



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 734 of 2016

Date of order: 29.11.2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Monohar Kumar,
Son of Surendra Prasad,
Aged 25 years,
Residing at Vill. & P.O. Meghi,
Dist. Nalanda,
Pin - 803 111.

.. Applicant

- VERSUS -

1. Union of India,
Through the General Manager,
Eastern Railway,
Fairlie Place,
Kolkata - 700 001.
2. The Chief Personnel Officer,
Eastern Railway,
Fairlie Place,
Kolkata - 700 001.
3. The Chief Medical Director,
Eastern Railway,
B.R. Singh Hospital,
Sealdah, Kolkata.

.. Respondents

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. S.K. Das, Counsel

ORDER (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved at the denial of opportunity for re-medical examination, the applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

"(a) Office Order dated 2/11/2015 issued by the Chief Medical Director, Eastern Railway cannot be sustained in the eye of law and as such the same may be quashed.

(b) An order do issue directing the respondents to send the applicant for re-medical examination for appointment in the post of Assistant Loco Pilot without taking into account the Railway Board's circular dated 5.6.2014."

2. Heard both Ld. Counsel. The respondents have filed a short reply as counter to the Original Application. Examined documents on record.

3. The applicant's submission, in brief, is that he had appeared in the selection test for appointment to the post of Assistant Loco Pilot pursuant to a notification of 2011. Having been declared successful, an offer of appointment was issued in his favour. The applicant, however, was declared medically unfit by the respondent authorities although the doctor of AIIMS Hospital, Patna had given him a fit certificate. The applicant had prayed for re-medical examination as per extant rules but his prayer was rejected on the basis of an amended circular. As the amended circular had come into force after issuance of the Employment Notice, such circular was not applicable in his case and hence, being aggrieved the applicant has approached the Tribunal in the instant Original Application.

The applicant has advanced the following ground in support of his claim, namely:-

That the circular dated 5.6.2014 shall not be applicable in his case as the Employment Notification was issued in 2011;

The applicant has cited Tribunal's orders dated 31.8.2015 in O.A. No. 542 of 2015 in support.

4. The respondents, in their short reply, have contended that on 25.6.2014, the applicant, a candidate for trainee ALP, Medical Category A I (Aye one), was examined by a three member Divisional Committee (as per Railway Board's letter dated 5.6.2014) which has unanimously opined that the applicant is having unaided substandard visual acuity in left eye with central traumatic cataract which is a progressive disease and, hence the candidate was declared unfit in Category A I (Aye one).

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5. The point of determination in this matter is whether the applicant is entitled to medical re-examination as per rules of the respondent authorities.

6. At the outset, we refer to Rule 522 (1) of Indian Railway Medical Manual which is germane to the lis and is reproduced as under (with emphasis supplied):-

"522. Provision for reconsideration of adverse reports:- The following provisions shall apply in regard to the reconsideration of adverse reports of Medical Examination.

(1) Candidates:-

(i) Ordinarily, there is no right of appeal against the findings of an examining medical authority, but if the Government is satisfied, based on the evidence produced before it by the candidate concerned, of the possibility of error of judgment in the decision of the examining medical authority, it will be open to it, to allow re-examination. Such evidence, should be submitted within one month of the date of communication in which the decision of the first medical authority is communicated to the candidate. The appellate authority may entertain the appeal within a reasonable time after the expiry of said period, if it is satisfied that the appellant had sufficient cause for not preferring an appeal in time. Consultation and investigation charges will be recovered for appeal.

(Ministry of Railway's letters No. 947/H/5/1 dt. 23/08/1991 and No. 87/H/5/18 dt. 26/10/1988):

(ii) If any medical certificate is produced by a candidate as evidence about the possibility of an error of judgement in the decision of the first medical authority, the certificate will not be taken into consideration unless it contains a note by the medical practitioner concerned, to the effect that it has been given in full knowledge of the fact that the candidate has already been rejected as unfit for service by the medical authority appointed by the Government in this behalf."

A plain reading of the paragraphs translates into the following:-

- (a) Ordinarily there is no right of appeal against the findings of an examining medical authority;
- (b) If the government is satisfied, based on the evidence produced before it by the candidates concerned of the possibility of error of judgment in the decision and the examining medical authority, it will be open to allow re-examination;
- (c) Such evidence should be submitted within one month from the date of communication whereby the decision of the first medical authority was communicated to the candidate.

