

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/00241/2018

Date of CAV : 31-10-2018

Date of Order : 13-11-2018

Between :

P.V.L.N.Rao S/o Venkat Rao
Aged about 36 years, Occ : Parcel Porter, Gr 'C',
O/o Chief Reservation Inspector, Hyderabad
R/o 64/3, Railway Quarters,
Back side of Nampally Courts,
Red Hills, Nampally, Pin-500 001.

....Applicant

AND

1. Union of India,
South Central Railway,
Rep by its General Manager,
3rd Floor, Rail Nilayam,
Secunderabad-500071.
2. Senior Divisional Personnel Officer,
Secunderabad Division, S.C.Railway,
IV Floor, Sanchalan Bhavan,
Secunderabad-500071.
3. Chief Medical Superintendent,
Chilkaiguda HealthUnit,
Chilkaiguda, Secunderabad.
4. Senior Divisional Commercial Manager,
Secunderabad Division, S.C.Railway,
I Floor, Sanchalan Bhavan,
Secunderabad-500071.

...Respondents

Counsel for the Applicant: Mr. P. Ramchander Rao

Counsel for the Respondents : Mr. S. M. Patnaik, SC for Rlys

CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the A.T.Act,1985 to

- (a) Direct the 2nd Respondent to immediately arrange to post the Applicant with retrospective effect, i.e., from 01.03.2016, the date of his qualifying for the post of Ticket Examiner as per the guidelines of Hon'ble Supreme Court on 14.02.2011 and Hon'ble High Court of Madras on 29.11.2016;
- (b) To grant costs to the applicant for the failures on part of the Respondents, though the applicant was qualified for B II medical Category on 22.10.2013 and 01.03.2016 at the desire of the Respondents (which is contrary to the Hon'ble Supreme Court order), in not appointing the Applicant as Ticket Examiner and sent him for SPME and got the Applicant unfit for B II and given a letter which is totally against the judgments delivered by the Hon'ble Supreme Court and Hon'ble High Court of Madras for the appointment of Ticket Examiners post (erstwhile Ticket Collector).

2. The brief facts of the case are that the applicant was appointed as Substitute Khalasi on Act Apprenticeship. On 22.11.2009 while the applicant was on duty he met with an accident (injured on duty). Due to the accident the applicant was medically decategorized and was given a suitable post.

3. The applicant submits that on 27-09-2013 he was selected for the post of Ticket Examiner and was sent for medical examination with special remarks "Unfit for B II earlier" for promotion to the post. The applicant humbly submits that, on 22.10.2013, he was found fit for B II medical classification said to be attached to the post of Ticket Examiner, immediately a suitable endorsement "Fit for B II Medical Category" was made in the Service Register of the applicant. On 09-05-2014, the selection was

cancelled by the Respondent Department. Deprived with the action of the Respondents, Sri B. Adinarayana along with the applicant and others filed OA No.913/2014 is still pending before this Tribunal.

4. While the facts stood thus the Respondents called for another selection for the post of Ticket Examiner. On 28.12.2015 again the applicant got selected for the post of Ticket Examiner and was sent for medical examination with special remarks "Unfit for B II earlier" for promotion to the post of Ticket Examiner. On 01.03.2016 the applicant was found fit for B II medical classification attached to the post of Ticket Examiner. On 06.05.2016, after two months and four days of his fitness for B II medical category, only to deprive the applicant in getting the post of Ticket Examiner, the 2nd Respondent sent him for the Special Medical Examination which was not warranted.

5. The applicant belongs to Yerukala Community and got selected in unreserved quota for the said two times, only to deprive the applicant in getting the post of Ticket Examiner, the 2nd Respondent sent him for the Special Medical Examination which was not warranted more particularly against the judgments delivered by the Hon'ble Supreme Court of India and on 14.02.2011 and Hon'ble High Court of Madras on 29.11.2016, since the applicant was found suitable for B II medical category twice, after his decategorization. The applicant humbly submits that, the applicant was made unfit for B II Medical Category, vide SPME No. C-I/72/16, dt. 09.06.2016, the communication was given to the applicant on 03.10.2016 by

the 2nd Respondent with an advice to submit the appeal to CMD/SC as per IRMM 522(2).

6. The applicant has submitted request for reconsideration of the adverse medical report to the Chief Medical Director/South Central Railway. The applicant has received a letter from the 2nd Respondent stating that, the applicant is medically unfit for the post of Ticket Examiner vide SCR/P-SC/212/EC/Tkt.Chg/PRQ, dt. 30.12.2017 and vide CMS letter No.C/MD/SPME/17-18, dt.12.01.2018 which is contrary to the Hon'ble Supreme Court judgment dt.14.02.2011 and Hon'ble High Court of Madras, judgment dt.29.01.2016. Hence this petition.

7. The Respondents have filed reply statement stating that the applicant was appointed as Substitute Khalasi on Act Apprenticeship in Mechanical Department. The applicant joined duty on 22.11.2006 on being found fit in BEE-ONE medical classification vide Medical certificate No. C/461, dt.07.11.2006. On 22.11.2009 while on duty, the applicant met with an accident in which his both hands has Crushed Injury with loss of DP/MP Right Index finger and loss of DP Left thumb with contractures of Left Ring finger and Left middle finger. The applicant was sent for special medical examination and was declared medically unfit for B-1 & B-II but fit in C-1 on account of IOD vide MC No. C/MD/SPME/158/10, dated 08.04.2010. Subsequently he was screened and absorbed in alternative post of parcel porter in Commercial department.

