



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2017

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P.(MD) No.4515 of 2014

M.Esakkiganesh

... Petitioner

-vs-

1. Union of India
rep.by Deputy Chief Personnel
Officer / Recruitment
Railway Recruitment Cell
No.5, Dr.P.V.Churian Crescent Road
Egmore, Chennai-8

2. The Registrar
Central Administrative Tribunal
Madras Bench, Chennai

... Respondents

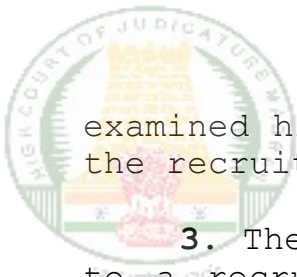
PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records relating to the order passed in O.A.No.839 of 2012, dated 28.01.2014, by the second respondent and to quash the same and consequently directing the first respondent to appoint the petitioner in Group D Posts as per the recruitment process under Employment Notification 2 of 2007, dated 24.11.2007, with all consequential benefits both service and monetary within a stipulated period.

For Petitioner : Mr.V.Kannan
For Respondents : Mr.S.Manohar for R1
R2 - Tribunal

O R D E R**[Order of the Court by T.S.SIVAGNANAM, J.]**

Heard Mr.V.Kannan, learned counsel appearing for the petitioner and Mr.S.Manohar, learned counsel appearing for the first respondent and perused the materials produced.

2. The petitioner challenges the order, dated 28.01.2014, passed by the second respondent, in O.A.No.839 of 2012. The said original application was filed by the petitioner to direct the first respondent to refer him for medical re-examination before any other Doctor or panel of Doctors not being the same Doctor, who earlier

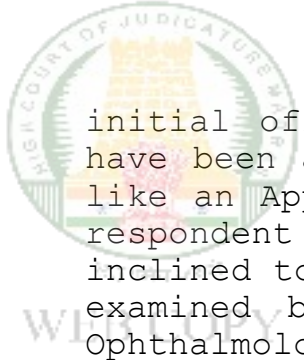


examined him and further to direct the first respondent to complete the recruitment process in a time bound manner.

3. The petitioner is a Graduate in History and he has responded to a recruitment notification issued by the first respondent for being considered for Group-D posts in various categories in Southern Railway and Integral Coach Factory. The process of recruitment consists of physical efficiency test followed by written examination and then medical examination. It is not in dispute that the petitioner qualified in both physical efficiency test and written examination. When he was sent for medical examination, the Ophthalmologist, who examined the petitioner, declared him as unfit for all categories. The petitioner had earlier approached the Chief Civil Surgeon, Thoothukudi Medical College, Thoothukudi and obtained a Certificate of Physical Fitness certifying that he is fit for Group-D posts. Therefore, the petitioner had his own doubt as to why he has been physically disqualified by the Ophthalmologist nominated by the first respondent. In such circumstances, in terms of the Rules, he sought for medical re-examination. This medical re-examination has to be done by the Board, which consists of three Doctors, one of whom must be Chairman. However, the Board which examined the petitioner, consists of one Ophthalmologist, who is the same Ophthalmologist who had earlier declared the petitioner unfit for all categories. Therefore, the petitioner approached the second respondent / Tribunal and sought for medical re-examination by a different Medical Board. The petitioner also pointed out that in the Medical Certificate, the Doctor had declared him fit in Cey Two with glasses, subsequently, it was altered as the petitioner is unfit for all categories. Therefore, it is submitted that the petitioner has been unjustly dealt with.

4. The learned counsel appearing for the first respondent would content that the recruitment was for more than 3500 vacancies and as of now, the recruitment processes is over. Further, the manner in which the selection was conducted was sought to be justified by referring to the averments made in the counter affidavit.

5. After hearing the learned counsel appearing for the parties and perusing the materials placed on record, we find from Paragraph No.11 of the counter affidavit that the alteration in the medical examination report submitted by the Doctor has been admitted therein. The first respondent would state in the counter affidavit that the Senior Divisional Medical Officer / Golden Rock has overruled his initial declaration of fit in Cey Two with glasses to that of unfit for all classes. Since the recruitment rules provide for a remedy to the persons, who have been medically declared unfit, the petitioner was justified in invoking the remedy. Unfortunately, this Medical Board comprised of the same Ophthalmologist, who had earlier declared the petitioner unfit for all categories and he was the only Ophthalmologist in the Board. Thus, it is clear that the Senior Divisional Medical Officer / Golden Rock has acted as a "judge on his own cause". When the said Medical Officer was the



initial officer, who declared the petitioner unfit, he should not have been a part of the subsequent Medical Board, which in fact is like an Appellate Board. Thus, the procedure adopted by the first respondent in this regard is flawed. Therefore, this Court is inclined to issue appropriate direction for the petitioner to be re-examined by the Medical Board consisting of not less than two Ophthalmologists. However, we feel that such examination can be conducted in Madurai Division taking note of the fact that the petitioner hails from Tirunelveli.

6. Accordingly, there will be a direction to the first respondent to make necessary arrangements to constitute a Medical Board, at Madurai Division, consists of three Doctors two of whom must be Ophthalmologists and to re-examine the petitioner as regards his fitness, without being in any manner influenced by the earlier reports.

7. It is made clear that even assuming that the new Medical Board to be constituted as directed above certifies that the petitioner is fit for selection to Group - D posts, that by itself will not guarantee employment to him, but it is subject to the rules and regulations and if there are any vacancies in the said post in the said selection. These directions shall be complied with by the first respondent within a period of four weeks from the date of receipt of a copy of this order.

8. The writ petition is disposed of with the above directions. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To:

1. The Deputy Chief Personnel Officer/Recruitment,
Railway Recruitment Cell, Union of India,
No.5, Dr.P.V.Churian Crescent Road,
Egmore, Chennai-8.

2. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai.

+ 1 CC TO Mr.S.MANO HAR, ADVOCATE IN SR No. 16964

+ 1 CC TO Mr.V.KANNAN, ADVOCATE IN SR No. 17104

SKM/KRK

TE/SV/SAR-II : 06/04/2017 : 3P/5C

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