

Dilip Kumar Vs. Union of India Through the General Manager, Northern Railway, Baroda House, New Delhi and Others

Dilip Kumar Vs. Union of India Through the General Manager, Northern Railway, Baroda House, New Delhi and Others

SooperKanoon Citation : sooperkanoon.com/938609

Court : Central Administrative Tribunal CAT Delhi

Decided On : Feb-01-2012

Judge : The Honourable Mrs. Meera Chhibber, Member (J) & the Honourable Mr. Shailendra Pandey, Member (a)

Appeal No. : O.A. No.442 of 2011

Appellant : Dilip Kumar

Respondent : Union of India Through the General Manager, Northern Railway, Baroda House, New Delhi and Others

Advocate for Pet/Ap. : For the Applicant: Yogesh Sharma with N.N.S. Rana, Advocates. For the Respondents: Shailendra Tiwary, Advocate.

Judgement :

Oral:

Mrs. Meera Chhibber, Member (J)

1. Applicant has challenged orders dated 11.2.2010, 9.11.2009 and Medical Certificate dated 10.10.2009 and has sought a direction to the respondents to get him medically examined by an independent Medical Board at Dr. Ram Manohar Lohia Hospital, New Delhi or at Safdarjung Hospital, New Delhi or in any other

Government Hospital on the question whether applicant had undergone any Lasik surgery or is having any other problem as per the medical requirement of the Railways for the post of Assistant Loco Pilot (hereinafter referred to as ALP) and his case may be considered for appointment to the said post on the basis of medical report given by an independent medical board.

2. The brief facts, as stated by the applicant, are that Railway Recruitment Board, Chandigarh, had advertised 12 posts of Apprentices Assistant Loco Pilot (hereinafter referred to as AALP) in the year 2008. Applicant appeared and was selected and even offer of appointment was issued to him vide letter dated September, 2009 by the DRM's Office, New Delhi for the post of AALP (page 15). He was thereafter sent for the medical examination and vide letter dated 9.11.2009, he was informed that he has been found unfit for A-I category vide Memo dated 10.10.2009 (page 9). In this letter, no reasons were given as to why he has been found unfit but orally he was informed that he has been found to be a case of consistent Hypertension. Being aggrieved, applicant gave a request for re-medical examination but he was again declared medically unfit without conducting any medical re-examination. In the meantime, applicant had gone to the AIIMS Hospital which certified that there was no evidence of Hypertension in its prescription dated 14.4.2010 (page 11 at 12). The applicant thereafter again requested the authorities to hold the Medical Board for him but interestingly, this time respondents issued letter dated 11.2.2010 (page 8) informing the applicant that there is no provision for second appeal under para 522 (i) of Indian Railway Medical Manual (hereinafter referred to as IRMM) for medical reexamination and further informed that the CMS, Delhi vide his letter dated 5.2.2010 has reiterated that the candidate has been declared as unfit as he has undergone Lasik Surgery which was confirmed during the appeal.

3. It is submitted by the counsel for the applicant that at this stage applicant approached Dr. Rajendra Prasad Centre for Ophthalmic Sciences and AIIMS, who suggested that a Medical Board be first constituted but no such Board was constituted by the respondents, therefore, applicant had no other option but to file the present OA.

4. It is submitted by the counsel for the applicant that respondents are taking different stands for rejecting his case even though none of the grounds exist, therefore, the OA may be allowed.

5. Respondents have opposed this OA on the ground of limitation. On merits, they have stated that though it is correct that applicant was selected for the post of Assistant Loco Pilot but he was found medically unfit due to having consistent Hypertension after being examined consecutively for three days. As per IRMM, if any candidate is having consistent Hypertension, he is deemed to be unfit for all services in the Indian Railways. Applicant had appealed for re-medical examination but he was again declared medically unfit.

6. They have further stated that the Railway Medical Administration had never stated that applicant had ever undergone Lasik Surgery. The applicant is trying to misinterpret and mislead the Tribunal by making false averments. In order dated 11.2.2010 due to inadvertent typographical error, facts relating to the ailment in some other case was conveyed to applicant which was not connected to his case, therefore, the said contents be treated as deleted from letter dated 11.2.2010. Letter to this effect was also issued to the applicant on 29.11.2011. They have categorically stated in para 4.7 that on 10.10.2009 the medical examination of the applicant was conducted by Ophthalmologist of Railway Hospital which clearly stated that no refractive surgery has been done.

