



WP No.30907 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

WP No.30907 of 2023

Arshad Ali

... Petitioner

versus

1.The Senior Divisional Personnel Officer/MAS
Personnel Branch,
Divisional Railway Manager's Office,
Chennai Division,
Southern Railway,
NGO Annexure, Part Town,
Chennai – 600 003.

2.The Assistant Personnel Officer,
Railway Recruitment Cell,
Southern Railway,
No.5, 3rd Floor,
Dr.P.V.Cherien Crescent Road,
Egmore,
Chennai-600008.



WP No.30907 of 2023

3. The Assistant Personnel Officer Mechanical,
Divisional Office,
Divisional Railway Manager's Office,
Personnel Branch near Triuchirapalli Railway Junction,
Triuchirapalli – 620 001.
4. The Chief Medical Superintendent,
Office of the Medical Superintendent,
Chennai Division, Southern Railway,
Egmore, Chennai – 600 002.
5. The Principal Chief Medical Director,
Southern Railway, Office of the Chief Medical Director,
4th Floor, Moore Market Complex, Park Town,
Chennai- 600 003.
6. The Medical Director,
Railway Hospital,
Perambur,
Southern Railway,
Headquarters Hospital,
Chennai- 600 023.
7. The Senior Divisional Medical Officer/
Health Unit/NGO/MAS,
Southern Railway,
Chennai -600 003.
8. The Senior Coaching Depot Officer/BBQ,
Office of the Senior Coaching Depot Officer,
Train Care Centre,
Basin Bridge,
Chennai – 600 003.



WP No.30907 of 2023

9. The Divisional Railway Manger,
Divisional Office, Personal Branch,
Southern Railway, Near Tiruchirapalli Railway Junction,
Tiruchirapalli- 620 001.

10. The Divisional Personnel Officer,
Divisional Office, Personal Branch,
Southern Railway, Near Tiruchirapalli Railway Junction,
Tiruchirapalli- 620 001.

11. The Registrar,
The Hon'ble Central Administrative Tribunal,
Chennai Bench,
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorarified Mandamus, to call for the records related to the impugned order passed by the Central Administrative Tribunal, Chennai Bnech dated 10.07.2023 in OA No.310/01661/2019, to quash the same and consequently direct the third respondent to place the petitioner in the post of Assistant Loco Pilot after complying with proper medical examination concerning the post of Assistant Loco Pilot through RRB, Chennai.

For the Petitioner :Mr.L.P.Maurya

For the Respondents :Mr.S.Janarhanam
Senior Panel Counsel
for respondents 1 to 10.
11th respondent - Tribunal



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WP No.30907 of 2023

ORDER

(Order of the Court was made by *D.KRISHNAKUMAR, J.*)

Challenging the order in OA No.310/01661/2019 dated 10.07.2023 passed by the Central Administrative Tribunal, the petitioner has filed the present writ petition.

2. Brief facts of the case:

2.1. The petitioner was selected by the second respondent for the post of Helper/Mechanical and he joined duty on 02.12.2015 in the office of the eighth respondent. On 09.03.2016, while he was discharging his duty, he sustained an injury at Yard (Basin Bridge). He underwent proper treatment on 12.03.2016 in the seventh respondent hospital. On 22.04.2016, the seventh respondent certified him as fit for duty and his physical condition as normal. Again on instructions by the seventh respondent dated 24.10.2016, the petitioner visited the seventh respondent's office and underwent a medical examination on 28.10.2016 in the Perambur Railway Hospital and



WP No.30907 of 2023

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at the request of the petitioner, the Perambur Railway Hospital Doctor referred him to the Medical Board for the purpose of allotting light job for a few days. Thereafter, on 14.02.2017, the petitioner visited the fourth respondent's office and the clerk in the said office got his signature in the blank forms. He complied with the same since the office clerk informed him that only then further process would be complied with for allotting light job to the petitioner.

2.2. On 14.02.2017, the second respondent has passed an order, wherein it is stated as follows: "*The above named employee was examined by the Medical Board on 02.02.2017 at Railway Hospital/Egmore and declared unfit in the present job in BEE ONE and BEE TWO categories and fit in a sedentary job in CEE ONE and below categories. He has been declared unfit vide unfit certificate No.ABCE.55/2016-17/081 dated 14.02.2017 enclosed with. He does propose to appeal against this decision. His statement is enclosed.* Neither the copy of the said order dated 14.02.2017 was served to petitioner nor he was examined by any medical



WP No.30907 of 2023

board except the one conducted on 22.04.2016 wherein he was certified as medically fit. The petitioner has obtained information about the proceedings of the fourth respondent dated 14.02.2017 only under RTI Act.

