

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/01780/2018

DATED THIS THE 11th DAY OF JUNE, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Rambhajo Poddar
S/o shri Shodhabant Poddar
Aged about 29 years
At + PO: Sughrain
Via: Bithan
PS: Kushawer Sthan
Distr: Darbhanga
Bihar.848 207.

....Applicant

(By Advocate Sri Izzhar Ahmed)

Vs.

1. Senior Divisional Personnel Officer
South Western Railway
Personnel Department
Bangalore Division
Bangalore-23.
2. Chief Medical Superintendent
South Western Railway
Medical Department
Bangalore Division
Bangalore-23.
3. Principal Chief Medical Director
Head Office
Medical Department
South Western Railway
GM's Office
Club Road, Keshavapur
Hubli-20.
4. Union of India
through the General Manager
South Western Railway
Gadag Road
Hubli.

....Respondents

(By Advocate Sri J.Bhaskar Reddy)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicant in this case has submitted that he applied for recruitment to the post of Assistant Loco Pilot(ALP) to the RRB, Bangalore and submitted medical fit certificate as per the format prescribed(Annexure-A1). He passed the written examination and his name was in the select panel and the same was forwarded by RRB to Chief Personnel Officer, Hubli for allotment of candidates to Division Level against the vacancy of ALP. The applicant was referred to Bangalore Division for appointment under the 1st respondent. The 1st respondent issued a letter dtd.16.8.2017(Annexure-A2) advising the applicant to submit documents and to undergo medical examination and to report for training thereafter within 21 weeks subject to passing medical examination. The applicant submits that the medical examination is not permitted without offer of appointment. The medical department informed verbally to the applicant that he is unfit in vision and the 1st respondent has not communicated the decision of medical Board regarding unfit in vision test with medical category as A-1. Accordingly, he filed appeal dtd.30.10.2017(Annexure-A3) to the Medical Department because he has no knowledge of appellate authority. Then the 1st respondent issued a letter dtd.8.11.2017(Annexure-A4) advising the applicant to appeal to the Personnel Branch. Then the applicant filed appeal dtd.2.12.2017(Annexure-A5) for re-medical examination to RRB, Bangalore and the same was not forwarded to the concerned officer as appellate authority. The 1st respondent again issued letter dtd.28.5.2018(Annexure-A6) to the applicant advising again to file appeal to the appellate authority without giving designation of the appellate authority. The applicant filed application under RTI on

28.5.2018(Annexure-A7) to the 1st respondent seeking documents of medical report and the same was furnished vide dtd.29.6.2018(Annexure-A7) wherein the applicant was stated as unfit in class A-1 in medical examination which is absolutely against the rules of IRMM, I-2000(Annexure-A8). There was no medical board of 3 members and the report is illegal and against the rules. Applicant submits that two members have prepared report dtd.20.9.2017 in the medical examination and submit that the applicant was declared unfit for Aye One due to Distance Vision not meeting the required standards 6/6 without glasses in both eyes and he was found to have distant vision of 6/9 in right eye and 6/9 in left eye without glasses and passed colour perception, night vision and field vision. It is not clear as to how the applicant was unfit in distance vision test having passed night vision and also colour perception. The distance test was based on 'Shellons Chart' fixed on wall in particular distance using the letters A to Z in big, medium and small size. It is very much clear that the applicant passed in near vision, colour perception and night vision. Then he cannot be disqualified in distant test without using binocular vision for distance which is not available in the medical department. The medical department has no alternate machine for distance test for safety category post. The applicant submits that the medical report is highly contrary and the conclusion is without methodology of test and wrongly applied Rule 510 (1), 512(1) and 503(c) of IRMM, I-2000. The 2nd respondent has approved the medical report without applying mind and his opinion was different and contrary to the medical report and he has not referred the case of the applicant for second medical opinion if he disagreed with the medical report. The 3rd respondent advised the applicant to submit appeal to the personnel department without indicating division/headquarter and he did not apply mind regarding delegation of powers in case of medical matters as per

