- ii) To direct the Respondents to issue appointment order in favour of the applicant in the post of Junior Trackman & Helper-II.

2. Facts in a nutshell are that in pursuance of an Employment Notice dated 28.10.2006 issued by the Railway Recruitment Board (Recruitment Cell), Bhubaneswar, applicant had appeared written test followed by Physical Efficiency Test (PET) and was provisionally shortlisted for document verification and medical examination for the post of Junior Trackman & Helper. Vide communication dated 23.08.2012, he was informed that he has been declared unfit in Bee-One medical category by the concerned medical authority with a liberty being given to make an appeal to the Chief Medical Director, E.Co.Rly, Bhubaneswar through Deputy Chief Personnel Officer(Recruitment), E.Co. Railway within a period of 30 days. In response to this, the applicant submitted his appeal on 23.09.2012. However, he was intimated again that it has been decided to consider his re-medical examination only after getting correct medical certificate along with proper endorsement by a medical practitioner. Accordingly, he was asked to submit his appeal for re-medical examination. The applicant in response to this submitted his appeal on 28.10.2012 along with the medical fitness certificate with proper endorsement by a medical practitioner. Thereafter, he was intimated vide communication dated 01.01.2014 that his appeal for re-medical examination was considered and he is to appear before the Medical Board on 20.01.2014 for re-medical examination. Accordingly, applicant's re-medical examination was completed on 20.01.2014. Since he did not receive any communication from the railway authorities regarding the result of re-medical examination, he submitted a representation dated 03.02.2014 to the Chairman, Railway Recruitment Cell, Respondent No.2 with a prayer to issue appointment order in his favour. Since, he did not receive any reply to this, he approached this Tribunal in O.A.No.254/2014. This Tribunal vide order dated

23.04.2014 disposed of the said O.A. with direction to Respondent No.2 to consider and dispose of the representation dated 03.02.2014 through a reasoned and speaking order. In compliance with this order, Respondent No.2 passed a speaking order dated 19.05.2014 (A/12), the relevant part of which reads as follows:

"That the applicant submitted his application for the post of Jr.Trackman and Helper Gr.II notified vide E.N.No.ECoR/RRC/D/2006/01 dated 26.10.2006. The posts were identified as safety category and the minimum medical standard was notified as B-1 (Bee-One). Basing on the performance in the written examination and Physical Efficiency Test, Shri Surya Kanta Kumar the applicant with Roll No.1164896 was provisionally shortlisted for document verification and medical examination. Accordingly he attended for verification of documents on 21.05.2012. After verification of document he was sent for medical examination at Railway Hospital, Sambalpur. He was declared unfit in B-1(Bee-One) category vide Medical Certificate No.571067 dated 22.05.2012 issued by Sr.Divisional Medical Officer, Eco. Rly, Sambalpur. Accordingly he was informed vide this office letter No.ECoR/RRC/D/2006/01 dated 23.08.2012 regarding his unfitness and advised to appeal if suspecting any possible error of judgment by the medical examining authority within a period of one month. In the advice letter detail procedure for appeal was clearly explained.

In response, he submitted his appeal on 27.09.2012. His appeal was not in compliance to this office letter No.ECoR/RRC/D/2006/01 dated 23.8.2012. Hence, his request for medical re-examination was not considered. However, he was again intimated vide this office letter No.ECoR/RRC/D/2006/01 dated 16.10.2013 to resubmit his appeal submitting the requisite documents within a period of 15 days. In response, he submitted his appeal and his appeal was considered and the re-medical examination was fixed to be conducted at railway Hospital, Visakhapatnam on 20.01.2014. Accordingly he attended this office on 17.01.2014 and was directed to report at the Railway Hospital Visakhapatnam for re-medical examination. He was examined and again he was declared unfit in B-1(Bee-One) category vide Medical Certificate No.633192 dated 21.01.2014 issued by Sr.Divisional Medical Officer (PME), Eco. Rly Visakhapatnam.

