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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 03.09.2021

+ **W.P.(C) 9559/2021 & CM APPL. 29584-85/2021**

DEVENDRA SINGH

..... Petitioner

Through: Mr.Shailinder Saini, Adv.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr.Jagjit Singh, Sr. Standing
Counsel for Railways with
Mr.Preet Singh & Mr.Vipin
Chaudhary, Advs.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner challenging the communication dated 04.11.2019 by which the petitioner was informed that the Senior Divisional Medical Officer (G&O), Eastern Railway, Asansol vide Medical Certificate No. 777600 dated 19.09.2019 has declared the petitioner as unfit for recruitment as a Constable (Executive) in the Railway Protection Force (hereinafter referred to as 'RPF') in BEE ONE(B-1) medical category due to 'EGL 13mm defective'.

2. The petitioner further challenges the communication dated 10.01.2020 by which the request of the petitioner for medical re-

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examination was not considered for the reason that the photograph of the candidate had not been attested by the doctor concerned on the medical certificate.

3. The petitioner also challenges the communication dated 08.05.2020 by which the Principal Medical Chief Director, Eastern Railway/Kolkata had rejected the appeal for medical re-examination.

4. The learned counsel for the petitioner submits that the petitioner had applied for the post of Constable (Group C Post) in the RPF. He was issued a letter dated 27.08.2019 mentioning his provisional selection and was called to present himself for the medical examination to be held on 05.09.2019 at the Office of the Inspector, RPF, Asansol. The petitioner duly presented himself for the medical examination, however, was declared unfit under BEE ONE (B-1) medical category due to 'EGL 13mm defective'. The impugned communication dated 04.11.2019 itself advised the petitioner of the procedure to file an appeal for medical re-examination. The petitioner duly applied for the same, however, on a technical ground of the photograph of the petitioner not being attested by the concerned doctor, the request was rejected by the respondent vide impugned communication dated 10.01.2020. The petitioner has thereafter undergone a medical test at IRMM at the Jaipur Calgery Eye Hospital and Research Centre Trust as well as the Raj Bahadur Memorial Rajkiye Chikitsalaya, who had declared him to be medically fit. The petitioner again applied for an Appeal Medical Board with the respondent, however, the said request has been rejected by the

respondents vide impugned order dated 08.05.2020 without giving any reasons for the same. The learned counsel for the petitioner submits that as the petitioner has been denied an opportunity of an examination by the Appeal Medical Board without giving any reasons, the present petition deserves to be allowed.

5. We have considered the submissions made by the learned counsel for the petitioner, however, find no merit in the same. The impugned communication dated 04.11.2019 informed the petitioner that he has been found unfit by a committee consisting of three Railway Doctors. The impugned communication further advised the petitioner that he may submit an appeal challenging this finding within one month of the date of the issue of the letter alongwith a medical certificate in the prescribed performa from a specialist doctor. The impugned communication further informed the petitioner that the communication itself shall have to be produced before the Government/private specialist doctor as the same bears the photograph and identification marks of the candidate for verification by the specialist doctor at the time of medical examination. The impugned communication is reproduced herein below:-

*“Office of the Principal Chief Security Commissioner/
RPF Eastern Railways, 14 Stan Road (3rd Floor)
Kolkata – 700 001*

*S. No. SC.30/65/5-
E/Const.Rectt/2019 Kolkata the 4th November, 2019*

To,

Name: Devendra Singh
Father's Name: Vijay Singh
Roll No: C/UR/13120195578
Address: Vill-Dayopura PO-Kumha Teh- Bharatpur
Distt.- Bharatpur, Rajasthan (PIC)
Mobile No.: 8739962594
Devendra Singh Email: devvijay321303@gmail.com

29.03.2018

Sub: Medical Examination of empaneled
constable (Executive) candidate at Asansol
Railway Hospital, Asansol

This is to intimate that Sr. Divisional Medical Officer (G&O), Eastern Railway/Asansol vide Medical Certificate no. 777600 dated 19.09.2019 has declared you unfit as Constable (Executive) in RPF in **BEE ONE (B-1) medical category by a committee consisting of three Railway Doctor, "due to EGL 13mm defective"**.

In terms of para – 522 of India Railway Manual, you may prefer appeal to higher medical authority i.e., Principal Chief Medical Director, Eastern Railway/Kolkata within one month from the date of issue of the letter. You are advised to enclose a medical certificate in prescribed Proforma (sample copy, is attached herewith) obtained from a specialist doctor for consideration of appeal in the case of the candidates declared unfit. A demand draft for Rs. 1000/- drawn in favour of Principal Financial Advisor, Eastern Railway/Kolkata should be enclosed along with the application for appeal.