7. They have further stated that Medical Officers engaged in pre-employment medical examination are well familiar with different nature of jobs associated with various categories of employment in Railways. In any case one cannot compromise with the safety aspects at any cost. They have thus prayed that the OA may be dismissed.

8. We have heard both the counsel and perused the pleadings also.

9. Though in letter dated 11.2.2010 the applicant was informed he was declared unfit as he has undergone Lasik Surgery but now respondents have admitted that applicant is not declared unfit on account of Lasik Surgery and this reasoning was given inadvertently to the applicant whereas it was with reference to some other

candidate. Since this was a specific reason given in letter dated 11.2.2010, therefore, naturally letter dated 11.2.2010 cannot be sustained in law. In any case, respondents have already stated that this portion be treated as deleted and have issued a specific letter also annexed with the reply which means applicant has been declared unfit in A-I category only on account of persistent Hypertension. On this ground applicant has annexed the prescription of AIIMS Hospital dated 14.4.2011 (page 11) which categorically noted that he had been refused job by the Railway Recruitment Board on account of Hypertension. Thereafter his BP was recorded on 3 consecutive dates and it was found there is no evidence of Hypertension (page 26). It is in view of above, that the applicant has prayed that his case may be referred to an independent Medical Board for re-medical examination because he is not suffering from Hypertension. In view of above, the objection of limitation is overruled,

10. Counsel for the applicant has placed reliance on judgment dated 10.5.2011 given by Hon'ble High Court of Delhi in Writ Petition (C) No.3121/2011 whereas counsel for the respondents has placed reliance on judgment dated 22.9.2010 also given by the Hon'ble High Court of Delhi in Writ Petition (C) 13980/2009.

11. We have gone through both the judgments. The judgment given by the counsel for the respondents shows the petitioner therein had been advised by the Medical Officer, who conducted his medical examination to reduce his weight and bring the same within normal limits within 10 weeks because as per the policy adopted by the CISF the officers were required to remain in Shape-1 as per CISF Circular No.29/2005 dated 23.8.2005 which categorically dealt with the instructions pertaining to Medical Categorisation and Classification for promotion of all combatised personnel. As against this, the petitioner therein had placed reliance on medical examination conducted by Unkal Healthcare Private Limited. It was in view of above held by the Hon'ble High Court of Delhi that the private facility would not have the expertise to evaluate the service personnel on the standards which are laid by the respondents.

12. In the instant case, it is relevant to note that the applicant has not gone to any private Doctor but he had approached the AIIMS Hospital, which is a prestigious

institution. The Doctor of AIIMS had recorded that BP of applicant on 3 consecutive dates and came to the conclusion that there is no evidence of Hypertension, therefore, it is a fit case which needs to be re-looked. It creates a doubt as to whether applicant actually suffers from Hypertension because admittedly there has already been one mistake committed by the respondents because in the second letter respondents have themselves stated that the cause of some other candidate was mentioned for declaring the applicant as medically unfit inadvertently, therefore, there may be some confusion. In order to remove the confusion, we feel ends of justice would be met by giving appropriate directions to the respondents.

13. Before giving any direction, we would like to note that we are aware that the post of Assistant Loco Pilot is a responsible post and cannot be treated lightly because it involves safety of the train and passengers, therefore, before any appointment is given to the persons, they must be examined thoroughly and given appointment only if they are found fit by the medical standards mentioned by the Railway authorities. However, in the given circumstances in this case we direct respondents No.2 and 3 to request the Medical Superintendent, Safdarjung Hospital, New Delhi(a Government Hospital) to constitute a Medical Board for examining the case of the applicant by giving all his papers and the medical requirement for the post in question and also informing them why applicant has been found unfit by the Railway authorities so that an independent Medical Board may examine the case of the applicant and give its report whether applicant can be declared unfit in A-1 category on the ground of Hypertension. This exercise shall be completed within a period of 3 months from the date of receipt of a copy of this order and the report of the Medical Board should be communicated to the applicant within 4 weeks thereafter. In case applicant is still found unfit that would be end of the matter but if it is found that applicant is not unfit, respondents shall pass orders in accordance with law.

14. With the above direction, this OA stands disposed of. No order as to costs.