

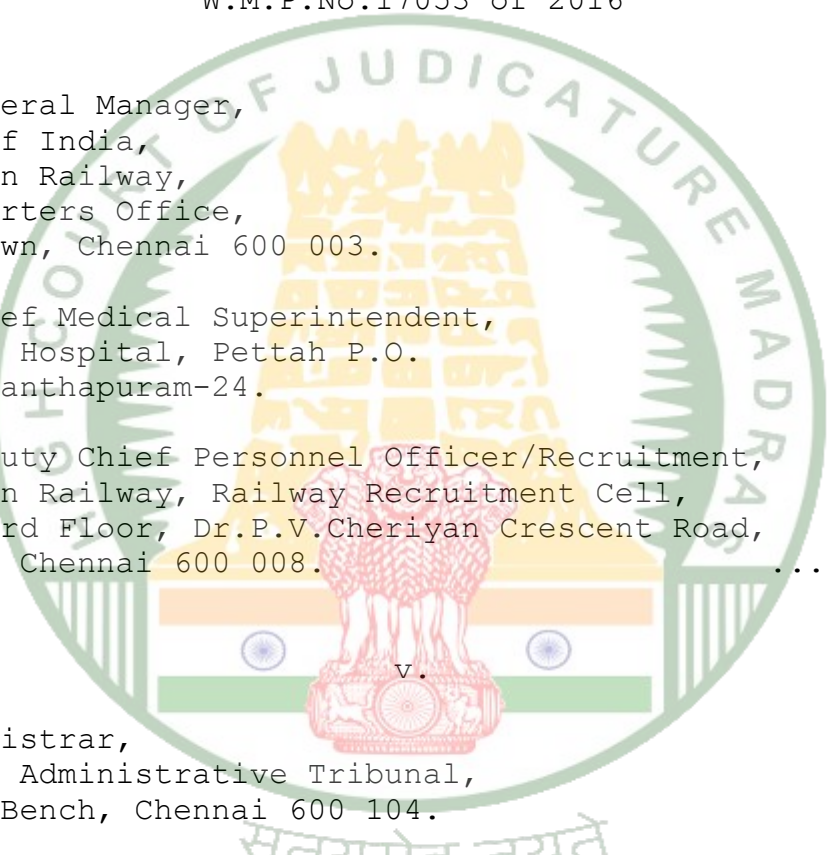
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.19705 of 2016
W.M.P.No.17053 of 2016

- 
1. The General Manager,
Union of India,
Southern Railway,
Headquarters Office,
Park Town, Chennai 600 003.
2. The Chief Medical Superintendent,
Railway Hospital, Pettah P.O.
Tiruvananthapuram-24.
3. The Deputy Chief Personnel Officer/Recruitment,
Southern Railway, Railway Recruitment Cell,
No.5, 3rd Floor, Dr.P.V.Cheriyar Crescent Road,
Egmore, Chennai 600 008.Petitioners
- v.
1. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai 600 104.
2. Shri Syed Ghouse Maideen,
No.9-2/18, Maruthupandiyar,
III Cross Street, Viswanathapuram,
Madurai 625 014.Respondents
- सत्यमेव जयते
- WEB COPY

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Ceriorari, to call for the records in O.A.No.666 of 2013 and quash the order, dated 24.03.2016.

For Petitioners : Mr.P.T.Ramkumar
For 2nd Respondent : Mr.L.Chandrakumar

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ petition is to the order, made in O.A.No.666 of 2013, dated 24.03.2016, of the Central Administrative Tribunal, Madras Bench, directing the petitioners herein, to re-consider the matter, by subjecting the 2nd respondent, to be examined by a team of three doctors, within a time frame, for selection to the post of Trackman.

2. Assailing the correctness of the order made in O.A.No.666 of 2013, dated 24.03.2016, Mr.P.T.Ramkumar, learned counsel for the petitioners submitted that the Central Administrative Tribunal, Madras bench, has erred in directing the petitioners to re-consider the matter, by subjecting the 2nd respondent, for third medical examination, by a team of three doctors, when he had already been found as medically unfit, by the competent Railway Medical Officer, during the initial medical examination, as well as in the further re-medical examination, conducted on 18.01.2012 and 12.06.2012 respectively.

3. Inviting the attention of this Court to the procedure followed for recruitment, to Group 'C' or Group 'D' services, in Railways, learned counsel for the petitioners submitted that as per Paragraph 511 of the Indian Railways Medical Manual (IRMM), whenever a candidate is subjected for medical examination, the Medical Examiners would use their own discretion, as to the scope of the general physical examination in each case and will judge cases on their merits, taking into consideration the prospective duties of the examinee, as also the age of the examinee and need for continued fitness for the remaining years of service.