8. A Notification dt.28.01.2013 was issued calling volunteers for the pot

of Ticket Examiner against 16 /23% LDCE Quota with the condition that “on being found fit in BEE-TWO medical classification”. The applicant having qualified in the written examination for the said post of Ticket Examiner was sent to medical examination in Bee-two category where he was declared fit in contrast to the earlier fitness when he met with the accident. A clarification was sought vide letter dated 07.11.2013. The Chief Medical Officer in his letter dt.12.05.2014 addressed to 2nd and 3rd respondent advised to send the applicant with fresh memo for re-medical examination. At this point of time the said notification dt.28.01.2013 has to be cancelled in view of serial circular No.100 of 2013.

9. A fresh notification dt.29.07.2015 was issued, calling volunteers against 33 1/3% promotional quota subject to condition that “on being found fit in BEE-TWO medical classification”. Having passed in this examination also, the applicant was sent for medical examination in Bee-two category. In the medical examination the applicant was found fit in Bee-two medical classification vide CMS/CKL fit certificate No. RME/BII/63, dt.01.03.2016 in contrast with the medical declaration during the time of accident when the applicant was found not fit for B-1 & B-II but fit in C-1 on account of an IOD vide MC No. C/MD/SPME/158/10, dt.8.4.2010, on the basis of which the applicant was given alternative post of Parcel Porter in Commercial Department. In view of the contradicting fitness certificates, the 2nd respondent sought clarification from Medical Director, Central Hospital, Lallaguda. Accordingly a Medical Board was constituted in which orthopaedic surgeon and a Neuro Surgeon was included as a co-opted

member to assess the fitness of the applicant and the applicant was advised to appear before the Medical Board. The Medical Board, while giving their opinion as not fit in Bee-two to perform the duties of the Train Examiner, however, opined that the applicant is fit in Cey-one and below, duly advising that the applicant is free to make an appeal to the Chief Medical Director, South Central Railway as per the provision of para 522 (2) of the Indian Railway Medical Manual against the report of the Medical Board.

10. CMD/SC vide letter No. C/MD/I/2018-19, dt.14.08.2018 & 17.8.2018 has also suggested the above same remarks such as the post of Ticket examiner is a frontline post. It means he is in direct contact with public. The safety and comfort of public is paramount and same has suggested that it is jeopardizing public safety by having a physically challenged person in such post. A Ticket examiner is expected to perform certain duties, which the applicant cannot do as a result of his deformed right hand and render first aid to needy passengers and perform rescue operations in the event of an accident. Hence the employee was not given the post of Ticket examiner. There is no malafide intension. The applicant has been advised on previous two occasions vide letter dt.16.01.2018 and 02.07.2018 to file an appeal to the next higher authority ie CMD/SC, in response of which no appeal has been received either by this office or CMS/SC's office till date. In view of the forgoing discussion, Respondents pray for dismissal of the OA.

11. We have heard Mr. P. Ramachander Rao, learned counsel for the applicant and Mr. S. M. Patnaik, learned Standing Counsel for Respondents.

12. In support of his contentions, learned counsel for the applicant relied upon the following decisions :

(i) SKM Haider Vs. UoI & Ors (CA No.1630/2011) of Hon'ble Apex Court, dt. 14.02.2011 ;

(ii) UoI Vs. Satish Kumar Ranjan, dt.21.09.2016 (WP No.239/2016) of Hon'ble High Court of Madras ;

(iii) Major General H.M.Singh, VSM Vs. UoI & Anr (CA No.192/2014) of Hon'ble Apex Court ;

(iv) Railway Board Ir. No. E(NG)I-2016/pm1/12(PT), Dt. 22.02.2018.

13. After the applicant was medically decategorized with effect from 29.11.2009 he was given the alternative post of Parcel Porter in Commercial Department. Then he had appeared in the LDCE within the 16 2/3% . Thereafter he was medically examined and in the year 2013 as well as in the year 2016. At that time he was given certificate stating that he was medically fit for C-1 category. Subsequently he was again asked to appear before the Medical Board wherein one of the Neuro Surgeon and one Orthopedic surgeon was Member. This it is pertinent to mention that the examination for the post in question in respect of the year 2013 was cancelled but the notification for the year 2016 was not cancelled. Admittedly the applicant is not having any difficulty in the eye sight but for performing the duty of Ticket Examiner one has to naturally under take journey by Train. The copy of the Medical Report dt.08.04.2010 issued by the Sr DMO states that the applicant had sustained 'crush injury on both hands with loss of DY/MP Rt Index finger and loss of DP Thumb with contractures of Lt Ring finger and Lt middle finger' and accordingly he was found fit for CEY-ONE and BELOW without Glasses. The said letter also

reflects that the applicant was not willing to appeal on the decision of the Sr DMO and the Medical Board in order to be medically eligible to perform duty as Ticket Examiner. In the circumstances, taking into consideration the injury sustained by the applicant, it is seen that the applicant cannot duly perform his duty as Ticket Examiner by undergoing journey in the Train, in the event he is promoted to the said post. We have given our careful consideration to the judgments cited by the applicant and we are of the view that they are not applicable to the facts of the case.

14. Therefore, in these circumstances, this Tribunal also finds from the materials on record that there was no illegality committed by the Respondents in not giving promotion to the post of Ticket Examiner as he was not found suitable due to the Medical Certificate issued in his favour and he comes under the category of CEY-ONE and BELOW. Accordingly the OA is dismissed as devoid of merits.

(SWARUP KUMAR MISHRA) (B.V.SUDHAKAR)

JUDICIAL MEMBER

ADMINISTRATIVE MEMBER

Dated : 13th November, 2018.

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