

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.31/2016

Dated this Wednesday the 12th day of June, 2019

CORAM: R. VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Avvaru Babu
 (Son of Late A. Nageshwara Rao)
 Age 44 years, (Date of Birth – 10.02.1972)
 Working as : Loco Controller (TLC)
 (Group 'C' Post) under Sr. Divisional
 Electrical Engineer (Operational)
 (Sr. DEE(OP)), Office of the Divisional
 Railway Manager (DRM), South-East
 Central Railway, Kingsway,
 Nagpur – 440 001, and Residing at
 : Plot No.117, C/o. Shankara Rao
 Dhande, Sheshnagar, Post Nagpur,
 Near Bhartiya Vidya Bhavan's School
 Gate No.2, Taluka and District :
 Nagpur, State of Maharashtra – 440 009. ... ***Applicant***
(By Advocate Ms. Pratiksha Sharma)

Versus

1. The Union of India
 Through : General Manager,
 South East Central Railway,
 Headquarters' Office, New Zonal
 Building, Bilaspur, State of
 Chhatisgarh, Pin Code : 495 004.
2. Divisional Railway Manager (DRM)
 Divisional Railway Manager's Office,
 South East Central Railway,
 Kingsway, Nagpur – 440 001,
 State of Maharashtra.
3. Chief Medical Officer (CMO)
 South East Central Railway,
 Headquarters' Office, New Zonal
 Building, Bilaspur, State of
 Chhatisgarh, Pin Code – 495 004. ... ***Respondents***
(By Advocate Shri V.D. Vadhavkar)

Order Reserved on : 11.04.2019

Order Pronounced on: 12.06.2019

ORDER

Per : Ravinder Kaur, Member (J)

The Present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

"8(a) This Hon'ble Tribunal will be pleased to hold and declare that the applicant is entitled to continue as Loco Pilot (Goods) in accordance with the Medical Fitness Certificate dated 14/18.02.2011.

(b) This Hon'ble Tribunal will be pleased to hold and declare that the Second Special Medical Examination conducted by the respondents under the Medical certificate dated 23.09.2011 is wrong, illegal and unconstitutional and void-ab-initio.

(c) This Hon'ble Tribunal will be pleased to hold and declare that the letter dated 23.09.2011 is illegal and required to be quashed and set aside.

(d) This Hon'ble Tribunal will be pleased to hold and declare that the applicant is entitled to continue as Loco Pilot (Goods) with all consequential benefits including promotion, seniority and arrears of pay etc.

(e) This Hon'ble Tribunal will be pleased to quash and set aside the letter dated 23.12.2014 rejecting the appeal of the applicant under letter No.Med/HQ/SECR/Approval/Employee/53/1961 dated 23.12.2014 with all consequential benefits.

(f) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.

(g) Cost of this Original Application be provided for."

2. We have heard Ms. Pratiksha Sharma, learned counsel for the applicant and Shri

V.D. Vadhavkar, learned counsel for the respondents at length and perused the pleadings on record.

3. The applicant at present is working as a Traction Loco Controller (TLC) in the pay band of Rs.9300-34800 + Rs.4200 (GP) which is an alternative post given to him instead of Loco Pilot (Goods). The post of Loco Pilot (Goods) is also in the pay band of Rs.9300-34800 + Rs.4200/- (GP).

3.1 The applicant was sent for Medical Examination at the time of his recruitment and he passed in A1 category which is applicable to the Loco Running Staff which includes Assistant Drivers and Drivers known as Loco Pilots.

3.2 The applicant states that his entire service record is absolutely clear and no punishment has ever been imposed upon him. However, on 10.03.2011 he was illegally sent for a Special Medical Examination (hereinafter referred as 'SME') with malafide intention and for extraneous reasons though the Medical Examination was not due. It is stated that normally, SME is conducted in the cases where the employee

has been sick for long time or he has passed a signal at danger or has caused an accident or in the case if employee i.e. the Loco Pilot has been operated upon for any Eye problem/disease. That none of these conditions existed in the case of the applicant.