4. At this juncture, learned counsel for the petitioners submitted that recruitment was for the post of "Trackman", in Railways and therefore, medical fitness of the candidate, is a mandatory requirement. As duties and responsibilities of a trackman, involves safety of the public, travelling in trains and therefore, utmost care and caution have to be taken, while assessing, as to whether, a candidate, is medically fit to be

appointed to the said post, falling under Group 'D' service. He further submitted that at the relevant point of time, there was no procedure for conducting a third medical examination and that too, by team of three doctors.

5. Inviting the attention of this Court to the fact that medical examination and re-medical examination have been done, as per the then existing guidelines and procedure, and that the revised memorandum issued on 05.06.2014, by the Ministry of Railways, for consideration of an appeal, of a non-gazetted candidate, declared as unfit in medical examination, cannot retrospectively be applied to any candidate, who had been medically examined and found unfit, he submitted that the Tribunal has erred in issuing directions, on the basis of a circular, issued at a later point of time.

6. Learned counsel for the petitioners further submitted that when the first medical examination was conducted on 18.01.2012, by the Railway Medical Officer, Tiruvananthapuram, he has issued a certificate, stating that the 2nd respondent was unfit for appointment in all classes and that his blood pressure was 160/100. Accordingly, while communicating to the 2nd respondent, vide letter, dated 13.03.2012, he was informed that if he has any objection against the medical fitness, he may submit an appeal for re-medical examination, along with the Medical Certificate, in proof of his claim, within a period of one month, from the date of receipt of the letter, dated 13.03.2012. In the said letter, he was also informed that if any medical certificate is produced before him, as evidence, in support of his medical fitness, such certificate would be taken into consideration, only if, it contains a specific note or observation by the medical practitioner, who had issued the medical certificate to the effect that the certificate has been given with full knowledge of the fact that he has already been declared as medically unfit for Railway Service by the Railway Medical Authority, appointed by the Government, in this behalf. It was also stated that if no appeal is filed within the stipulated period of one month, request for re-medical examination would not be considered in future, under any circumstances. He submitted that as per the proceedings, dated 06.06.2012, against the adverse report, the 2nd respondent was re-examined on 12.06.2012, by the Chief Medical Superintendent, Southern Railway, Trivandrum. At that time, his blood pressure was 180/120.

7. It is also the submission of the learned counsel for the petitioners that the medical certificate issued by the Senior Civil Surgeon, Government Rajaji Hospital, Madurai, to the effect that the respondent was physically fit for the job, he had applied for, does not disclose that the said Doctor, was aware of the fact that the 2nd respondent had already been examined by the competent Railway Medical authority twice, and found medically unfit, for railway service.

8. Taking this Court through the medical certificate issued by the Senior Civil Surgeon, Government Rajaji Hospital, Madurai, learned counsel for the petitioners submitted that there is nothing in the certificate to indicate that the 2nd respondent had even informed the said Government Doctor, about the factum of unfitness, declared by the Railway Medical Authority and that the said Doctor had any knowledge about the same.

9. Inviting the attention of this Court to the decisions by the Tribunals made in O.A.No.442 of 2011, O.A.No.496 of 2009 and O.A.No.718 of 2008 and relied on by the Tribunal, learned counsel for the petitioners submitted that in all the above three cases, re-medical examination was not conducted and therefore, the Tribunal, granted the reliefs therein. On the contrary, in the case on hand, appeal of the 2nd respondent was entertained and re-medical examination has been conducted and once again, he was found him "unfit for all classes". He therefore submitted that the Tribunal has erred in taking note of the above judgments, for issuing directions.

10. Learned counsel for the petitioners further submitted that when the competent Railway authorities have conducted examination, as per the procedure in vogue, directions issued by the Tribunal to follow a procedure, which came into force, at a later point of time, requires to be set aside. It is also his contention that no mala fides have been alleged in the process of medical examination and therefore, the Tribunal ought to have dismissed the Original Application.

11. Per contra, based on the averments made in the counter affidavit to the writ petition, Mr.L.Chandrakumar, learned counsel appearing for the 2nd respondent reiterated that in terms of the mandatory provisions made under the Indian Railways Medical Manual, as a general rule systolic pressure over 140 and diastolic over 90 should be regarded as suspicious and that the

candidate should be hospitalised by the Board, by giving their final opinion, regarding the candidate's fitness or otherwise. He further submitted that hospitalization report should indicate, as to whether the rise in blood pressure was of a transit nature due to excitement, etc., or whether, it is due to any organic disease. In all such cases, X-Ray and electrocardiographic examination of heart and blood urea clearance test should be done as a routine and a final decision has to be arrived at.

