



2024:DHC:6139-DB



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

% ***Date of decision: 13th August, 2024***

+ **W.P.(C) 10152/2024 & CM APPL.41705/2024**

UNION OF INDIA & ORS.Petitioners

Through: **Mr. Rajesh Kumar, Senior Panel
Counsel with Ms. Mishika Pandita
and Mr. Mohd. Changez Ali Khan,
Advocates**

versus

SUMIT KUMARRespondent

Through: **Ms. Sonika Gill, Advocate**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (oral)

1. The present petition has been filed by the petitioners under Article 226 of the Constitution of seeking setting aside of the impugned order dated 27.07.2023 passed by learned Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in OA No.942/2017 whereby petitioners have been directed to appoint respondent on the post of Trackman for which he was found eligible, suitable and medically fit in A-2 category.

2. Though the present petition has been filed on various grounds, however, learned counsel for petitioners, on instructions, has confined the grounds of challenged to grounds C and D, which are reproduced as under:-

C. Because the initial medical test of the respondent herein in which he was declared fit in A2 and below was conducted in year 2014 and he was issued an offer letter in 2016. Since, considerable time



2024:DHC:6139-DB



was spent between the first medical test and respondent's joining to the post of Trackman, the second medical test was conducted. It is submitted that second medical test is in consonance with Rule 513 of Indian Railway Medical Manual which reads as under:

“513. Time when candidates are to be sent for Medical Examination:-

(1) The medical examination of the candidates selected for appointment against posts for which initial training has been prescribed should be conducted immediately prior to their being deputed for training.

(2) In the case of candidates to be appointed against posts for which no initial training is necessary, the medical examination should be conducted at the time of their appointment. ”

D) Because the Ld . Tribunal failed to consider the fact that the medical certificate of the respondent dated 15.03.2016 was never challenged by him and has thus attained finality. It is apposite to mention Rule 506 of Indian Railway Medical Manual which reads as under:

“506. Provision for re-consideration of adverse reports

(1) Candidates are warned that there is no right of appeal from a medical board, special or standing, appointed to determine their fitness for the above services. If, however, Government are satisfied on the evidence produced before them of the possibility of an error of judgement in the decision of the first board , then it is open to Government to allow an appeal to a second board. Such evidence should be submitted within one month of the date of communication in which the decision of the first medical board is communicated to the candidate, otherwise no request for an appeal to a second medical board will be considered.”



2024:DHC:6139-DB



3. Brief facts of the case, as spelt out by learned Tribunal in the impugned order dated 27.07.2023, are that the respondent was medically examined on 06.06.2014 and was found to be fit in medical category A-2 and below, as per the Medical Fitness Report. On the basis of the said Medical Fitness Report, he was allotted the post of Trackman in Moradabad Division. When he went to join the said post, he was again subjected to a second medical examination. However, in the second medical examination, he was found unfit, stating as under:-

*“I do hereby certify that I have examined (Name) (Unfit A-2, A-3, B-1, B-2) Sumit Kumar S/o Sh. Suresh Verma (Age) 23.08.1993 a candidate for appointment as (designation) Trackman Class B-2 and below in the Personnel Branch/Department whose signature/left thumb impression has been appended below in my presence. Unfit Aye One, Aye Two, Aye Three, Bee One Bee Two. I consider him *fit/Unfit for such appointment.”*

4. Being aggrieved, the respondent preferred OA before the learned Tribunal, on the ground that even if the second medical was warranted, he was found fit in C1 and C2 and could have been offered a post as per the said medical requirements.

5. Further case of the respondent was that his case was squarely covered by a decision dated 31.03.2014, in O.A. No. 1957/2013, titled as **Ajay Kumar Vs. Union of India & Ors.** passed by the learned Tribunal.

6. The case of the petitioners- Union of India before learned Tribunal was that since the respondent was found medically ‘unfit’ in the second medical examination, hence, he could not be offered the post of Trackman and the remaining posts had already been filled-up.



2024:DHC:6139-DB



7. The issue before the learned Tribunal was that as to why the respondent was subjected to second medical examination when he was already found fit in the first medical examination for category A2 and below. Accordingly, learned Tribunal did not appreciate the action of the petitioners in subjecting the respondent to a second medical examination and held that there is no rule *qua* the second medical examination to be conducted. Accordingly, the Tribunal observed that the first medical examination of the respondent was conducted on 06.06.2014, i.e. at the time of selection, and he was found fit. Thereafter, after around two years, the petitioners asked the respondent to appear in second medical examination which was conducted on 15.03.2015 whereby the respondent was declared unfit, as he had developed cataract in his eyes.

8. Upon hearing learned counsel for the parties and on perusal of impugned order and material placed on record, this Court finds that in the medical examination conducted on 06.06.2014, the respondent was declared 'Fit in A-2 and below'. However, vide letter dated 24.06.2016, i.e. after a span of two years, he has been subjected to second medical examination, wherein he has been declared 'unfit' and his candidature has been rejected.

9. The medical examination of a candidate is required to find out physical and mental well being of an employee at the time of appointment. It has to be ensured that the medical examination complies with the principles of fairness and established procedures and the said process is completed in a time scheduled manner. If a person has been declared 'fit' to join service in the first medical examination, on what premise the second medical examination is initiated, the reasons therefor have to be substantiated. In the present case, no plausible reasons are forthcoming for



2024:DHC:6139-DB



conducting second medical examination of the respondent and thus, the learned Tribunal has rightly rejected petitioners' contentions for not offering appointment to the petitioner.

10. Thus, finding no merit in the present petition, the same is hereby dismissed.

11. However, much water has flown since the year 2014 when the respondent was subjected to first medical examination. However, for the lapse of petitioners, he cannot be made to suffer. Accordingly, in the peculiar facts of the present case, we hereby direct the petitioners to conduct fresh medical examination of respondent only for the limited purpose to ascertain as to whether respondent is fit to work under medical category A-2 or below, and to issue him offer of appointment within four weeks of passing this judgment.

12. Pending applications stand disposed of as infructuous.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 13, 2024

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