2.3. Subsequently, the petitioner was selected to the post of Trainee Assistant Loco Pilot on the basis of General Departmental Competitive Examination conducted by the Railway Recruitment Board, Chennai and offered appointment vide letter dated 11.09.2017 by the tenth respondent. As per paragraph 24 of the offer of appointment order dated 11.09.2017, the petitioner had to undergo medical examination. However, the medical board certificate dated 14.02.2017 has been taken into consideration and his candidature to the post of Assistant Loco Pilot was rejected vide letter dated 13.10.2017 of the first respondent. Aggrieved by the same, the petitioner had approached the Tribunal in OA No.1029 of 2019. The Tribunal disposed of the said OA with a liberty to the petitioner to make a detailed representation to the competent authority. As the representation dated 26.08.2019 of the petitioner seeking to continue in the post of Assistant



Loco Pilot was rejected by the third respondent vide order dated 23.09.2019, the petitioner had filed the instant Original Application in OA No.1661 of 2019 before the Central Administrative Tribunal. The Tribunal, by order dated 10.07.2023, dismissed the said OA by holding: *In view of the submission made by the parties and from bare perusal of the record, it is evident that the applicant is unfit under the Aye-One category which is mandatory for the post of Assistant Loco Pilot. Hence, we do not find any reason to interfere in the decision of the respondents Accordingly, the OA is dismissed.* Challenging the said order of the Tribunal dated 10.07.2023, the petitioner has filed the present writ petition.

3. Learned counsel for the petitioner submits that the petitioner has not appeared before the Medical Board on 02.02.2017 as mentioned in the letter of the fourth respondent dated 14.02.2017 and his signature has been forged in the proceedings said to have been held by the fourth respondent dated 02.02.2017. The medical board has not provided opportunity to the petitioner to appear for the medical examination and therefore, the said



WP No.30907 of 2023

WEB COPY

certificate issued by the medical board cannot be considered and consequently the said rejection order dated 13.10.2017, rejecting his candidature to the post of Assistant Loco Pilot passed by the first respondent is liable to be set aside. The Tribunal without considering the said aspects has dismissed the said OA. Hence, he seeks for setting aside the order of the Tribunal.

4. Learned counsel for the petitioner further submits that the petitioner has made a representation under RTI dated 22.07.2023 seeking information with regard to:

(i) any letter/notice received by the office of CDO/BBQ from CMS/MAS asking the petitioner to attend medical examination at CMS Office, Egmore on 02.02.2017

(ii) any letter/notice received by the office of CDO/BBQ from CMS/MAS asking the petitioner to attend medical examination at CMS Office, Egmore on 14.02.2017.

To the said queries, the RTI has supplied information to the petitioners that



WP No.30907 of 2023

no such letter/notice received from CMS/MAS by the office of the CDO/BBQ regarding to attend Medical Examination on 02.02.2017 and 14.02.2017 at CMS Office/Egmore.

5. Learned Senior Panel Counsel appearing for the respondents 1 to 10 submitted that an opportunity was granted to the petitioner to appear before the medical board for examination before issuing the certificate in question.

6. Learned Senior Panel Counsel for the respondents further submitted that as against the order of the Medical Board, the petitioner ought to have filed an appeal before the appellate authority. However, without exhausting the said remedy, the petitioner has straight away filed the original application before the Tribunal. Therefore, the writ petition is liable to the dismissed.

7. Heard the parties and perused the materials available on record.



WP No.30907 of 2023

WEB COPY

8. On a perusal of the records placed before this Court, it is seen that the respondents have not placed sufficient materials to refute the said allegation of the petitioner that he has not been provided an opportunity by the Medical Board, before issuing the certificate. The only contention of the learned Senior Panel Counsel for the respondents is that when an alternative remedy of appeal is available, without exhausting the same, the petitioner has filed the instant OA.

9. Considering the pendency of the matter for more than four years both before the Tribunal as well as this Court, at this stage, we are not inclined to send back the matter to the appellate authority to decide the issue afresh. We are of the view that an opportunity has to be granted to the petitioner to appear before the medical officer as nominated by the CMO/CMS/MS/ACMS.

10. Therefore in view of the abovesaid discussion, we are of the opinion that the order of the Tribunal is liable to be set aside. Hence, we are



WP No.30907 of 2023

inclined to pass order as follows:

(i) The cancellation order dated 13.10.2017 passed by the first respondent is quashed and consequently, order dated 10.07.2023 passed by the Tribunal in OA No.310/01661/2019 is set aside.

(ii) The Principal Chief Medical Director/fifth respondent is directed to serve notice to the petitioner to appear before the Medical Director, Southern Railway/sixth respondent on a specific date to be fixed by the fifth respondent.

(iii) After the medical examination of the petitioner by the Medical Director, Southern Railway/sixth respondent, the sixth respondent has to forward the report to the higher authority namely Chief Medical Officer. If in the opinion of Chief Medical Officer, the petitioner is required for appearing before Medical Board, the Chief Medical Officer shall submit the report to the General Manager namely the first respondent for passing necessary orders on merits. The entire exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.



WP No.30907 of 2023

11. With the above direction, the writ petition stands allowed.

[D.K.K., J.] [P.D.B., J.]
01.12.2023

Index : Yes/No
Neutral Citation : Yes/No
mrn

To

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WP No.30907 of 2023

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WP No.30907 of 2023

WEB COPY

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Tiruchirapalli- 620 001.



WEB COPY



WP No.30907 of 2023

D.KRISHNAKUMAR, J.

and

P. DHANABAL, J.

(mrn)

WP No.30907 of 2023

01.12.2023

15 of 15