12. Learned counsel for the 2nd respondent further submitted that the blood pressure readings at the time of initial medical examination, and on re-medical examination were 160/100 and 180/120 respectively and the same would be due to anxiety or any other reasonable cause and that hyper-tension recorded ought not to have been taken as a ground to decline unfitness of a candidate, for all services in Railways.

13. Placing reliance on the Railway Board's letter, dated 05.06.2014, learned counsel for the 2nd respondent reiterated that the examination ought to have been done by a team of three doctors. Therefore, he contended that the medical examination conducted earlier, ought not to have been taken into consideration.

14. Learned counsel for the 2nd respondent further contended that if hyper-tension is taken as one of the grounds to disqualify a candidate, no recruitment can be made to any class, in railway service. It is also his contention that the Railways ought to have considered the certificate issued by the Senior Civil Surgeon, Government Rajaji Government Hospital, Madurai, wherein, he has categorically certified that the 2nd respondent is fit to discharge the duties. He prayed to sustain the order of the Tribunal.

Heard the learned counsel appearing for the parties and perused the materials available on record.

15. Material on record discloses that based on the performance in the written examination conducted on 16.10.2011, the 2nd respondent has been provisionally called for document verification. As per Paragraph 511 of the IRMM, it is stated that the medical examiners would use their own discretion, as to the scope of the general physical examination in each case and will judge cases on their merits, taking into consideration the

prospective duties of the examinee, as also the age of the examinee and need for continued fitness for the remaining years of service. Note to Para 522(1)(i) & (ii), states that, "if any medical certificate is produced by a candidate as evidence about the possibility of an error of judgment in the decision of the 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." According to the writ petitioners, blood pressure measurement is a basic requirement in all medical examination, though it is not specifically mentioned.

16. Procedure in vogue, as on 06.09.1994, enabling an appeal to be filed by a candidate for re-medical examination, against any previous adverse report, is as follows:

"(1) Genuine, deserving & worth cases alone need be referred to by the concerned employer.

(2) Such of those cases mentioned under item 1 above, fulfills all the conditions mentioned in para 523 of IRMM supra be referred to the concerned CMSS/MSS, in-charge of the Division.

(3) CMSSs/MSs, he/she, if happens to be the next appellate authority, may reconsider the above case for purpose of re-medical examination.

(4) If CMSSs/MSs do not happen to be the next appellate authority, then such cases may be referred to MD/RH/PER so that the concerned specialist's opinion can be taken and decision made as per Railway standard, duly enclosing:

(i) a statement of any special circumstances that appear worthy for consideration and

(ii) a report of the examination in form MO 105.

(5) Even if CMSSs/MSs happen to be the next appellate authority, finds difficulty in determining the precise nature & standard of deformity which is the cause for unfitness may also refer cases to MD/RH/PER.

(6) Request for appeal against the decision of first medical unfitness will be considered ONLY ONCE.

The receipt of this letter may kindly be acknowledged.

NB: Next Appellate Authority: If a candidate has

been examined & declared UNFIT by an ADMO/DMO, the next appellate authority is CMS/MS in-charge of the Division. If a candidate has been examined and declared unfit by a Sr.DMO, the next appellate authority is CMS in-charge of the Division. If there is no CMS in the Division, then the next appellate authority is MD/RH/PER."

17. On 18.01.2012, the 2nd respondent has been subjected to medical examination, by the Additional Chief Medical Superintendent, Tiruvananthapuram. At that time, blood pressure of the 2nd respondent was 160/100. The Additional Chief Medical Superintendent, Tiruvananthapuram, vide Medical Certificate No.C/233/2011-12, dated 18.01.2012, has certified that the 2nd respondent is unfit for appointment in all classes, and the said certificate is extracted hereunder:

SOUTHERN RAILWAY

MEDICAL DEPARTMENT

CERTIFICATE - PHYSICAL FITNESS OF CANDIDATE

(Certificate to be used when a candidate is medically examined for fitness for appointment to a Railway)

ORIGINAL

Hospital/Health Unit: TVC

No.C/233/2011-12

I do hereby certify that I have examined (name) Syed Gouse Maideen, S-252807, Age 38 years, a candidate for appointment as (designation) Group-D, Class..... in theBranch/Department, whose signature/thumb impression has been appended below in my presence.

