



2024:DHC:7907-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 7941/2024 & CM APPL. 32748/2024, CM APPL. 56591/2024

UNION OF INDIA THROUGH GENERAL
MANAGER, & ANR.

.....Petitioners

Through: Mr. Himanshu Pathak, SPC with
Mr. Amit Singh, Adv.

versus

ARUN KUMAR KULDEEP AGED ABOUT 27 YEARS &
ANR.

.....Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

07.10.2024

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C. HARI SHANKAR, J.

1. This is a completely unnecessary writ petition and, predictably, has been instituted against a Khalasi and a Trackman.

2. We wonder if this writ petition would have ever been instituted, had the hapless respondents been occupying Group-A posts.

3. The respondents were appointed as Khalasi and Trackman in 2014-2015. At that time, they were subjected to ocular examination in which they were found fit in category "Aye-Three and below with D.V glasses for distant vision". Apparently, this was sufficient for working

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as Khalasi and Trackman.

4. The petitioners thereafter issued a notification for conducting a General Departmental Competitive Examination¹ for selection to the post of ASM and Goods Guard in 2016.

5. Respondent 1 was shortlisted for the post of Goods Guard and Respondent 2 was shortlisted for the post of ASM and Goods Guard. Without, however, subjecting them to any medical examination, their selection was cancelled on the ground that, in the medical examination which had been conducted at the time of their recruitment as Khalasi and Trackman, they had been found fit only in the Aye-Three standard and below, whereas the requisite standards for the post of ASM and Goods Guard was Aye-Two, which standard they had not met at that stage.

6. Aggrieved thereby, the respondents petitioned the learned Central Administrative Tribunal by way of OA 4515/2017. The respondents contended that they had got themselves examined in a government hospital, which had certified them as having 6/6 vision which was equivalent to A-1 category. Accordingly, the respondents prayed that the petitioners be directed to subject them to a fresh medical examination.

7. Before the learned Tribunal, the petitioners relied on the following stipulation in a Notification dated 17 May 2019, issued by

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Railway Recruitment Cell:

“3. Those employees who have been declared Medical UNFIT at the time of initial appointment in the prescribed Medical Standard of the post being applied for this notification need not apply”

8. As such, the petitioners sought to contend that they were justified in rejecting the respondents' candidature and in not calling the respondents to a fresh medical examination in view of the medical examination which had undertaken by them at the time of their initial appointment as Khalasi and Trackman.

9. The learned Tribunal has not accepted this submission. In holding as it has, the learned Tribunal has relied on Clause 14 of the notification dated 21 December 2016, pursuant to which the respondents had applied for the post of ASM and Goods Guard. The said Clause reads as under:

“14. Document Verification and Medical Examination.

14.1 After finalizing the results of the written examination shortlisted candidates on the basis of merit of written examination subject to minimum marks required to qualify written exam to the extent required as per the notified vacancies, will be sent for Document Verification *appropriate Medical Examination.*”

The learned Tribunal thus has proceeded to hold that Clause 14.1 clearly requires the candidates who had applied for ASM/Goods Guard to be subjected to a fresh medical examination.

10. This requirement would not be satisfied merely on the basis of medical examination conducted at the time when the candidates had been originally recruited as Khalasi/Trackman.



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11. The learned Tribunal has also rejected the reliance, by the petitioners, on the GDCE notification dated 17 May 2019, holding that it could not be retrospectively applied to selections which took place pursuant to the notification dated 21 December 2016.

12. Aggrieved by the aforesaid decision of the learned Tribunal, the Railways have approached this Court by means of the present writ petition.

13. We have heard Mr. Himanshu Pathak, learned Counsel for the petitioners at some length and perused the material on record.

14. We see no reason to differ with the view taken by the learned Tribunal. Clause 14.1 of the notification dated 21 December 2016 has been correctly interpreted by the learned Tribunal as requiring the candidates who had applied for the post of ASM/Goods Guard consequent to the notification dated 21 December 2016 to be sent for document verification *and appropriate medical examination*.

15. The learned Tribunal has therefore correctly held that a fresh medical examination of the candidate was required to be conducted. The “clarification” provided by the subsequent notification dated 17 May 2019 has also correctly been held by the learned Tribunal not to apply to the petitioners who had participated in the selection to the post of ASM/Goods Guard consequent on the notification dated 21 December 2016.



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- 16.** In this context, we notice that
- (i) the respondents had applied on 9 January 2017,
 - (ii) online written test was conducted on 10 June 2017, in which the respondents participated,
 - (iii) the result of the online written test was declared on 4 July 2017, and the respondents were found to have successfully cleared the test,
 - (iv) the respondents were called for aptitude test on 18/19 July 2017,
 - (v) the results of the aptitude test were declared on 5 September 2017,
 - (vi) the list of provisionally shortlisted candidates for documents verification was released in the last week of September 2017 and the respondents' name figured therein,
 - (vii) the respondents were called for document verification on 24 October 2017,
 - (viii) a status report was published after document verification on 16 November 2017 and
 - (ix) the final result was published on 21 November 2017.

Everything, therefore, took place much before 17 May 2019, when the purported “clarificatory notification” was issued by the petitioners. In fact, the respondents’ candidatures were rejected on 16 November 2017, stating that they did not fulfil the eligibility criteria for medical fitness, as they could not make the Aye-Two grade at the time of initial appointment in the Railways. Thus, at the time when this decision was taken, the notification dated 17 May 2019 was not even in contemplation.



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17. The petitioners cannot, therefore, seek to rely on the notification dated 17 May 2019 to support their decision. In fact, it appears that the notification dated 17 May 2019 was issued as a hindsight attempt to justify the decision which was taken by the petitioners almost two years prior thereto.

18. The learned Tribunal was, therefore, justified in directing the petitioners to subject the respondents to a fresh medical examination.

19. We find no reason to interfere with the judgment of the learned Tribunal which is, accordingly, upheld in its entirety.

20. The petition is, therefore, dismissed with no orders as to costs.

C.HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 7, 2024

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Click here to check corrigendum, if any