

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A./100/2962/2014

Reserved on: 26.09.2019
Pronounced on: 14.10.2019

Hon'ble Mr. R.N. Singh, Member (J)
Hon'ble Ms. Aradhana Johri, Member (A)

H.K. Malik (58 years)
H.No.644 near dispensary,
VPO Gandharva, Distt. Rohtak,
Haryana

... Applicant

(Through Sh.Amit Anand with Sh.Ramesh Shukla, Advocates)

Versus

Union of India through

1. General Manager,
Northern Railway, Baroda House,
Copernicus Marg,
New Delhi
2. DRM
Northern Railway,
Ambala Cantt.,
Haryana
3. Chief Medical Director,
Baroda House,
Copernicus Marg,
New Delhi

... Respondents

(Through Shri Kripa Shankar Prasad with Shri Prabodh
Kumar Singh, Advocates)

ORDER

Mr. R.N. Singh, Member (J)

In the present application filed under Section 19 of the Administrative Tribunals Act 1985, the applicant has challenged orders dated 17.01.2014, 18.03.2014 and 31.03.2014 (Annexure A-1 colly) whereby he has been declared 'unfit' in the re-medical examination for the post of Assistant Loco Pilot (ALP), under the respondents. The applicant has prayed for the following reliefs:

- “(i) quash and set aside the impugned orders dated 17.01.2014, 31.03.2014 and 18.03.2014 (Annexure A-1 Colly) with all consequential benefits.
- (ii) respondents may be directed to conduct reexamination of the applicant by Experts appointed by Chief Medical Director, Northern Railway, Baroda House, New Delhi at the cost of the applicant as has been done in OA No.442/2011, 424/2010 and 531/2013;
- (iii) The applicant may be appointed on the post of loco pilot if the applicant found fit by the medical board to be constituted in pursuance to the prayer (i) above;
- (iv) May also pass any further order(s), direction(s) as deemed just and proper to meet the ends of justice.”

2. The brief facts leading to the present OA are that the applicant applied for the post of ALP and successfully cleared the written examination. He was called for verification of documents, antecedents etc. and medical examination. The applicant was required to be found 'fit' in the medical classification Aye-One without glasses for the said post of ALP. He was not found 'fit' in the medical examination due to sub-standard visual acuity. The applicant submitted his

appeal for re-medical examination with medical memo no.271879 dated 8.01.2014 from Deputy Civil Surgeon, Rohtak. On such request, the applicant was got medically examined again and was again found 'unfit' and was accordingly informed vide the impugned orders.

3. The learned counsel for the applicant argues that the respondents have passed the impugned orders without application of mind and by ignoring the facts as well as judgments of this Tribunal in catena of cases. He submits that in the first medical report the applicant's visual acuity (distant vision) was found to be Right Eye 6/12 and Left Eye 6/12 and he was declared 'unfit' for medical category Aye-one vide 'unfit' certificate no.331629 dated 24.10.2013. When the applicant approached the Deputy Civil Surgeon, Rohtak, it was certified on his examination in the report dated 6.12.2013 (Annexure A-3) that there was error of judgment in the report dated 24.10.2013. Based on the same, the applicant made an appeal for his re-examination. He was re-examined on 15.01.2014 and his distant vision was found to be Right Eye 6/9 and Left Eye 6/9.

4. Learned counsel for the applicant argues that there is inconsistency in the medical reports dated 24.10.2013 and 15.01.2014 issued by the doctors of the respondents and the Deputy Civil Surgeon, Rohtak. The Deputy Civil Surgeon, Rohtak has reported error of judgment in the very first

medical report dated 24.10.2013. In this background, the learned counsel for the applicant argues that though there may not be any provision for re-appeal, the same is not forbidden under any rule or instruction. Moreover, in the interest of justice and in view of the various judgments of this Tribunal, a few of which he has quoted in the OA, the respondents are required to constitute an independent Medical Board for medical examination of the applicant, contends the learned counsel for the applicant. He places reliance on order/judgment of this Tribunal dated 24.01.2017 in OA 1813/2015 with batch of cases. Paragraphs 7 and 8 thereof, relevant for the purpose, are quoted below:

“7. We may now take note of the following observations of the Hon’ble Supreme Court in ICAR & Anr. Vs. Smt. Shashi Gupta, AIR 1994 SC 1241 :

“We do not agree with the reasoning and the conclusions reached by the tribunal. We are of the view that once the medical board and the Appellate Medical Board found the respondent medically unfit for the post of Scientist Grade S the tribunal had no jurisdiction whatsoever to have got over the medical opinions and directed her appointment to the Service. The Tribunal out-stepped its jurisdiction and acted with an utter perversity. Medical fitness is the sine qua non for appointment to public services. It is the inherent right of an employer to be satisfied about the medical fitness of a person before offering employment to him/her.”