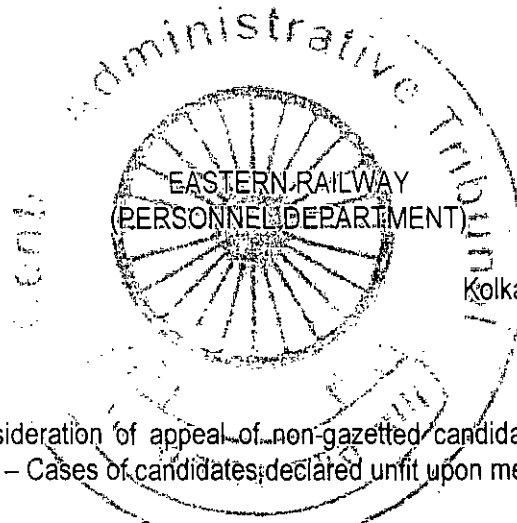
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(d) If any medical certificate is produced by the candidate as evidence about the possibility of an error of judgment in the decision of the first medical authority, the certificate has to contain a note to the effect that it has been given in full knowledge of the fact that the candidate has already been rejected as unfit for service by the medical authority appointed by the government in this behalf.

Next, we examine the circular dated 28.7.2014 communicating Railway Board's letter dated 5.6.2014 on the subject matter of consideration of appeal of non-gazetted candidates declared unfit upon medical examination, which also refers to Para 522(I) of IRMM. The said circular bearing Sl. No. 82/2014 is reproduced below:-

No. E.691/0/Pt.III

All concerned



Sl. No. 82/2014

Kolkata 28th July, 2014

Sub: Consideration of appeal of non-gazetted candidates selected for Railway employment – Cases of candidates declared unfit upon medical examination.

Railway Board's letter No. 2014/H/5/8-(Policy) dated 5.6.2014 along with ACS No. 1/2014 of Para 522 of IRMM, 2000 is forwarded for information, guidance and necessary action.

DA: As above

(S. Ganguly)
Asstt. Personnel Officer/R
For Chief Personnel Officer

Railway Board's letter No. 2014/H/5/8 (Policy) dated 5.6.2014 addressed to CPO/E. Railway, All Divisions / Units.

Sub: Consideration of appeal of non-gazetted candidates selected for Railway employment – Cases of candidates declared unfit upon medical examination.

Detailed Provisions for reconsideration of adverse reports of medical examination of candidate selected for employment in various non-gazetted posts in Railway services and procedure for making an appeal and its disposal have been laid down in Para 522 (I) of IRMM, Third Edition, 2000. It is not clear from the said provisions as to who would act as the appellate authority and what would be the maximum number of appeals that are permitted. This is resulting into a number of appeals for

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reconsideration of the cases even though they have been declared unfit during initial medical examination. Some of the candidates have also been approaching Railway Board for reconsideration of decision of the Zonal Railways on their earlier appeals.

There have also been instances where the candidate was declared unfit by the initial medical examiner due to the candidate being hypertensive/diabetic or visual acuity problems. Some such candidates have taken treatment and then, within the stipulated time frame, submitted an appeal for reconsideration. In such cases, it becomes really difficult for the appellate authority to come to a conclusion with regard to the candidate's original condition which was prevailing at the time of initial medical examination. The appellate authority will be in no position to disprove that the person has been administered medicines or has undergone surgical treatment for refractive error etc. This situation calls for a permanent remedy by laying down a specific procedure for examination of candidates, consideration of their appeal in case they are declared unfit in the initial medical examination as also disposal of subsequent appeals by higher authorities.

The matter has been considered at length in Board's Office and the following guidelines are laid down for medical examination of candidates for non-gazetted posts, disposal of their appeals and other representations submitted to higher authorities:-

- I. Medical Examination - Medical examination of candidates will be done by a Medical Officer with adequate experience in doing medical examination and one specially nominated by the CMO/CMS/MD/ACMS in charge.
- II. If a candidate has been found to be unfit on grounds of vision / color vision/hypertension/diabetics or any other condition/diseases, the medical examiner will not issue any certificate and will put up his/her findings to the in CMO/MD/ACMS/CMS in charge of the Unit/Division/Sub-Division/Production Unit.
- III. The candidates, without having to submit an appeal, will then be immediately examined by a three member standing medical team consisting of 1) a specialist in the field; however if the specialist is not available within the unit/division/Production Unit, a senior doctor would be nominated in place of a specialist 2) the medical officer who has conducted the first medical examination and 3) their third being a senior medical officer specially nominated by the CMO/CMS/MD/ACMS in charge.
- IV. This three member team will examine the candidate at the earliest after the first medical examination report is put up to the CMO/MD/ACMS/CMS in charge of the Unit/Division/Sub-Division. If necessary, the candidate would be kept in observation in bed. The accommodation charges etc. in this regard will be borne by Railway Administration except for such investigations and/or consultation, which is not available in-house, for which the charges will be borne by the candidate concerned.
- V. In case the candidate absconds or absents himself willfully prior to/during examination by the three member medical team, the decision of the first medical examiner would prevail and no further appeal shall lie with any higher authority including Railway Board.
- VI. This committee will write their detailed findings and will either endorse the first examination findings or differ and record their recommendations in the form of speaking orders, based upon which a fit/unfit certificate will be issued by the doctor who examined the candidate at the first instance. This committee's decision, as

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accepted by the respective CMO/MD/ACMS/CMS in charge of the Unit/Division/Sub-Division, will be final and no appeal will be entertained against this decision.

