

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 1646 of 2019

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Hafizul Haque --- --- Petitioner

Versus

1. Union of India through General Manager,
South Eastern Railway, Kolkata.
 2. Chief Personnel Officer, South Eastern Railway, Kolkata.
 3. Chief Medical Director, South Eastern Railway, Kolkata.
 4. Sr. Divisional Personnel Officer, South Eastern Railway, Ranchi.
 5. Chief Medical Superintendent, South Eastern Railway, Ranchi.
- --- Respondents

CORAM: The Hon'ble Mr. Justice Aparesh Kumar Singh
The Hon'ble Mrs. Justice Anubha Rawat Choudhary
Through Video Conferencing

For the Petitioner	: Mr. Manoj Tandon, Adv.
For the Respondents	: Mr. Gautam Rakesh, Adv.

06/10.03.2021 Heard learned counsel for the parties.

2. Petitioner got temporary appointment on the post of Apprentice Trainee Junior Engineer (Signal) after successfully competing in the recruitment test under Advertisement No.02/2014. However, he was declared unfit by a Three Member Medical Board also comprising an Eye-Specialist. His appeal was not entertained and thereafter he approached the learned Central Administrative Tribunal in O.A. No.051/00124/2017 also taking a plea that he had a favourable eye test report by RIMS, Ranchi. The learned Tribunal without getting into the merits of the case, disposed of the application with a direction upon the respondents to examine the merits or desirability or permissibility of a surgery to correct his vision. Respondent, by a speaking order at page-61, has rejected the appeal. The ground for rejection of the appeal is that a LASIK surgery of eye for correction of refractive error is not permissible for new recruits in Aye and Bee medical categories as per the policy of Railway Board applicable in cases for appointment of Junior Engineer (Signal). It also mentions that petitioner's appeal for re-medical examination was turned down as no useful purpose would be served by another medical examination since he was examined by a Senior Medical Officer with considerable experience initially and subsequently also examined by a Three Member Medical Board consisting of an Eye Specialist which declared him to be unfit.

3. In the 2nd round of litigation learned CAT by the impugned order dated 13th February 2019 passed in OA No.051/00134/2019 has declined relief holding as under :-

“4. Heard the learned counsel for the parties and perused the materials on record. In the speaking order, the respondents have categorically stipulated that the extant policy guidelines on vision corrective surgery were studied and noted that as per policy of Railway Board applicable in such cases for appointment as Jr. Engineer (Signal), there is explicit directive that surgeries for refractive error (LASIC surgery of eye) is not permissible for new recruits in Aye and Bee medical categories.

5. In view of the policy of Railway Board that surgeries for refractive error (LASIC surgery of eye) is not permissible for new recruits in Aye and Bee medical categories, we do not find any merit in the instant OA. Accordingly, the same is dismissed. No costs.”

4. Before us, learned counsel for the petitioner has placed the report of the Eye Department, RIMS, Ranchi and the letter dated 12th November 2013 of the Railway Board. It is submitted that the Railway Board has issued revised guidelines for medical fitness of candidates and employees of various medical categories who have undergone LASIK surgery in the past or during service period. Procedures for new recruits and existing employees have been prescribed. It is submitted that the petitioner's candidature has been rejected on the basis of some defect in his eye but the Doctor at RIMS, Ranchi did not find any significant defect in his eye-sight. At the same time, the Doctor had opined that LASIK surgery would correct the error in his eye-sight. It is submitted that the respondents did not constitute a review medical board which could have come to an independent and objective opinion as to whether the initial report of the Medical Board of Railways was accurate or not.

5. Learned counsel for the petitioner has, however, not challenged the policy of the railways which is to the effect that surgery for refractive error (LASIK surgery of eye) is not permissible for new recruits in Aye and Bee medical categories. Learned counsel for the petitioner submits that since the employment opportunities are scarce, if the Court so deems fit, the respondents may be directed to convene a review medical board and examine

the case of the petitioner for coming to a proper finding. In case the refractive error in his eye is insignificant or not found in the review Medical Board, the petitioner may be able to serve the railways.

6. Learned counsel for the railways submits that petitioner's case has been considered again after the matter was remitted by the learned Tribunal in the first round, but since the Railway Board's policy does not permit LASIK surgery for correction of such refractive error for new recruits in Aye and Bee medical categories, the request was declined. Moreover, earlier the petitioner was subjected to examination by a Senior Medical Officer initially and thereafter by the Three Member Medical Board consisting of an Eye Specialist also. Therefore, his appeal for re-medical examination was turned down as no useful purpose would be served. Petitioner cannot seek a review Medical Board once again in such circumstances when his case has been given due and proper consideration. The writ petition is devoid of merit and may be dismissed.

7. We have considered the submissions of learned counsel for the parties and taken note of the facts and circumstances above.

Petitioner's is a case of new recruitment. The cadre for which he was selected, is in the Signal Branch on the post of Junior Engineer. Petitioner was initially examined by a Senior Medical Officer with considerable experience and then also examined by a Medical Board of three Members including one Eye Specialist. The Medical Board recorded the following opinion :-

"The duly constituted three members standing medical Team/Ranchi carefully examined Hafizul Haque S/o Zafirul Haque newly recruited candidate for the post of JE/Signal in Medical category Aye three (A3) on 27.02.2017. On the basis of opinion of DMO/Eye/CH/GRC and considering the vision with glass is below 6/9, 6/9 BE and power of lenses are more than 2D and as per guide line laid down in IRMM 2000, Vol.-I, Para 512(i) A pg.No.61. The three members' medical team recommended that Sri Hafizul Haque S/o Zafirul Haque is UNFIT for the post of JE/Signal in medical category Aye Three (A3) which will likely to interfere with the effective performance of the duties of his appointment."

He was declared unfit in medical category Aye Three. Such a

defect in the eye-sight called as a refractive error could be corrected by a LASIK surgery, but as per the Railway Board's policy it is not permissible for new recruits in Aye and Bee medical categories. The plea raised by the learned counsel for the petitioner for constituting a review Medical Board does not have enough merit since the report of RIMS, Ranchi Eye Department also records that the error in his eye-sight can be corrected by a LASIK surgery. Moreover, petitioner's case was considered by a Medical Board comprising of three Doctors including an Eye Specialist earlier. This Court cannot rewrite the policy of the Railway Board in such matters, especially when the appointment relates to the Signal Branch.

8. In these circumstances and in view of the discussions made herein above, we do not find any error in the impugned order. Accordingly, the writ petition is dismissed.

(Aparesh Kumar Singh, J.)

(Anubha Rawat Choudhary, J.)

Shamim/