

O.A No. 180/00006/2016

Tuesday, this the 18th day of June, 2019.

HON'BLE Mr. E.K. BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER

Aruldas K,
S/o. Krishnankutty,
Residing at : Peechiyode House,
Koduvayur Post, Palakkad – 678 501. - Applicant

[By Advocate Mr. T.C. Govindaswamy]

1. Union of India represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town (P.O),
Chennai – 600 003.
2. The Chairman,
Railway Recruitment Cell,
No. 5, Dr. P.V. Cherian Crescent Road,
Egmore, Chennai – 600 008.
3. The Chief Medical Superintendent,
Railway Hospital, Southern Railway,
Palakkad – 678 002.

[By Advocate : Mr. Sunil Jacob Jose]

The application having been heard on 11.06.2019, the Tribunal on 18.06.2019 delivered the following:

ORDER

Per: Ashish Kalia, Judicial Member

The applicant approached this Tribunal seeking the following reliefs:-

“i) call for the records relating to the issue of Annexure A-2 and quash the same.

ii) direct the respondents to subject the applicant for a fresh medical examination at a fairly higher level and direct further to grant all the consequential benefits, including appointment against one of the posts for which the applicant was sent for medical examination; alternatively.

Iii) direct the respondents to consider the applicant for appointment atleast against one of the vacancies earmarked the Persons with Disability, for which the recruitment was initiated in terms of the Employment Notice bearing No. 2/2013;

iv) Award costs of and incidental thereto;

v) Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal.”

The brief facts of the case are the applicant is an unemployed graduate, pursuant to the Employment Notice dated 21.09.2013 had applied for Direct Recruitment to the various erstwhile Group 'D' posts in the Southern Railway. The vacancies notified included vacancies meant for the Unreserved category/OBC/SC/ST/Persons with Disabilities, etc. The applicant, who is a member of Other Backward Community got qualified in the written examination and also in the physical efficiency test. Thereafter, the applicant was invited to the office of the 2nd respondent on 31.08.2015 for document verification. On completion of the document verification, medical examination of the applicant was conducted at the Railway Hospital, Palakkad. The applicant was declared as “*unfit in all classes*” and the same was communicated to the applicant. It is further submitted that there is no provision for certification like “*unfit in all classes*” except in the case of “*malingering*”. The impugned order at Annexure A-2 dated

17.11.2015 is passed by the respondents without application of mind and unsustainable in the eyes of law. The applicant had also made a representation, but the same was not considered in his favour.

2. Aggrieved by this, the applicant approached this Tribunal for redressal of his grievances by stating that this is violative of the constitutional guarantees enshrined in Articles 14. It is also submitted that he could have been declared unfit in all classes only in case of 100% permanent disability, but the same is not the case here.

3. Notices were issued and Mr. Sunil Jacob Jose, learned Standing Counsel for the Railways put appearance and filed a reply statement, wherein, it was submitted therein that the applicant was examined by the Committee consisting of three Doctors including a Physician. The medical authorities after examining the applicant, certified that the applicant was 'Unfit in all categories in Indian Railway' as per the Medical Certificate dated 17/23.09.2015. By invoking para 501(2) of the Medical Manual, he was detected with high BP by the Doctor, who examined him initially on 17.09.2015 and later by Committee of three Doctors on 21.09.2015. It is further stated that 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 member committee, no further appeal shall lie with any higher authority including Railway Board and question of alleged arbitrariness and unconstitutionality does not arise in this case.

4. Heard Mr. T.C. Govindaswamy, learned counsel appearing for the applicant and Mr. Sunil Jacob Jose learned Standing Counsel appearing for the respondents and perused the records.

5. The grievance raised in the present O.A is that whether the applicant can be declared 'unfit in all classes' even by a common disease of BP by the Medical Board. The Government of India made an order dated 05.06.2014 which reads as follows:-

“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/ colour vision/hypertension/diabetes or any other condition/disease, the medical examiner will not issue any certificate and will put up his/her findings to the CMO/MD/CMS/ACMS in charge of the Unit/Division/Sub-Division/Production Unit.

III. The candidate, without having to submit any appeal, will then be immediately examined by a three member standing medical team consisting of I) 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) the third being a senior medical officer specially nominated by the CMO/ CMS/ MD/ ACMS in charge.”