Your application for appeal should be sent to Principal Chief Security Commissioner, RPF, Eastern

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Railway, NKG Building 3rd Floor 14, Stand Road, Kolkata, Pin – 700001, A copy of Railway Board's letter No. 2014/H/5/8 (Policy) dated 07.07.2017 regarding instructions for consideration of appeals in the cases of the candidates declared unfit upon medical examination is enclosed here with for your information.

DA: As above

Note: This letter be produced before Government/private specialist doctor, who will examine the candidate. The photograph and identification marks are printed on this letter for verification of the candidate by the specialist doctor at the time of Medical Examination.

Identification Marks:

A cut mark on left Thumb

A mole on right Chest

-sd-

Dt. 24/11/2019

*Staff Officer to
PCSC For Principal Chief Security
Commissioner/RPF Railway Protection Force
Eastern Railway/ Kolkata*

Copy to PCMD/E. Rly, Kolkata for kind information, please.

*Staff Officer to
PCSC For Principal Chief Security
Commissioner/RPF Railway Protection Force
Eastern Railway/ Kolkata”*

6. The petitioner has also annexed with the petition, a copy of instructions dated 07.07.2017 regarding consideration of an appeal by

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a candidate selected for railway employment declared unfit upon medical examination. Clause VI of the same is relevant and is reproduced hereinbelow:-

“VI. If the candidate wants to appeal against the decision of the Committee, he should submit the same to CMD of the zone within a period of one month (from the date of receipt of decision from Personnel Department) with due justification routed through concerned Personnel Department of the zone. Such an appeal shall be entertained, only if, the candidate produces a certificate from a Government/Private doctor of the specialty /specialties in which the candidate has been found unfit. Such a certificate should contain a note that the Government/Private specialist is fully aware of the physical & visual standards set by the Railways for the particular medical category, and that he is aware of the fact that the candidate has already been declared unfit according to these standards during medical examination conducted by an appropriate Medical Board comprising of three senior railway doctors appointed by the Government in this regard. The certificates should bear the photograph and mark of identification of the candidates duly attested by such a Government/Private Issuing Authority. Such an issuing authority shall also clearly mention its MCI/State registration number. The candidate should clearly should be advised of this para.”

(Emphasis supplied)

7. A reading of the above clause and the impugned communication would clearly show that the respondents have placed emphasis on the

identity of the candidate undergoing examination to be attested by the doctor examining the candidate and for this purpose, it has been mandated that the certificate issued by the doctor must have the photograph and identification marks of the candidate duly attested by the Government/private issuing authority.

8. In the present case, the petitioner does not deny that in the original appeal filed by him, his photograph was not duly attested by the doctor concerned. Therefore, no fault can be found in the rejection of his request for an appeal, communicated to him by the impugned letter dated 10.01.2020.

9. Clause VI of the Instructions further states that a request for appeal must be submitted within one month from the date of receipt of the decision from the Personnel Department of being declared unfit. The petitioner was informed of him being declared medically unfit vide the impugned communication dated 04.11.2019. The petitioner admittedly filed the appeal with the respondents after his first rejection of appeal, only on 02.03.2020, which is beyond the prescribed period. The recruitment period being time sensitive, therefore, no fault can be found in the rejection of such request by the respondents.

10. It is also relevant to note here that though the rejection of appeal of the petitioner was communicated to him vide letter dated 08.05.2020, the present petition has been filed belatedly and is first time listed only today, i.e. after a period of more than one year of such rejection. Though the petitioner, in the present petition claims of an another order dated 01.09.2020 being passed by the Principal Chief

Security Commissioner, RPF, Eastern Railway rejecting his request for medical re-examination, even a copy thereof has not been annexed with the petition.

11. As far as the reliance of the petitioner on the certificate issued by the other Medical Institute(s) is concerned, once a proper procedure has been followed by the respondents and no *mala fide* is attributed against the respondents, no credence can be placed on such certificate(s) for challenging the report of the Medical Committee appointed by the respondent, which found the petitioner to be medically unfit for appointment. It is relevant here to emphasize that the Medical Committee that declared the petitioner Unfit consisted to three doctors from the Railways.

12. In view of the above, we find no merit in the present petition. The same is dismissed.

NAVIN CHAWLA, J

MANMOHAN, J

SEPTEMBER 3, 2021/rv