

\$~36 (2021 list)

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

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Date of decision: 27.10.2021

+ **W.P.(C) 12113/2021 and CM Nos. 37830-32/2021**

UNION OF INDIA AND ORS

..... Petitioners

Through: Mr. V.S.R. Krishna with Mr. V.
Shashank Kumar, Advocates.

versus

JEET RAM GURJAR

..... Respondent

Through: Mr. Bimal Berera, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Court hearing convened *via* video-conferencing on account of COVID-19]

RAJIV SHAKDHER, J.: (ORAL)

1. This writ petition is directed against the order dated 26.04.2021, passed by the Central Administrative Tribunal [in short “the Tribunal”] in O.A. No.3652/2016.

2. The record shows that, the petitioners, in effect, Northern Railway, had initiated steps for employing 5679 persons in Group ‘D’, in various categories i.e., job functions. This process was commenced, *via* a notification issued on 30.12.2013.

2.1. Insofar as the respondent is concerned, he sat for the written examination, in which he qualified. The respondent, concededly, also qualified the prescribed physical endurance test.

2.2. It is at the stage of medical examination that, the respondent encountered impediments.

3. Mr. V.S.R. Krishna, who appears on behalf of the petitioners, does not dispute the fact that, the respondent was examined, based on a request made by the concerned authority in Northern Railway, by a Medical Board constituted by the All India Institute of Medical Sciences (AIIMS).

3.1. It is also not disputed by Mr. Krishna that, the Medical Board rendered the following opinion, on 22.08.2015:

“Presently the patient has normal vision. The lesion may increase in future, but are known to be very slowly progressive and do not cause visual disturbance until crosses age 40-50 years. He may be adjusted in non-clerical job as per eligibility.”

3.2. It is however, Mr. Krishna’s submission that, if the respondent is appointed, as directed by the Tribunal, it would involve a breach of the extant regulations, which are prescribed *qua* the employees that are recruited by the Northern Railway.

3.3. Mr. Krishna says that, every employee who is recruited to Northern Railway is required to undergo a medical examination.

3.4. According to Mr. Krishna, since there is an apprehension of the respondent’s vision deteriorating in future, and in particular, the possibility of the lesion in his eyes increasing, the respondent cannot be inducted in service, in terms of note (b) appended to paragraph 512, at page 75 of the Indian Railway Medical Manual 2000 [in short “manual”].

4. On the other hand, Mr. Bimal Berera, who appears on advance notice on behalf of the respondent, points out that, the respondent falls in Class A-2.

4.1. It is stated by Mr. Berera that, the standards for vision required for candidates falling in A-2 are set out at page 76 of the manual [i.e., page 32

of the case file] both for those who are below 40 years, and those who are 40 years and above.

4.2. To be noted, the petitioner's age is about 32 years.

4.3. It is Mr. Berera's submission that, the respondent has a 6/6 vision i.e., normal eye sight, and therefore, it is better than the parameters set forth for candidates falling in A-2 category.

4.4. We may note that, the contention of Mr. Berera that the respondent has 6/6 vision, is fully supported by the certificate issued by the Central Hospital, Northern Railway, New Delhi, which is appended on page 67 of the case file.

4.5. It is Mr. Berera's contention that the petitioners' apprehension that the respondent's vision may deteriorate, is an aspect which may or may not arise. Mr. Berera says that, in any event, as indicated by AIIMS and by the Tribunal, the respondent, at that stage, could be put in a post, which does not entail monitoring safety aspects.

5. We may indicate that, in the rejoinder, Mr. Krishna says that, A-2 category applies to persons, who are already in service, and not qua direct recruits.

6. We have heard learned counsel for the parties and perused the record.

7. According to us, the medical opinion rendered by AIIMS requires to be given due weight.

7.1. As is evident from the extract set forth hereinabove, the medical opinion rendered by AIIMS is unambiguous, inasmuch as, it states in no uncertain terms that the respondent's vision, at present, is normal.

7.2. Furthermore, the said medical opinion, while noting that the respondent's lesion may increase in future, has also stated, in explicit terms

that, it progresses very slowly, and that it does not cause visual disturbance, until the person crosses an age spanning between 40 to 50 years. More particularly, the medical opinion emphasizes the fact that, the respondent could be adjusted in a non-clerical job, albeit, as per eligibility.

7.3. Therefore, in our view, Mr. Krishna cannot but accept the position that, amongst various jobs, for which the aforementioned notification was taken out, there were also jobs such as that of a ‘safaiwala’ and ‘khalasi’ available which do not require visual acuity.

8. Given the aforesaid position, we are of the opinion that no interference is called for, in the given circumstances, with the impugned order of the Tribunal.

8.1. The respondent has managed to enter the fray for acquiring the job, by going through the rigour prescribed by the petitioners.

8.2. To our minds, the principle of reasonable accommodation should apply to persons, such as the respondent, both at the recruitment stage as well as after a person enters in service.

8.3. The respondent can be assigned a job in the Northern Railway, which does not deal with safety aspects, if and when his vision deteriorates.

9. Thus, for the forgoing reasons, the writ petition is dismissed. Consequently, pending applications shall also stand closed.

RAJIV SHAKDHER, J.

TALWANT SINGH, J.

OCTOBER 27, 2021/tr

Click here to check corrigendum, if any