- VII. Once a decision has been taken at the level of the Divisional/Production Unit in charge and the candidate has been declared fit/unfit by three members committee, no further appeal shall lie with any higher authority including Railway Board.

VIII. Consideration of specific cases:-

- (a) Once the 03 member committee has taken a decision on the grounds of conditions like hypertension, sub-standard vision and diabetes and the same has been accepted by the respective CMO/CMS/MD/ACMS in charge of the Unit/Division/Sub-Division, any representation/appeal shall be dealt with on the basis of records and findings of the Committee and the candidate will not be subjected to examination.
- (b) Only in specific and exceptional cases in which there is an objective record of a disease like an X-Ray finding, ECG record, Echo or a permanent defect /deformity, there can be an appeal in regard to the interpretation of such a finding and such cases can be entertained as an appeal by the CMD. CMD of the Zone may order for re-medical examination of such candidates if he is satisfied that there are genuine ground for consideration of such an appeal. Such evidence should be submitted within one month of the date of communication of the decision of the CMO/MD/ACMS/CMS in charge of the Unit/Division/Sub-Division/Production unit to the candidate. However, such an appeal shall be entertained only if the candidate produces a certificate from Government/Private doctor of the speciality/specialties in which the candidate has been found unfit. Such a certificate should also contain a note that the Government/Private specialist was aware of the fact that the candidate has already been declared unfit during medical examination conducted by an appropriate medical committee appointed by the Government in this regard. The Government/Private specialist should also certify that he is fully aware of physical & vision standards set by the railways, and that he is aware that cases of appeal, consultation and investigation charges as applicable, will however, be recovered separately. In case of Production units, such powers for consideration of appeal shall be vested in the CMD of the neighboring/parent zone to which the production unit belonged to earlier.
- (IX) For all cases, the highest level of appeal shall lie with the CMD and there is no further provision for review against the decision of a CMD i.e. in case the appeal has been rejected by the CMD or the candidate is again found unfit upon re-medical examination carried out as per the orders of the CMD, no further appeal shall lie with any higher authority including Railway Board."

Upon an examination of the above noted circular it is seen that there are two possibilities for reexamination in case of candidates declared unfit in medical examination:

- (i) The medical examination of candidates will be done by a Medical Officer and if the candidate is found unfit on grounds of vision, the Medical Officer will put up his/her findings to the in-charge of the unit. Thereafter the candidates, without having to submit any appeal, will then have to be immediately examined by a three member

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standing medical team comprising of a specialist in the field, the medical officer, who had conducted the first medical examination and a senior medical officer specially nominated.

- (ii) The second possibility is that of appeal as mentioned in para VIII (b) of the policy that states as follows (emphasis supplied):-

"VIII. Consideration of specific cases:-

(a) Once the 03 member committee has taken a decision on the grounds of conditions like hypertension, sub-standard vision and diabetes and the same has been accepted by the respective CMO/CMS/MD/ACMS in charge of the Unit/Division/Sub-Division, any representation/appeal shall be dealt with on the basis of records and findings of the Committee and the candidate will not be subjected to examination.

(b) Only in specific and exceptional cases in which there is an objective record of a disease like an X-Ray finding, ECG record, Echo or a permanent defect /deformity, there can be an appeal in regard to the interpretation of such a finding and such cases can be entertained as an appeal by the CMD. CMD of the Zone may order for re-medical examination of such candidates if he is satisfied that there are genuine grounds for consideration of such an appeal. Such evidence should be submitted within one month of the date of communication of the decision of the CMO/MD/AGMS/CMS in charge of the Unit/Division/Sub-Division/Production unit to the candidate. However, such an appeal shall be entertained only if the candidate produces a certificate from Government/Private doctor of the specialty/specialties in which the candidate has been found unfit. Such a certificate should also contain a note that the Government/Private specialist was aware of the fact that the candidate has already been declared unfit during medical examination conducted by an appropriate medical committee appointed by the Government in this regard. The Government/Private specialist should also certify that he is fully aware of physical & vision standards set by the railways, and that he is aware that cases of appeal, consultation and investigation charges as applicable, will, however, be recovered separately. In case of Production units, such powers for consideration of appeal shall be vested in the CMD of the neighboring/parent zone to which the production unit belonged to earlier.