3.3 The applicant vide certificate dated 14/18-02-2011 (Annex A-4) was declared fit in A1 category which was not to the liking of respondent Nos.1 & 2 and therefore he was sent for 2nd SME against the Rules. He made representation dated 25.03.2011 (Annex A-5) in this regard alleging therein that sending him for the SME particularly for the second time was malicious and against the Rules. It is also alleged that the respondents desired that some how the applicant should be declared unfit medically, to be removed from the post of Loco Pilot. That the Chief Medical Superintendent, Nagpur vide his letter dated 10.02.2011 raised objections regarding referring the applicant for second SME. The applicant also wrote a letter dated 12.02.2011 (Annex A-7) addressed to the CCE(G), SEC. Rly, Dongargarh raising

objections to his being referred for such Examination and also demanded a copy of the Rule applicable in this regard. Vide letter dated 12.02.2011 addressed to the CMS, SEC Rly., Nagpur by the Crew Controller Elect (G), the reasons for sending the applicant for SME were explained. Thereafter vide letter dated 10.03.2011, Sr.DEE(OP) also specified the irregular activities of the applicant, due to which he was referred for such Examination. It is stated that the reasons as contained in this letter are illegal, totally out of context, with a view to victimise the applicant. The applicant claims that he was working as per Rules and in the interest/safety of the Administration, however, he did not like to work beyond duty hours, which irked some officers who used to complain against him. He claims to have made representation dated 15.06.2011 to General Manager, Sec. Rlys, Bilaspur against some officers.

3.4 It is further stated that vide letter dated 15.04.2011, he was referred for conducting a review of the SME already conducted by the respondents and that there

is no provision in the Railway Medical Manual for conducting such review, by the same committee or same level of Doctor who had earlier given fitness certificate to the applicant. It is further claimed that his Psychological Report dated 26.04.2011 does not suggest that he was unfit for the post of Loco Pilot (Goods). Further that the suggestive personality disorders, even if present are common in human beings and are traits of common human conduct, nature and character in different human beings, but in any case it cannot be concluded that the applicant was not fit for the post of Loco Pilot (Goods). Further, the disorders mentioned in the report are manipulated and in fact do not exist in the personality of the applicant.

3.5 He preferred appeal dated 10.10.2011 against his de-categorisation in the Second Medical Examination which was forwarded to Chief Medical Officer. The applicant vide letter dated 15.11.2011 was absorbed as Traction Loco Controller, the alternative post under CTLS, Nagpur in the same pay on provisional basis. Applicant alleged that he

was not subjected to fresh psychological or psychiatric test and that the findings of Medical Board were unilaterally approved by CMD. He has annexed the recommendation of Medical Board dated 10.01.2012 as Annex A-12.

3.6 The applicant has filed the present OA on the grounds that the impugned medical decategorisation and absorption of the applicant as Traction Loco Controller is illegal, arbitrary, malafide and against the Rules. That he has been put to a permanent/gross loss in respect of his promotional channel, as the post of Traction Loco Controller has no avenues for promotion as available to loco running staff i.e. Loco Pilot.

4. The respondents have filed detailed affidavit in reply and have denied the adverse allegations levelled against them.

5. The respondents have admitted that the applicant was sent for SME vide letter dated 09.02.2011 (Annex R-1), on account of reasons mentioned in the letter dated 12.02.2011 (Annex R-2). Thereafter in pursuance to Annex R-2, he was examined and

certificate dated 14/18-02-2011 (Annex R-3) was issued whereby he was declared fit as Loco Pilot in medical category A-1. However, he was sent for SME 2nd time vide letter dated 10.03.2011 (Annex R-4) due to his irregular activities mentioned therein which are as follows:-

"1. Not giving charge of the Train to booked reliever and demanding Ambulance at KP.