Railway Board's order dtd.18.10.2017(Annexure-A9). The applicant was not unfit in distance medical examination in terms of para-IV of the Railway Board's order dtd.31.12.2015. It is further clarified by the Board dtd.7.7.2017 referring earlier orders dtd.5.6.2014 and 31.12.2015(Annexure-A10) and the same was ignored by the respondents intentionally in his case. Thus the respondents have violated Articles-14, 309 and 311(2) of the Constitution of India and the rules prescribed in IRMM, I-2000 and the orders of Railway Board. Hence, the applicant has filed the present OA seeking the following relief:

- i. Set aside the impugned medical report No.19132/131 dtd.20.9.2017(Annexure-A7) as illegal and against Rules-503(c), 510(1) and 512(1) of IRMM, I-2000 as referred in the Medical Board's proceedings dtd.20.9.2017 following class A-1 is not applicable for the said post and not provided opportunity of re-medical examination in terms of the Railway Board's orders.*
- ii. Direct the respondent-01 to issue offer of appointment indicating the medical class against the post of Assistant Loco Pilot and permit the applicant for re-medical examination for the said selected post on the facts on records and the guidelines of the Railway Board within the stipulated time in the interest of justice and equity.*
- iii. Grant relief or reliefs as deemed fit and proper, with costs on judicial scrutiny the ignorance responsibility of the respondents in the interest of justice and equity.*

2. The respondents, on the other hand, have submitted in their reply statement that the applicant as a candidate for appointment as Assistant Loco Pilot in Bengaluru Division in medical class Aye One attended Railway Hospital at Bengaluru on 20.9.2017. The offer of appointment will be issued after passing of medical examination. Initially he was examined by Sr.Div.Medical Officer and was declared unfit for Aye one due to his distant vision not meeting the required standards of 6/6/, 6/6/ without glasses. As per Railway Board guidelines vide letter dtd.7.7.2018 regarding medical examination of candidates found unfit by the initial medical

examiner, a Divisional Medical Committee of three doctors excluding the initial medical examiner, re-examined the applicant. The Divisional Medical Committee comprising of one Sr.DMO/Ophthal/SBC and two ACMS/SBC found that he has distant vision of 6/9, 6/9 without glasses and left eye fundus showed RPE defects which is a progressive condition. He was recommended unfit for Aye one medical category. As per IRMM 2000 Vol I para 512, the candidate for Aye one medical category must have a distant vision of 6/6, 6/6 without glasses whereas the applicant has a distant vision of 6/9, 6/9 without glasses. As per IRMM 2000 Vol I para 503 sub para C, normal fundus examination is necessary for the post of ALP in medical category Aye one for the purpose of visual acuity and general physical examination. The post of ALP is safety category who runs the train involving safety of thousands of passengers. The medical classification cannot be compromised with safety of passengers. The work of ALP involves seeing the signal from distance and if he is not able to see distant objects, he will pass the signal and there may be casualty causing danger to lives of passengers. Distant vision is tested in a dark room on an illuminated board by using Landolt's split rings where the board will be fixed at a distance of six meters from the examinee. The Medical Board had applied their mind as per provision of IRMM. The Medical Board recommendations are accepted by Chief Medical Superintendent(CMS)(2nd respondent) as per the Railway Board guidelines of letter dtd.7.7.2018 and he has followed the procedure prescribed by the Railwal Board and as per privison of IRMM. As per Railway Board guidelines vide letter dtd.7.7.2018, there is no provision for appeal but candidate can appeal to Chief Medical Director of the zone within a period of one month with due justification and candidate should produce a certificate from a Govt/Private doctor with a specialty in which a candidate has been found unfit. Such certificate

should contain a note that the certifying specialist is fully aware of physical and visual standards set by the Railways for the particular medical category and that he is aware of the fact that the candidate has already been declared unfit according to these standards during medical examination by an appropriate medical board. The applicant admits that he received letter dtd.28.5.2018 with an advice to appeal within one month. Hence, the contentions raised by the applicant are baseless and incorrect and the OA is liable to be dismissed.

3. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that the respondents repeatedly stated that the applicant was unfit in terms of the Railway Board order dtd.7.7.2018 which is neither produced by the respondents nor issued by the Board. It is even not existing in the website of the Railway Board. The respondents have not stated in the reply that under what reason the applicant was not called for re-medical examination but it found that the applicant was not unfit in medical examination as per the medical report. The applicant has filed appeal dtd.30.10.2017 & 2.12.2017 much before the communication of the 1st respondent vide letter dtd.28.5.2018. Hence, the respondents wrongly submit that the applicant is communicated with the decision of unfit when the unfit medical report is not communicated to him. The 2nd respondent stated that 'Fundus' is mandate in medical examination for ALP referring Rule 503(c) of IRMM, I-2000 which is related to the medical examination of Gazetted Railway Service. The respondents have not considered that the post of ALP is non-gazetted and 'Fundus' is not applicable in his case. The respondents have not stated under which rule the post ALP is medically examined for vision test. The respondents have not denied the guidelines of the Railway Board referred by the applicant for re-medical examination. Accordingly, he is eligible to be extended the

benefits given in the identical cases of OA.No.46/2016(Annexure-Re12) and OA.No.462/2017(Annexure-Re13).

4. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The facts in this case are very simple. The applicant, a candidate for appointment as Assistant Loco Pilot which is a safety post, was initially examined by the Sr.DMO on 20.9.2017 and was declared unfit due to distant vision not meeting the required standards of 6/6 without glasses in both eyes. In view of being found unfit by the initial medial examiner, the Divisional Medical Committee excluding the initial medical examiner, was nominated by the Chief Medical Superintendent with three specialist doctors and the Divisional Medical Board came to the same conclusion and also noted that the left eye macula shows RPE defects which may be progressive. The respondents have contended that as per IRMM 2000 Vol. I para 512, the candidate for Aye one medical category must have a distant vision of 6/6, 6/6 without glasses whereas the applicant has a distant vision of 6/9, 6/9 without glasses. The Chief Medical Officer(CMO) has also accepted the recommendations of the Medical Board. The respondents have also stated that vide the same IRMM 2000 Vol. I para 503, normal fundus examination is necessary for the post of ALP in medical category Aye One. It is apparent that the department has followed all the procedures prescribed and infact vide Annexure-A6 has given a detailed reply specifically mentioning that the appeal if any to be made by the applicant should contain a certificate from the Government/Private doctor of the specialty/specialities in which he is found unfit. The doctor's certificate should contain a note of the Government/Private specialist to the effect that he is aware of the fact that the candidate has been declared unfit during medical examination conducted by appropriate medical committee appointed by the Government in this

regard. The Government/Private specialist should also certify that he is fully aware of the physical and vision standards set by the Railways and the candidate has already been certified as Unfit according to the standards. The applicant has not cared to produce any such certificate in this regard along with any appeal. The applicant has cited two other OAs, one of which relates to a physically challenged person applying for commercial clerk post and the other one relating to an applicant not being allowed for re-medical examination. These two cases do not come to his help as in those cases, re-medical examination was not agreed to by the respondents for various reasons, but the Tribunal decided that a fair opportunity must be given for re-medical examination. In the present case, the procedures set out have been followed fully. In a matter involving the safety of thousands of passengers, there cannot be any compromise. The OA is thus dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred by the applicant in OA.No.170/01780/2018

Annexure-A1: A copy of format fit in Medical examination along with application for recruitment

Annexure-A2: A copy of letter dtd.16.8.2017

Annexure-A3: A copy of appeal dtd.30.10.2017

Annexure-A4: A copy of letter dtd.8.11.2017

Annexure-A5: A copy of appeal dtd.2.12.2017

Annexure-A6: A copy of letter dtd.28.5.2018

Annexure-A7: A copy of application under RTI dtd.28.5.2018 and reply dtd.29.6.2018

Annexure-A8: A copy of extract rules in IRMM, I-2000

Annexure-A9: A copy of Railway Board's order dtd.18.10.2017

Annexure-A10: A copy of Railway Board's orders dtd.5.6.2014, 31.12.2015 & 7.7.17

Annexures with reply statement:

-NIL-

Annexures with rejoinder:

Annexure-Re-11: A true copy of circulation dtd.8.8.2017

Annexure-Re-12: A true copy of order dtd.2.6.2016 in OA.46/2016 along with compliance order dtd.29.11.2016

Annexure-Re-13: A true copy of order dtd.6.2.2018 in OA.46246/2017 along with compliance order dtd.26.3.2018