8. The crucial question in these cases is as to whether the applicants were considered as to their medical fitness vis-à-vis the post in question, i.e., keeping in view the functional requirements of the post. The medical certificates do not inspire 12 conviction that functional ability of the candidates was properly considered and reported upon.”

Reliance is also placed on order/judgment of this Tribunal dated 9.12.2013 in OA 531/2013. Paragraphs 4 and 5

thereof read as under:

“4. We have heard both sides and have perused the material on record. The applicant is relying on medical certificates he has obtained from RML Hospital as well as AIIMS which are attached to his OA at pages 15 to 22. It is indeed surprising that while the other reputed Government hospitals are finding the applicant to be fit and as never having undergone Lasik surgery, the Railway doctors are repeatedly giving finding that evidence of Lasik surgery is visible in his eyes. Thus contradictory medical findings have been presented to us. We have considered this matter in the light of specific cases quoted by the applicant alleging that it has been a practice in the Delhi Division of Northern Railway to declare candidates medically unfit by saying that they had undergone Lasik surgery. The applicant has quoted examples of Sh. Dilip Kumar, Sh. Bacchi Ram and Sh. Dev Narain who were earlier declared unfit but were subsequently taken into service on the directions of the Tribunal or in the intervention of the Honble Minister for Railways. The applicant has also made available a copy of the judgment dated 10.02.2012 of this Tribunal given in OA-4224/2010. In this case also the applicant (Sh. Rajender Prasad) had been declared medically unfit on the ground of having undergone Lasik surgery. Relevant para of the judgment reads as follows:-

“10. xxx On the contrary, at the time of arguments, counsel for the applicant had produced letter dated 11.2.2010 addressed to the applicant which shows that the applicant has been found unfit as he had undergone Lasik Surgery which was stated to be confirmed during the appeal whereas admittedly, even as per respondents stand, at no stage was applicant declared unfit due to Lasik Surgery.”

In this case the Tribunal had ordered constitution of an independent Medical Board for conducting medical re-examination of the applicant. The applicant has also relied on a judgment dated 07.02.2012 of this Tribunal in the case of Manoj Kumar Vs. UOI & Ors. (OA-2099/2011). In this case also the Tribunal had ordered re-examination of the applicant by an independent medical board of AIIMS.

5. Considering the facts and circumstances of the case and the voluminous evidence presented by the applicant in his favour, we are inclined to allow this O.A. and direct the respondents to request constitution of independent Medical Board either in AIIMS or in Safdarjung Hospital or in RML Hospital for conducting medical re-examination of the applicant. In view of the averments of the respondents that the earlier certificate obtained from the applicant from AIIMS was false, we also direct that a responsible employee of the respondents be present at the time of medical re-examination of the applicant by the independent Medical Board. A copy of the report of the Medical Board will be collected directly by the employee of the respondents and submitted to the respondents for consideration of the case of the

applicant for appointment to the post of Asstt. Loco Pilot. In case the applicant is found fit he will be offered appointment and will also be entitled to the benefit of pay fixation and seniority. This exercise will be completed by the respondents within eight weeks from the date of receipt of a certified copy of this order. No costs.”

5. Respondents filed counter affidavit opposing the OA. They stated that the applicant was not found fit in the medical examination due to sub-standard visual acuity and further, the medical examination was conducted as per the guidelines provided. The learned counsel for the respondents argues that the post being very sensitive, no compromises can be made in the matter.

6. We have considered the facts and circumstances of the case and are of the considered view that this Tribunal will not interfere into the opinion of the expert(s) i.e. the competent doctors. However, in view of the inconsistency in the two medical reports dated 24.10.2013 and 15.01.2014 furnished by the doctors under the respondents and the judgments of this Tribunal referred to above, it would be just and proper that the OA is disposed of with direction to the respondents to refer the applicant to any other Government hospital to get him medically examined by a Board of three doctors of the concerned field.

7. Accordingly, the OA is disposed of with a direction to the respondents to constitute a Medical Board of three doctors to get the applicant medically re-examined within 60

days of receipt of a certified copy of this order and, on receipt of the medical report from the said Board, the competent authority under the respondents shall consider the candidature of the applicant and pass appropriate, reasoned and speaking order within 30 days thereafter. In case, the applicant is found 'fit' for empanelment/appointment on such reconsideration, he shall be entitled to all consequential benefits on notional basis i.e. fixation of seniority, pay etc. However, he shall not be entitled to any arrears of pay.

8. The OA is disposed of in the above terms.

9. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(R.N. Singh)
Member (J)

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