2. He is working with argumentative nature.

3. Frequently creating problem during Train operation which reflect smooth train run.

4. As per his regular activities like above it seems that he may have some mental problem or otherwise any reason."

6. The above letter, also finds mention that the applicant had either detained the train or by any other way created problem for smooth running of the train on 18.04.2010, 23.10.2010, 24.01.2011 and 07.02.2011. The applicant attended Psychiatry OPD/RH/PER on 13.04.2011, 20.04.2011, 21.04.2011 and 23.04.2011 for observation and psychological evaluation as mentioned in Annex R-5 dated 26.04.2013. As per his psychological report dated 26.04.2011 annexed alongwith Annex R-5, the

Sr. DMO/PSYCHIATRY, RH/PER, Chennai gave the following test findings :-

TEST FINDINGS:

SRI AVVARU BABU IS CONSCIOUS, WELL ORIENTED, CO-OPERATIVE. HIS HIGHER MENTAL FUNCTIONS ARE INTACT. DETAILED PSYCHOLOGICAL EVALUATION AND CLINICAL INTERVIEW ARE SUGGESTIVE OF A PERSONALITY DISORDER PREDOMINANTLY PARANOID AND ANANKASTIC.

It is categorically mentioned in the said report that the applicant was suffering from

Personality Disorder Predominantly Paranoid and Anankastic.

This report has not been rebutted in any manner by the applicant through any independent medical evidence.

7. The respondents have also relied upon the opinion dated 13.09.2011 of Dr. Sumit Prakash, Sr. DMO/CH/BSP Annex R-6 which we have gone through carefully. The said opinion speaks of that the applicant was booked for SME time and again as a case of recurrent behavioural misconduct with argumentative behavior. He used to misconduct on duty and was refusing to handover charge to book reliever and was demanding ambulance claiming to be ill so as to get immediate conveyance to get back to headquarters, though no illness could be

found. His behaviour has been termed as purely manipulative. Time and again, he has been picking up quarrels and disrupting train operation in the section. He was admitted in the hospital for observation and examined by Dr. Sumit Prakash between 28.03.2011 to 08.04.2011 and it was observed that he is argumentative with inflated self esteem, believing he could do wonder in improving the system, has callous concern towards colleagues, administration, loss to Railways and even to his family as it did not bother him being away from them because of all these incidences and threatened legal implications time and again, if any decision goes against him. Though he was not suffering from acute or active psychopathology but his manipulative and argumentative behaviour alongwith conflicting interpersonal relationship with seniors pointed him to have a personality disorder.

8. The applicant was also referred to regular railway clinical psychologist at CH/Perambur for 2nd opinion and confirmatory reports. After his psychological assessment,

he was found to have Paranoid and Anankastic Personality Disorder. The opinion given by Dr. Sumit Prakash which is relevant to be discussed is reproduced as below:-

“OPINION

The disorder is maladaptive pattern of behaviour relating to interpersonal relation affectivity and impulsivity. Such person keep grudges and often act impulsively in emotional state and a possibility of a deliberate accident in grudge & impulsivness cannot be excluded. Such persons have numerous trains of thoughts as well as planning maladaptive ways going on all the time and as a driver while on duty is dangerous, and is a threat to thousands of passengers on board and may incur big loss to Railways, property and lift.

Though these maladaptive behaviour and actions are under control of an individual and is liable to be punished for his action but knowingly the risk to thousands of passengers aboard and heavy loss to railways that it may incur due to an impulsive behaviour could not be taken. As all insight development, motivational, behavioral and cognitive psychotherapy given to him were of no help. Hence, it is recommended that SRI AVVARU BABU. LP/Elect.(OP)/DGG/NGP is not fit for footplate, train passing and jobs related with public safety.”

As per the opinion referred above, the risk to thousand passengers aboard and heavy loss to railways may incur due to an impulsive behaviour of the applicant. Hence, it was categorically recommended that the applicant is not fit for footplate, train passing and jobs related with public safety. This

opinion of Dr. Sumit Prakash though has been challenged but has not been rebutted in any manner. In rejoinder, in reference to para 4.12 of the reply of the respondents, the applicant has claimed that the psychiatrist had specified the type of personality disorder but did not declare as 'unfit'. However, this contention is not acceptable as in his opinion, Dr. Sumit Prakash has categorically mentioned that the applicant is not fit for footplate, train passing and jobs related with public safety. The applicant has not produced any independent medical opinion from any other psychiatrist to rebut the above medical evidence against him.