Learned counsel for the applicant has also drawn our attention to Annexure A-6, which states as :

“510. Classification of staff:-

(1) for the purpose of visual acuity and general physical examination of candidates and of serving Railway employees, the non-Gazetted Railway services are divided into the following broad groups and classes. The detailed categories of Railway posts under each of the classes/groups mentioned below are given in Annexure IV to this chapter:

Groups	Classes
A Vision tests required in the interest of public safety	<p>A-1 Foot plate staff, Rail car drivers and Navigating staff (For foot plate staff see para 520)</p> <p>A-2. Other running staff, Other shunting staff, Point lockers, Station masters, and other staff in operative control of signals.</p> <p>A-3 Loco, Signal and Transportation Inspectors, staff authorised to work trolleys, Yard supervisory staff, Road Motor Drivers and Gate keepers on level crossings.</p>
B. Vision tests required in the interest of the employee himself or his fellow workers or both.	<p>B-1 Such station and yard non supervisory, shed and other staff, excluding shed man, as are engaged on duties where failing eye sight may endanger themselves or other employees from moving vehicles, Road Motor drivers, Permanent Way Mistries, Gang Mates, Keymen, and staff of the Railway Protection Force.</p> <p>B-2 Certain staff in workshops and engine rooms are engaged on duties when failing eye sight may endanger themselves or other employees from moving parts of the machinery and crane drivers on open line.</p>
C. Vision tests required in the interest of administration only.	<p>C-1 Other Workshop and engine room staff, shed stockers and other staff in whom a higher standard of vision than is required in clerical and kindred occupation is necessary for reasons of efficiency and others not coming in group A or B.</p> <p>C-2 Staff in clerical occupations not included in A,B and C1.”</p>

Learned counsel has also drawn our attention to Annexure A-3 issued by District Community Health Centre, Koduvayur, who has given certificate that the applicant is otherwise fit and also Civil Surgeon, District Hospital, Palakkad along with lab records that the applicant's health is normal.

6. On the contrary, learned counsel for the respondents has drawn our attention to Annexure R-3 and R-4 - certificate issued by Medical Department for the Southern Railway. In these certificates, the observations made by the committee of the Doctors that the applicant is '*unfit in all categories in Indian Railway*' is mentioned on 17/23/09/2015. But this certificate is silent on what ground the applicant was declared unfit in all categories.

7. In the reply statement, it is stated that the applicant was detected with High B.P (Blood Pressure) by the Doctors. But, in these medical certificates, they have not mentioned what are the standards for fitness and what was B.P measured by the Doctor and Medical reading by monitor. What are the minimum and maximum level prescribed by Health Authorities. What is the actual level of Hypertension. The medical certificate is totally silent on this aspect. These details should have been provided to the applicant, particularly when career is at stake.

8. After considering the rival contentions, we are of the opinion that the applicant was declared medically unfit for all categories without even following medical norms by disclosing reading by BP, MONITOR or other test conducted by the Doctors. The same is unsustainable in the eyes of law. The applicant should have been provided medical reports straightforwardly. The fact that the authorities rejected the case of the applicant without doing this, gives us an impression that the medical examination was not done in a transparent manner. O.A is having merit on its side. So, we set aside the impugned order and we hereby direct the respondents to re-constitute a Medical Board after giving due notice to the applicant and he should be examined by the Specialist Doctors in the field, who shall give all supporting reports/documents to show that the applicant is fit/unfit for all categories by giving reasons for such opinion. In case applicant is found fit by the Board, then he should be considered for appointment. This O.A is allowed with the above observations. The order shall be implemented within three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated, 18th June, 2019.)

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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- Applicant's Annexures
- Annexure A1 - A true copy of communication bearing No. RRC/EN No.2/2013/PET dated 07.05.2015, issued from the office of the 2nd respondent.
- Annexure A2 - True copy of letter bearing No. RRC/EN02/2013/ME dated 17.11.2015, issued from the office of the 2nd respondent.
- Annexure A3 - A true copy of certificate of health dated 21.11.2015 issued by the Civil Surgeon, Community Health Centre, Koduvayur.
- Annexure A4 - A true copy of certificate of health dated 24.11.2015 issued by the Civil Surgeon, District Hospital, Palakkad with the Laboratory Report of the District Laboratory/ District Hospital dated 23.11.2015 along with the ECG Report dated 23.11.2015.
- Annexure A5 - A true copy of representation dated nil to the 3rd respondent.
- Annexure A6 - A true copy of relevant pages of Chapter V of the Indian Railway Medical Manual Vol. I containing paragraphs 501 to 522 dealing with the medical examination of candidates for appointment.

- Annexures of Respondents
- Annexure R1 - Photocopy of the Employment Notification No. RRC 02/2013 dated 21.9.2013.
- Annexure R2 - Photocopy of the Extract of Manual of Railway Recruitment Boards, 2007.
- Annexure R3 - Photocopy of the Medical Memo No. 31/8/93 dated 31.8.2015.
- Annexure R4 - Photocopy of the Medical Certificate No. 041278 dated 17/23/09/2015.
- Annexure R5 - Photocopy of the Railway Board's letter No. 2014/H/5/8 (Policy) dated 05.6.2014.
- Annexure R6 - Photocopy of the Extract of Para 222 of Indian Railway Establishment Code Volume I
- Annexure R7 - Photocopy of the Extract of Para 501(2) of the Indian Railway Medical Manual.
