

Central Administrative Tribunal
Patna Bench, Patna.
[Circuit Bench at Ranchi]
OA/051/00141/2019

Reserved on : 16.10.2019
Pronounced on: 18.10.2019

C O R A M

HON'BLE SHRI JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Yogendra Sawaiyan, Son of Late Kanuram Sawaiyan, aged about 46 years, Resident of Vill.- Purnia, PO- Chitimitti, PS- Manjhari, Dist.- Singhbhum (West), Pin- 833201.

.... Applicant.

By Advocate: Mrs. M.M. Pal, Sr. counsel with Mrs. Ruby Pandey

Vs.

1. The Union of India, through the General Manager, South Eastern Railway, Garden Reach, Kolkata- 43.
2. Divisional Railway Manager (P), South Eastern Railway, CKP Division, PO- Chakradharpur, Dist.- Singhbhum (West), Jharkhand, PIN- 833102.
3. Sr. Divisional Personnel Officer, South Eastern Railway, Chakradharpur Division, PO & PS- Chakradharpur, Dist.- Singhbhum (West), PIN- 833102.
4. Asstt. Personnel Officer, South Eastern Railway, Chakradharpur Division, Chakradharpur, Dist.- Singhbhum (West), PIN- 833102.
5. State Disability Commissioner (Under the person with Disabilities), Office at Project Building, Jharkhand State, Ranchi, PIN- 834002.

..... Respondents.

By Advocate: Mr. Prabhat Kumar

O R D E R

Per Mr. Dinesh Sharma, A.M.:- In this OA the applicant has prayed for quashing of the order passed by the General Manager, South Eastern Railway dated 01.11.2018 by which the request of the applicant for grant of

employment under visually handicapped quota for recruitments made against notification dated 10.02.1999 was denied. He has also prayed for directing the respondents to allow the applicant to join duty on the basis of disability certificate issued by Medical Boards in view of the order dated 10.03.2011 passed by this Tribunal in OA 263 of 2009. The applicant has earlier approached this Tribunal by OA/051/00164/2018 which was disposed of with a direction to consider the representation made by the applicant and to consider his case for appointment under the physically handicapped category as has been granted to other similarly situated candidates and pass a reasoned and speaking order within six weeks. The applicant has alleged that the order passed by the GM dated 01.11.2018 is not only illegal, improper, arbitrary and discriminatory but is also contrary to the order and direction passed by this Tribunal and amounts to colourable exercise of power. He has also alleged that the disability certificate dated 17.05.2017 issued by the district level Medical Board duly constituted by the statutes is enforceable throughout India and none other is competent to determine his disability. He has further alleged that the benefit of employment to other similarly situated persons has been given on the basis of their respective recent disability certificates issued by district level Medical Boards (constituted in terms of para 94 of the judgment passed on 10.03.2011 in OA 263 of 2009, further reproduced in OA 280 of 2012 and in OA 194 of 2016) the respondents cannot deny to extend the same benefit to this applicant.

2. The respondents have filed a written statement in which they have denied the claim of the applicant. The respondents have stated that the applicant was included in a provisional panel against the visually handicapped quota and subsequently offer of appointment was issued on 09.01.2001. This appointment was provisional and subject to their academic certificates, PHP certificates, Caste Certificates found correct and also subject to their passing prescribed medical examination by authorized medical officer. During the verification of medical certificates produced by the applicant it was noticed that his orthopaedical disability was shown as 35-40% and visual disability shown as 20-30% only. Since as per the rule, for recruitment against visually handicapped quota, 40% disability was required which the applicant did not possess, his candidature was not considered. The respondents have also stated that the competent authority had gone through the entire case file following the direction given by this Tribunal in OA/051/00164/2018 and passed the reasoned and speaking order dated 01.11.2018 where it has been made clear how his case was different from the other cases in which appointment has been given in terms of orders passed by this Tribunal. In all cases where such appointments had been given, the applicants had initially submitted handicapped certificate for their disability of 40% and above but were declared medically unfit for the job by the railway doctors. In this case, the visual certificate submitted by the applicant himself showed his disability as 20-30% only. The respondents have prayed for rejecting the application on these grounds.