I consider him fit/unfit for such appointment:
UNFIT IN ALL CLASSES.

Marks of Identification:

- (1) A mole on the right side face (right cheek)
- (2) A scar on the left leg

Sd/-

Signature/Thumb impression of
candidate

Sd/-

Signature of Railway
Medical
Examiner

Date: 18.01.2012

18. Accordingly, a communication, dated 13.03.2012, has been sent to the 2nd respondent, stating that he has been declared as medical unfit by the Railway Medical Authority. As rightly pointed out by Mr.P.T.Ramkumar, learned counsel for the petitioners that in the said letter, dated 13.03.2012 itself, the 2nd respondent has been categorically informed that if he has any objection against the medical fitness, he may submit an appeal for re-medical examination, along with the Medical Certificate, in proof of his claim, within one month, from the date of receipt of the above letter and if any medical certificate is produced before him, as evidence, in support of his medical fitness, such certificate would be taken into consideration, only, if it contains specific note or observation by the medical practitioner, who had issued the medical certificate to the effect that the certificate has been given with full knowledge of the fact that he has already been declared as medically unfit for Railway Service by the Railway Medical Authority, appointed by the Government, in this behalf.

19. As per the Note to the Circular, dated 06.09.1994, if a candidate has been examined and declared unfit by the Additional Divisional Medical Officer/Divisional Medical Officer, the next appellate authority is the Chief Medical Superintendent/Medical Superintendent in-charge of the Division. If a candidate has been examined and declared unfit by a Senior Divisional Medical Officer, the next appellate authority is the Chief Medical Superintendent, in-charge of the Division. If there is no Chief Medical Superintendent in the Division, then the next appellate authority is the Medical Medical Officer, Railway Hospital/PER. As stated supra, the first railway medical authority, who examined the 2nd respondent on 18.01.2012, is the Additional Chief Medical Superintendent, Tiruvananthapuram. Therefore, when re-medical examination was sought for, the 2nd respondent was directed to appear before the Chief Medical Superintendent, Southern Railway, Tiruvananthapuram, the next appellate authority, in-charge of the division. The said medical authority has also examined the 2nd respondent on 12.06.2012 and found that the blood pressure of the 2nd respondent was 180/120.

20. Thus, as per the procedure followed, in terms of the circular, dated 06.09.1994, the first medical examination conducted by the Additional Chief Medical Superintendent, Tiruvananthapuram, on 18.01.2012 and the second re-medical examination conducted by the Chief Medical Superintendent, Tiruvananthapuram, competent medical authority, on 12.06.2012,

are valid. At this juncture, it is to be noted that even in the Circular, dated 06.09.1994, the Chief Medical Director, Madras, while formulating the procedures for conducting re-medical examination, has taken note of Para 522(1)(i) & (ii) of the IRMM and the same is reproduced hereunder:

"if any medical certificate is produced by a candidate as evidence about the possibility of an error of judgment in the decision of the 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."

21. Certificate, dated 05.04.2013, issued by the Senior Civil Surgeon, Government Rajaji Hospital, Madurai, stated to have been submitted by the petitioner, is extracted hereunder:

TO WHOM THIS MAY CONCERN

This is to certify that Mr.Syed Gouse Maideen, 37/M, S/o.Syed mahaboob Basha, is physically fit for the job, he is applying for.

22. As rightly pointed out by Mr.P.T.Ramkumar, learned counsel for the petitioners submitted that the above certificate does not indicate, as to whether, the Senior Civil Surgeon, Government Rajaji Hospital, Madurai, was aware of the fact that the 2nd respondent had already been declared as unfit for appointment in railway service, by the Railway Medical Authority. As rightly pointed out, as per the then existing guidelines, the Doctor, who issued the certificate, has to vouch that he was aware of the earlier medical examination by the competent authority and thereafter, by making a specific note of the same, issue a certificate. The certificate, dated 05.04.2013, issued by the Senior Civil Surgeon, Government Rajaji Hospital, is bereft of any detail. Though a Senior Civil Surgeon had certified that, "the 2nd respondent is physically fit for the job, he had applied for", the said certificate does not even indicate the job, for which, the 2nd respondent had applied for. Apparently, the certificate issued is to all concerned and not specifically addressed to Railways. As rightly contended by the learned counsel for the petitioners that the Certificate of the Senior Civil Surgeon, Government Rajaji Hospital, Madurai, dated 05.04.2013, given after the re-medical

examination, cannot be given credence, at all and taken note of.