(IX) For all cases, the highest level of appeal shall lie with the CMD and there is no further provision for review against the decision of a CMD i.e. in case the appeal has been rejected by the CMD or the candidate is again found unfit upon re-medical examination carried out as per the orders of the CMD, no further appeal shall lie with any higher authority including Railway Board."

The respondents have admitted in their reply that the applicant was examined on 25.6.2014 by a three member standing medical team. In 522 (I) of IRMM as well as the amended circular of 5.6.2014, the primary medical examination of candidates would be conducted by a medical officer who have served as the first medical authority and the three member team would only

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convene for immediate re-examination of the candidate concerned. The finding of the Divisional Medical Committee is quoted as under:-

NOTE

No. HM/25/E
Dated 25.6.14

Sub: Re medical examination of Sri Manohar Kumar
S/o. Surendra Prasad (D.O.B. 17.3.91)
Ref.: Rly. Board's letter No. 2014/H/5/8 (Policy)
Dated 5.6.14

Name: Sri Manohar Kumar, candidate for Tr. ALP
Medical category = A I (Aye One)
G-36 Memo No. 898675 dated 14.5.14.

Brief History: Sri Manohar Kumar, S/o Surendra Prasad aged 23 yrs 1 month 27 days, is a candidate for Tr. ALP in medical category A-I (Aye one) was examined By Dr. Kamalendu Mondal, ACMS/BT on 3.6.14. The following findings were noted:

The candidate is having sub-standard visual acuity in (L.E) with retractive error.

As per Rly Board's letter No. 2014/H/5/8 (Policy) dated 5.6.2014 the case was put up to MD/BRSB and accordingly MD/BRSB, nominated 03 Members Committee, Dr. Mrs. Gopa Sinha, CMS/SDAH, Dr. S. Home, ACHD(Eye)/BRSB & Dr. Kamalendu Mondal AGMS/BT for Medical Examination of the candidate.

Recommendation of Divisional Medical Committee:

The Three Members Committee has examined the patient on 25.6.14 and is of unanimous opinion that the Sri Manohar Kumar, S/o Surendra Prasad, aged 23 years 1 month 27 days is having unaided Sub-Standard Visual Acuity in (L.E) with central traumatic cataract which is a progressive disease.

Hence, the candidate is declared unfit in category A-1.

(Dr. Kamalendu Mondal)
ACMS/BT
PCE Doctor / BRSB

(Dr. S. Home)
ACHD(Eye)/BRSB
Specialist/BRSB

(Dr. Mrs. Gopa Sinha)
CMS/SDAH

We also find that a communication dated 24.9.2014 (A-3 to the O.A.) addressed to the applicant by the respondent authorities advising him to approach the respondents for reconsideration of his adverse medical report as per Para 522 (I) of the Railway Medical Manual within one month from the date of communication with supporting medical certificates. The applicant having received the communication dated 24.9.2014, produced the medical certificate



dated 13.10.2014 from AIIMS Hospital, Patna. Hence, the applicant was correct in his action in responding to the respondents' communication dated 24.9.2014. It is however, contradictory on part of the respondents to advise the applicant on 24.9.2014 to approach the respondents in appeal and to simultaneously reject his prayer on the ground of policy dated 5.6.2014 when clearly the latter policy was dated prior to the respondents' communication to the applicant.

The following issues emerge from the actions of the respondents:-

- (i) The applicant had responded to an Employment Notification of 2011 and his offer of appointment was dated 30.4.2013. The medical examination being a pre-recruitment formality, only such instructions would be applicable and govern the field when the employment notification was issued. In this context, this Tribunal had, while disposing of O.A. No. 542 of 2015 on 31.8.2015, found that the applicant's case had emerged anterior to circular dated 5.6.2014 and directed the Respondent authorities to subject the applicant to re-medical examination. The applicant in the instant O.A. is similarly circumstanced.
- (ii) Although the policy dated 5.6.2014 was forwarded to all concerned on 28.7.2014, the applicant had been advised in September, 2014 to approach the authorities for re-examination within one month with supporting medical certificate implying that the respondents were acting in terms of Rule 522 (I) of IRMM which was applicable during the candidates offer of appointment.
- (iii) Again, even in the amended circular, there is a scope of appeal/re-examination which states that the Government/Private Specialist should also certify that he is fully aware of his vision standard set by the Railways and that he is aware that the candidate has already been certified as unfit according to the standards.

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Therefore, in our considered view, the applicant deserves to be reexamined both in terms of 522 (l) of IRMM as well as by virtue of VIII(b) of policy dated 5.6.2014. We therefore direct the respondent authorities to arrange for such reexamination within six weeks of receipt of this order, communicate their findings to the applicant immediately on conduct of such reexamination and take further necessary actions as per Rules.

6. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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