3. The applicant has filed a rejoinder reiterating his earlier arguments and stated that a number of handicapped persons, namely, Vidya Sagar Mahto, Shyam Bahadur Sonar, Bhagwan Tamsay including this applicant had applied for employment against the same Employment Notice dated 10.02.1999 and all of them were selected but denied employment alleging their handicapped percentage to be less than 40%. It was following prolonged litigation and by orders of the Hon'ble Jharkhand High Court it was subsequently decided to constitute district level Medical Boards and such Board established on the basis of the direction of the State Disability Commissioner is the only competent authority to issue the disability certificate that is binding all over India. The respondents have given appointment to other similarly situated persons on the basis of medical certificates issued by this Medical Board and therefore it cannot be denied to the applicant.

4. We have gone through the pleadings and heard the arguments of learned counsels for both the parties. During the course of arguments, the learned counsel for the applicant cited a ruling by the Hon'ble Apex Court in **Maharaj Krishan Bhatt and Anr. Vs. State of Jammu & Kashmir** [(2008) 9 SCC 24] in support of her contention that the authorities should have followed a decision of a Court and granted similar benefits to persons similarly situated. She also again brought to the notice of this Tribunal paragraph-94 of the decision in OA 263 of 2009 which was quoted in the decision dated 24.08.2015 in OA 280 of 2012. This paragraph is reproduced below:-

“ 94. As has been observed earlier also, the disability certificate issued to a few of the eight applicants before us are not accurate in the sense that they have not clearly stipulated the life of the certificate itself, and as to whether it is in respect of a permanent disability, or a temporary disability. Moreover, the certificates are not accompanied by any declaration by the State Government of the Constitution of an appropriate Medical Board at the district level for the purpose of issuance of such certificates. The absence of any mention of such an authorization from the State Government for constitution of a proper Medical Board from the body of the certificates issued at the District level denigrates the authority/force of such certificates produced by the applicants, as they appear to have been issued in the routine course itself. It is, therefore, laid down that the respondent no. 4, the State Disabilities Commissioner, shall forthwith notify the constitution of proper District Level Medical Boards, in order to enable these applicants, and any others, to approach those Medical Boards, and then their certificates shall certainly be enforceable throughout the country.”

5. After going through the pleadings and hearing the arguments, it is clear that the applicant is claiming for appointment in the visual handicapped category against the notification made in the year 1999 for which the selections were done in the year 2001 and the applicant and a number of other persons were not given final appointment since the railway authorities did not find them fulfilling the conditions necessary for appointment as physically handicapped under various categories. When a number of such candidates took up this issue before the Tribunal/Hon'ble High Court, a direction was issued (which is quoted above) for notifying the constitution of proper district Medical Boards. As made clear in the above para, this direction was issued in the context of the disability certificate issued to the applicants (therein) not being accurate in the sense of not

clearly stipulating the life of the certificate or whether it was permanent or temporary disability. The learned counsel for the applicant has argued that since the disability certificates issued were found to be defective and since it was ordered to constitute a Medical Board the respondents cannot consider any other certificate other than those issued by this Medical Board for the purpose of appointment against the handicapped quota. The learned counsel for the respondents, however, countered this argument by saying that the decision of the Tribunal mentioned above was in the context of applicants who had produced disability certificates which showed disability above the required percentage but were still not found acceptable by the Railway authorities. This direction cannot be extended to apply to even those cases where the certificates itself showed the disability to be less than what was required for consideration for appointment to the physically handicapped quota. The cases of all those candidates whose certificates, at the time of seeking employment, did not show the required level of disability, cannot now take advantage of a decision which was taken in the context of those who had produced certificates showing the required level of disability but were still not considered.

6. From the above discussion, it is clear that the only issue which needs to be decided here is whether the case of the applicant is substantially similar to the cases in which appointment was given to other applicants against the notification of the year 1999, following litigation and a medical board certification (confirming their disability) in later years. We find that there is a basic difference between the applicant and the others

who were given appointment in that the disability certificate produced by the applicant himself showed the level of disability to be less than what was required under the rules. He cannot become entitled to the job only because of his provisional empanelment and appointment which was subject to verification of certificates and medical examination. The impugned order dated 01.11.2018, which was issued following the direction issued by this Tribunal, is a reasoned and speaking order and it does make the above distinction between the applicant and other allegedly similarly placed persons. We find this distinction logical and sensible. Persons who agitated before the courts on ground of their certificates showing required level of disability and who finally secured employment when a further properly constituted Board reaffirmed their level of disability, cannot be treated on the same ground as those whose level of disability, according to the certificate produced by themselves, was lesser than the required percentage. Hence, we do not find anything wrong in the impugned order and therefore the OA is dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member