

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2156 OF 2022

Sanjeev Mehta

....Petitioner

V/S

Director General

RPF Railway Board & Ors.

....Respondents

...

Mr. Ashok T. Gade a/w Ms. Riya John for the Petitioner.

Mr. Neel Helekar a/w Mr. D.P. Singh for Respondent Nos.1 to 3-State.

...

**CORAM: S.V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

DATE : 24 APRIL 2023.

P.C.:

1 The Petitioner is working as a Inspector with the Respondent-Railways.

2 The learned Counsel for the Petitioner strenuously contends that the Petitioner is illegally denied the promotion on the ground of defective vision. In 2013 the Petitioner was denied promotion on the ground of defective vision. The Petitioner has got his vision tested at two Government Hospitals wherein the vision and color vision has been found to be within normal range. The Medical Board of Railways has held

the Petitioner to be color vision defective. The same does not appear to be proper. The learned Counsel submits that the Petitioner can be referred to an independent Government Hospital such as Sir J.J. Hospital. The learned Counsel submits that the Doctors in the Government Hospital also conducted the required test and thereafter issued the certificate that the vision and the color vision of the Petitioner is within the normal range. The same could not have been discarded. Different reasons have given by the Respondents. No consistency appears in the reasons given by the Respondents. In 2013 the promotion was denied only on the ground that the Petitioner had defective vision whereas now it is alleged that the Petitioner has defective color vision. Both the reasons would not go in hand in hand.

3 The learned Advocate for the Respondents submits that the Medical Board of Central Railways consists of experts and they conducted test in view of the requirement as per the rules governing the Railways and the Medical Board has examined the Petitioner again after this Court's directions. The Medical Board has found that the Petitioner has color defective vision.

4 The learned Counsel for the Petitioner submits that the rules cannot be made applicable to the persons who are already in service. The said rules can be made applicable only to the persons who want entry in service.

5 The learned Advocate for the Respondents submits that it is when the Petitioner claims the post from non-gazetted to gazetted the rules are made applicable.

6 We have considered the submissions.

7 The Petitioner's claim for promotion as Assistant Commandant has been denied on the ground that Petitioner is medically unfit. The order declaring the Petitioner medically unfit is assailed in the present Petition.

8 The rules in question for medical examination are applicable for the employees on promotion from non-gazetted to gazetted post. As per the said rules vision test is required in case an employee is promoted from non-gazetted to gazetted post.

9 Under order dated 21 October 2022 the Coordinate Bench of this Court observed that the decisions relied by the Petitioner of Delhi High Court and Jharkhand High Court to contend that vision impairment, from

which the Petitioner suffers, should not stand in the way of his promotion for the post of Assistant Commandant would not apply to the Petitioner as the Central Armed Police Forces (CAPFs) does not include RPF. This Court under order dated 21 October 2022 directed the Respondents to once again medically examine the Petitioner to find out whether the benchmark for appointment on promotion to the post of Assistant Commandant on medical ground is met with.

10 Pursuant to the aforesaid order the Petitioner was examined by the Medical Board. After examination the report is submitted by the Medical Board. The Medical Board concluded that the employee is color vision defective on Ishihara chart and EG Lantern test aperture size one point three mm & thirteen mm. The Medical Board further opined that the Petitioner is unfit for AC (Jr Scale).

11 This Court cannot sit in Appeal over the decision of the Medical Board inasmuch this Court does not possess any expertise in that regard. The Medical Board of Central Railways is competent to issue the certificate.

12 As the Medical Board has already found the Petitioner unfit and we do not find any procedural infraction, it would not be possible to come to the aid of the Petitioner. Writ Petition as such is disposed of. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

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by
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RAJALINGAM
KATKAM
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