9. The respondents have relied upon the Indian Railway Medical Manual, 2000. As per Rule 514 of the same, in order to ensure the continuous ability of Railway employees in class A-1, A-2, A-3..... to discharge their duties with safety, they will be required to appear for re-examination at the intervals throughout their service. So far category A-1, A-2 and A-3 is concerned, they are required to appear for re-examination at

termination of every period of four years, calculated from the date of appointment, until they attain the age of 45 years and thereafter every two years until the age of 55 years and then thereafter annually, until the conclusion of their service. Rule 514 (f) deals with Special Medical Examination of the staff in the categories A-1, A-2 and A-3 in the following circumstances.

(a) Having undergone any treatment or operation for eye irrespective of the duration of sickness.

(b) Absence from duty for a period in excess of 90 days. In case of A-1, A-2 and A-3 an employee may be asked to give an undertaking to his supervisor when reporting back to duty after leave or absence, irrespective of the period, that he has not suffered from any eye disease or undergone an eye operation.

10. The contention of learned counsel for the applicant is that there is no provision for 2nd SME as per IRMM 2000. However, the perusal of this Manual shows that as per Rule 568, all mental instability cases are required to be examined carefully. It reads as follow:-

*"568. All mental instability cases to be examined carefully:-
(1) Every case of mental instability is a potential medico-legal case and the Railway doctor who is called upon to examine and certify such a case, should go over it carefully and elicit all the relevant points. The proforma for recording the examination points is given in annexure XXII to this chapter.*

(2) He should particularly be careful to see whether the

case is genuine or feigned insanity."

11. Rule 570 of the Manual deals with the procedure to be adopted by the Railway Doctor when a mental case reports sick. Under Rule 571 the Assistant of Medical Board is required for declaring mental cases fit for duty. Even assuming that the Manual does not prescribe for 2nd SME, however, it also at the same time does not prescribe that there cannot be 2nd SME in any circumstance. In Rule 514(f) which deals with Special Medical Examination, the case of mental illness does not find mention, moreover, it cannot be anticipated as to when one can suffer from any such mental instability. Accordingly, as and when the situations arise, the Railway employee is required to undergo the SME irrespective of the fact that he has already undergone the same and the conditions mentioned in Rule 514(f) are not satisfied at that stage.

12. The perusal of the entire record and after giving thoughtful consideration to the submissions made by the learned counsels for the parties, it is observed that the applicant has not pleaded any valid ground

to rebut the report of the Medical Board whereby it is opined that the applicant was suffering from Personality Disorder Predominantly Paranoid and Anankastic.

13. We have conscious of the fact that to secure continuous effective service, the medical examination of an employee becomes essential, sometime even beyond the Rules.

14. SME once is a Rule and more than once is an exception in the given set of circumstances. No doubt, Rule 514(f) speaks of SME to be conducted in 3 situations as already discussed above. However, the same are applicable in normal circumstances. This Rule does not prevent for another SME within a short span of earlier SME provided circumstances so demand, as in the present case where abnormal behaviour of the applicant created reasonable apprehension in the mind of the concerned authorities that there is every likelihood of him suffering from mental illness which can be proved to be hazardous. The Rules are discretionary and are required to be relaxed as per the need of the hour. Thus, in such circumstances, the authorities are competent

to take a decision which is necessary not only in the interest of department or the public property but also for the employee. We can not lose sight of the fact that the applicant was posted as Loco Motor Driver and his behaviour as adjudged by these authorities, could have resulted in accident causing physical harm to him and other travelling alongwith him and loss of public property as well. The authorities are not expected to wait for some accident to happen. The safety of employees and the public property should always be the prime concern of the authorities.

15. The applicant has alleged malice against the respondents, however no evidence in this regard has been brought on record nor even the name of officers who have malice against him, are disclosed nor they have been made party to the present OA.

16. In view of the above discussion, we do not find any merits in the OA. Hence, the same is hereby dismissed without any order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)