23. Facts of the cases in O.A.No.442 of 2011, O.A.No.496 of 2009 and O.A.No.718 of 2008 respectively, considered and incorporated in the impugned order, before us, shows that there was no re-medical examination and in such circumstances, the Tribunal has granted the relief. As stated supra, the case on hand, is otherwise.

24. Though Mr.L.Chandrakumar, learned counsel for the 2nd respondent placed reliance on the Railway Board Circular, dated 05.04.2013 and contended that a team of three doctors, ought to have examined the 2nd respondent, which the Tribunal has directed, this Court is not inclined to accept the said contention, for the reason that re-medical examination, in the case on hand, has been done, as per the then existing guidelines contained in the Railway Board proceedings, dated 06.09.1994, which alone is relevant and applicable for the recruitment made in 2012. The Railway Board Circular, dated 05.06.2014, contemplating medical examination of a three member medical team, cannot be retrospectively applied for selection made in the year 2012. Arguments of the learned counsel appearing for the 2nd respondent, cannot be accepted.

25. Lastly, an important aspect to be considered is that the post of trackman involves maintenance of tracks, and considering the nature of duties, blood pressure measurement is one of the basic requirements, to be taken note of, and Railways have more responsibility, care and caution, in the matter of deciding, as to what type of fitness is required for the post notified, more particularly, medical fitness. Safety of the passengers is more important. Medical reports of the railway authorities, cannot be ignored and it require due consideration. As rightly contended by the learned counsel for the petitioners that there is no allegation of mala fides, against the Doctors, who examined the 2nd respondent. On the aspect of medical fitness, we deem it fit to consider few decisions,

(i) In State Bank of India v. G.K.Deshak reported in 1994 Supp (1) SCC 70, the Hon'ble Supreme Court, at Paragraph 3, held as follows:

"The medical opinion, which is on the records of the case, clearly indicates that the defect in his eyes is very serious and he is unfit for the post. He was allowed to join in obedience to the writ issued by

the High Court. The reasons given in the impugned judgment indicate that the High Court took upon itself to decide the question of medical fitness of the respondent and on reaching a conclusion in favour of the respondent, preferred the same as against the medical opinion of the specialist doctor. It is significant to note that it is not suggested on behalf of the respondent that the authorities of the appellant State Bank of India have acted mala fide or with any malice against the respondent. In the circumstances, we do not approve of the approach adopted by the High Court in allowing the writ petition."

(ii) In *Indian Council of Agricultural Research and another v. Smt. Shashi Gupta* reported in AIR 1994 SC 1241, at Paragraph 7, the Hon'ble Apex Court held as follows:

"7. We do not agree with the reasoning and the conclusions reached by the tribunal. We are of the view that once the medical board and the Appellate Medical Board found the respondent medically unfit for the post of Scientist Grade S the tribunal had no jurisdiction whatsoever to have got over the medical opinions and directed her appointment to the Service. The Tribunal out-stepped its jurisdiction and acted with an utter perversity. Medical fitness is the sine qua non for appointment to public services. It is the inherent right of an employer to be satisfied about the medical fitness of a person before offering employment to him/her."

26. Going through the material on record, it is also seen that there is no mechanism for admitting a candidate to a post, in a Railway hospital, by the Board, before taking a final opinion. In the case on hand, about 34,927, qualified in Physical Efficiency Test, plus 210 candidates belonging to the category of persons with disabilities, exempted from PET, have been called for the written examination. Among them, 29,192 candidates have appeared in the examination, out of which, 6,367 candidates have qualified. Out the these, 4,232 candidates, in the ratio 1:1:2, have been called for document verification and medical examination. 58 candidates have been found to be medically unfit for all classes and communications have been

sent to them. We find that there is no procedure for admitting a prospective candidate in a hospital, before selection. Submissions on the said aspect, by the learned counsel for the 2nd respondent, cannot be countenanced. There cannot be any third medical examination, as directed by the Tribunal, on the basis of the Circular Memorandum, dated 05.06.2014, which came into force, at a later point of time.

27. In the light of the above discussion, the impugned order made in O.A.No.666 of 2013, dated 24.03.2016 of the Central Administrative Tribunal, Madras Bench, Chennai, deserves to be set aside and accordingly, set aside. Hence, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

skm

To

The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai 600 104.

+1CC to Mr.P.T.Ramkumar, Standing Counsel for Railway, SR 58977

W.P.No.19705 of 2016

SSK (CO)
PSI 12/11/2016

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