

WPCT 14 of 2024
(Umesh Kumar Vs. Union of India & Ors.)

Mr. S. K. Datta
Mr. Barun Chatterjee
.... For the petitioner

Mr. Vipul Kundalia
Ms. Purabi Saha Das
Ms. Sangita Das
Mr. Anindya Karan
..... For the respondents

The present writ petition has been preferred challenging the order dated 12th December, 2023 passed by the learned Tribunal in the original application (in short, OA), being OA No. 350/1575/2023.

Mr. Datta, learned advocate appearing for the petitioner submits that the petitioner was medically de-categorized and was found suitable by the Screening Committee for alternative employment in '*Fit in Cey One and below with glass for NV with advice for regular follow up at local health unit vide ACMS/Adra's letter No. CMS/ADA/72/1/1787 dated 13.07.2023*'. In the said memo it was also stated that the staff, who have been kept on supernumerary post, their service is to be utilized as per their medical category.

According to Mr. Datta, the respondents, without considering the fact that the petitioner was fit in Cey One category and below, posted him as Crew Controller though the said post is meant for medically de-categorized drivers up to the level of "A-3". Such fact would be explicit from the memo dated 10th January,

2022 wherein it has, *inter alia*, been stated that ‘as per RBE No. 51/2009 circulated vide PCPO/ER serial no. 58/2009, medical category of Drafted Crew Controller is AYE-3’. Without considering such issues, the petitioner’s prayer for adjusting him in a suitable post keeping in view his current medical category was turned down by the authorities *vide* memo dated 8th August, 2023.

He submits that challenging the memo dated 8th August, 2023, the petitioner preferred OA 1444 of 2023 and the learned Tribunal taking into consideration the fact that the petitioner was suffering from blood cancer relegated the matter for fresh consideration with a direction that the respondents shall continue the petitioner’s posting on supernumerary post which he was holding prior to 20th February, 2023 till a speaking order is passed. Let the certificate from Tata Memorial Hospital, as placed, be kept on record.

He argues that the respondent no. 6 passed the order on 21st November, 2023 without taking into consideration the observations made by the learned Tribunal in OA 1444 of 2023. The infirmities in the said order dated 21st November, 2023 were glossed over by the learned Tribunal and the OA was rejected by a cryptic order.

Mr. Kundalia, learned advocate appearing for the Union of India and its functionaries denies and disputes the contention of Mr. Datta and placing reliance upon the Indian Railway Medical Manual Volume-I (hereinafter

referred to as IRMM) and Master Circular No. 25 submits that a perusal of the same particularly Clause 510 of IRMM and Clause 6.2 of the Master Circular would reveal that medically unfitted/de-categorised running staff may be absorbed in different categories including the category of Power Controllers. In view thereof, the petitioner has been rightly drafted as Crew Controller. The job offered to the petitioner is sedentary in nature and the petitioner had also joined the said post, as would be explicit from the order dated 21st November, 2023. In the said conspectus, no interference is called for the present writ petition.

We have heard the learned advocates appearing for the respective parties and considered the materials on records.

Indisputably, the petitioner was declared to be medically de-categorized and medically fit in Cey one and below category. The said category comes within the purview of Clause 510 of the IRMM and as per Clause 6.2 of the Master Circular medically unfitted/de-categorised running staff may be absorbed as Power Controller. The argument of Mr. Datta on the rudiments of the memo dated 28th November, 2023 pertaining to a post of Power Controller thus needs to be discounted in view of the IRMM and the Master Circular No. 25.

For the reasons discussed above, we do not find any infirmity in the order dated 21st November, 2023 passed by the respondent no. 6 and the learned Tribunal rightly

refused the petitioner's prayer and dismissed the OA and as such no interference is called for in the present writ petition.

However, as the records reveal that the petitioner has been diagnosed to be suffering from '*Essential thrombocythemia with myelofibrosis (MF gr 2)*' and was being treated at Tata Memorial Hospital, he would be at liberty to approach the competent authority along with all medical documents for placement in any other available post having lighter duties.

With the above observations, the writ petition, being WPCT 14 of 2024, is disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)