It is clearly mentioned in para 12(vii) of the Employment Notice No.ECoR/RRC/D/2005/01 that "The candidates in

the zone of consideration after written examination and PET will be subjected to Medical examination of prescribed Bee One medical standard, and only those who qualify in the medical examination will be included in the final merit list”

In view of the above, I find no merit in this case since he had not found fit in the prescribed medical standard i.e. Bee-One medical certification. Since he was not found fit in prescribed medical standard, he did not find place in the final merit list. Hence, his candidature against Employment Notice No.ECoR/RRC/d/2006/01 dated 28.10.2006 is treated as cancelled as per extant rules and procedures”.

3. Aggrieved with this, the applicant has filed this O.A. praying for the reliefs as mentioned above.

4. The grounds on which the applicant has sought for reliefs are that medical certificate No.633192 dated 21.01.2014 which is the basis of cancellation of his candidature for appointment to the post in question was neither provided to him nor annexed to the counter. As per medical report dated 28.10.2013, the applicant's colour vision is normal. Therefore, cancellation of his candidature based on the medical certificate dated 21.01.2014 issued by Respondent No.4 without referring the applicant to a third party in order to obtain an independent report, makes it clear the vindictive attitude of Respondent No.2.

5. Contesting the claim of the applicant, respondents have filed a detailed counter. According to respondents, as per Column (viii) of the Employment Notice it is prescribed that the candidates in the zone of consideration after written examination and PET will be subjected to Medical Examination of the prescribed 'Bee One' medical standard, and only those who qualify in the medical examination will be included in the final merit list. Since the applicant did not qualify in the prescribed medical standard there was no other option

than to cancel his candidature. In view of this, it has been submitted that the O.A. being devoid of merit is liable to be dismissed.

6. Applicant has filed a rejoinder to the counter in which he has expressed the veracity of the medical report annexed to the counter-reply at R/1.

7. We have heard the learned counsel for both the sides and perused the records. Admittedly, para 12(vii) of the Employment Notice No.ECoR/RRC/D/2005/01 provides that the candidates in the zone of consideration after written examination and PET will be subjected to Medical examination of prescribed Bee One medical standard, and only those who qualify in the medical examination will be included in the final merit list. On a perusal of the medical report produced by the respondents at R/1 to the counter it is mentioned therein that " Unfit in Bee One (B 1) due to colour blindness". Respondents have filed a copy of judgment dated 20.01.2015 of Hon'ble High Court of Orissa in W.P.(C) No.15348 of 2002. In that case, offer of appointment as Constable Tailor in CRPF in favour of the petitioner therein had been cancelled on the ground that he was declared unfit due to 'BEING SPINDLE CELL TUMER'. As per terms and conditions of appointment, in Clause-H of Annexure-4, the following were prescribed.

"Your appointment shall be subject to your medical fitness and Chest X-ray in the presence of CRPF Medical Officer at your own cost before filling up the recruitment Roll".

8. The Medical Board opined that the petitioner is unfit since the expert body which is competent under law has declared him as unfit medically as he is suffering from "BEING SPINDLE CELL TUMER" which is a deformity for enlistment in CRPF as per terms and conditions stipulated in Clause-H of the offer of appointment, Annexure-4. Taking note of this, the Hon'ble High Court held as under:

- "7. The appointment of the petitioner being subject to medical fitness and the petitioner having been found unfit by medical examination, applying the terms and conditions stipulated in the offer of appointment if the action has been taken pursuant to Annexure-1, this Court finds no illegality or irregularity committed so as to interfere with the same in exercise of writ jurisdiction.
8. Accordingly, the writ petition stands dismissed being devoid of any merits".

9. From the above, this Tribunal finds that the principle decided by the Hon'ble High Court (supra) is fully applicable to this case. Since the applicant herein has been declared medically unfit in the prescribed medical standard for the post in question, we are not inclined to interfere with the same. The applicant's contention that the medical report at R/1 to the counter is spurious is based on conjecture and surmises and hence, the same is rejected.

10. In the result, the O.A. being devoid of merit is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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