

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

LIBRARY

OA. 350/1371/2014

Date of Order: 25.09.2019

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

Avita Biswas, daughter of Ajit Kumar Biswas, aged about 37 years, by occupation- unemployed, residing at C/o- Kalyani Biswas, Vill- Mirpur, Bulbulchati, P.O- Kharagpur, Dist- Paschim Medinipore, Pin- 721301.

.....Applicant.

-versus-

1. The General Manager, South Eastern Railway, Garden Reach, Kolkata, Pin- 700043.

2. The Chairman, Railway Recruitment Cell, South Eastern Railway, Bungalow No. 12A, 11, Garden Reach Road, Kolkata- 700043.

3. The Assistant Personnel Officer, Recruitment, RRC, S. E. Railway, Bungalow No. 12A, 11, Garden Reach Road, Kolkata- 700043.

4. The Chief Medical Officer, S. E. Railway, Garden Reach, Kolkata, Pin- 700043.

5. The Sr. Divisional Medical Officer, OPD, S. E. Railway, Garden Reach, Kolkata, Pin- 700043.

.....Respondents.

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. B.P. Manna, Counsel

O R D E R (Oral)

Per Ms. Bidisha Banerjee, JM:

The applicant in this OA has sought for following reliefs:

"8(a) An order do issue directing the respondents to show cause as to why the result of the Medical examination showing the unfitness of the applicant for the post of Group -D will not be quashed and why the name of the applicant will not be recommended for his recruitment to the post of Group- D under the respondent authorities.

(b) An order do issue directing the respondents to arrange for a further Review Medical examination to be conducted by the respondent authority or any other Governmental Authority and to call for the applicant to appear before the same in order to ascertain the fitness of the applicant for her recruitment in Group- D post under railway respondents.

(c) To pass such other order/orders and or direction/directions, as this Hon'ble Court may deem fit and proper."

2. The grievance of the applicant in a nutshell is as under:

She applied for consideration against the post of Group -'D' under the S. E. Railway. She was declared suitable in the written test and appeared for physical endurance test conducted on 30.10.2012 and was declared successful therein. She also appeared for verification of documents and original testimonials on 26.12.2012 as asked for, but later on she was declared unfit for the post in question. By a letter dated 25.11.2013 she was informed that she was declared fit in C-II category and was not eligible for consideration against any of the advertised posts since the required medical standard against the advertised posts, was as under:

Sl No.	Category	Department	Medical Standard
1.	Track Man	Civil Engg	B-1
2.	Traffic Porter	Operating	A-2
3.	Helper-II	Mech, Elect., S&T, Engg	B-1
4.	Station Peon/Safaiwala, Cleaner, Helper-II	Comml, Med, Store, Workshop	C-1

It was also specifically mentioned that in terms of para 7.8 of employment notice that the candidates were required to be medically fit and in terms of para 7.9 that the candidates recommended for a particular category of post with a higher medical classification would not be considered for any alternative post with lower medical classification in the event of their medical unfitness. Therefore, she could not be offered appointment against any of the advertised post. However, she was granted liberty "to prefer an appeal against the findings of the medical authority, before Chief Medical Director, S. E. Railway, Garden Reach through Chairman/RRC/SER" wherein the following provisions of IRMM would apply:

"(xxxiii) 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 or error of judgment in the decision of the examine 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 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."

(xxxiv) If any medical certificate is produced by a candidate as evidence about the possibility of an error of judgment 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.

In view of the above provisions, you may prefer an appeal, if dissatisfied with the enclosed medical Report findings before CMD/GRC through Chairman/RRC/GRC within one month from the date of receipt of this letter. If no appeal is received within one month from the date of receipt of this letter, it will be presumed that you have nothing to say in this regard and your candidature shall be rejected accordingly."

3. The applicant was thus, at liberty to prefer an appeal within one month from the date of receipt of the letter and there was also a provision to entertain a delayed application. It is evident from Annexure A-5 to the OA that the applicant had approached the Chairman RRC seeking re-medical examination, vide her letter probably, dated 21.01.2014 beyond such month period, but that request was duly received, yet no order was issued on such representation seeking re-medical examination. Long thereafter, on 08.09.2014, the Chairman, RRC was informed by Addl. Chief Medical Director for Chief Medical Director, as evident from Annexure R-2 to the reply, that:

"In view of above, it is informed that since the abovenamed candidate was made fit in Cey two medical category, question of re-medical does not arise. Provision of reconsideration of adverse report of medical examination of any candidate is done only when a candidate is made unfit in all respect.

This is for your information in taking further necessary action.

This has the approval of CMD/SER."

A bare perusal of the provision in IRMM supra however would not indicate any restriction in reconsideration only in cases of unfitness in all respects.

4. Aggrieved the applicant preferred this original application immediately thereafter in September, 2014 itself. The matter was adjourned from time to time and finally came up for final hearing today. The applicant has categorically stated in the rejoinder to the reply that she had made a further application for re-medical examination enclosing a 'fit' certificate that she had obtained from a Medical Practitioner who certified her fit with full knowledge of the fact that earlier she was rejected as unfit for service, by a Medical Authority.

Ld. Counsel for applicant would thus vociferously plead that she should be given re-medical examination in terms of assurance communicated to her on 25.1.2013.

5. Per contra, respondents would urge that the applicant having failed to prefer an appeal on time was not entitled to be reconsidered. In support ld. Counsel would draw our attention to the Annexure R-2 dated 08.09.2014 issued in reference to the letter dated 14.08.2014.

6. We heard ld. Counsel for both sides and perused the materials placed on record.

7. In as much as it seemed that the applicant was never seriously pursuing the matter before this Tribunal but had approached this Tribunal on time and her prayer was not considered or disposed of in proper way, we feel it appropriate to dispose of this application with a direction upon the competent respondent authority to consider the application/appeal dated 21.01.2014, as contained in Annexure A-5 to the OA, in the light of the provision of IRMM extracted supra, condoning the delay if any in preferring the same and issue an appropriate order in accordance with law within 3 months from the date of receipt of copy of this order.

8. Thus, the OA would stand disposed of. No costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

pd

