



2024:DHC:5538-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Judgment reserved on: 24.07.2024**Judgment pronounced on: 29.07.2024*

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W.P.(C) 13581/2019 and CM APPL. 54917/2019**ADITYA SURESH RAO KAWARE AND ORS.**

.....Petitioners

Through: Mr. S.K. Rungta, Sr. Advocate with
Mr. Prashant Singh, Advocate.

versus

WESTERN RAILWAY RECRUITMENT CELL AND ORS.

.....Respondents

Through: Mr. Anshuman, Senior Panel
Counsel.**CORAM:****HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE GIRISH KATHPALIA****J U D G M E N T****GIRISH KATHPALIA, J. :**

1. By way of this petition brought under Article 226 of the Constitution of India, the petitioners have challenged judgment dated 05.03.2019 of the learned Central Administrative Tribunal, Principal Bench, New Delhi delivered in OA 659/2019, whereby the learned Tribunal refused to interfere in the decision of the Medical Board and the consequential rejection letters dated 04.05.2015 of the respondents holding the petitioners unfit for the post of *khalasi*/helper.

1.1 On service of advance notice, respondents entered appearance through



counsel and accepted notice before the Predecessor Bench. After filing of counter-affidavit, we heard learned counsel for both sides.

2. Briefly stated, circumstances relevant for present purposes are as follows.

2.1 On 30.11.2013, respondent no. 1 issued Employment Notice, thereby notifying 5775 vacancies, out of which 57 vacancies were for *khalasi*/helper, reserved for persons with low vision, though excluding the blind. The petitioners applied for the said posts and cleared the examination after which they were called for verification of documents. Similar vacancies were advertised by other Railway Recruitment Cells including RRC, New Delhi. Since blind persons were excluded from eligibility criteria for the said vacancies for the post of *khalasi*/helper, the advertisement in question was challenged before the learned Tribunal and vide judgment dated 08.05.2014, the learned Tribunal allowed the Original Applications, thereby directing the respondents to publish complete result including the result of 100% blind candidates, indicating their position in the general merit list as well as against the vacancies reserved for visually handicapped person.

2.2 The said judgment of the learned Tribunal was upheld by the co-ordinate bench of this court, directing the revival of the committee constituted for identification of posts by the Ministry of Social Justice and Empowerment. Accordingly, the Ministry of Social Justice and Empowerment, by way of Office Memorandum dated 04.03.2015, declared the persons with complete blindness and low vision suitable for the posts of *khalasi*/helper.



2.3 As mentioned above, on 12.03.2015, the petitioners having successfully cleared the written examination for those posts appeared for verification of their documents. After verification of documents, the petitioners were made to undergo medical examination conducted by respondent no. 2 during the period from 13.03.2015 to 16.03.2015. The petitioners were subjected to review medical examination also. Thereafter, on 04.05.2015, the respondents issued communications to each of the petitioners, annexing therewith the reports of the Medical Board and the Review Medical Board declaring the petitioners unfit for the posts on the ground that they had poor vision in the category of low vision. According to the petitioners, even if poor vision is treated to be blindness, they could not be disqualified since persons with complete blindness as well as with low vision were fit for appointment to the posts of *khalasi*/helper.

2.4 As such, across certain other judicial proceedings, the petitioners reached the learned Tribunal through OA No.659/2019, seeking quashment of the rejection letters dated 04.05.2015 and the medical as well as the review medical reports with the consequential directions to the respondents to appoint them as *khalasi*/helper.

2.5 By way of the judgment, impugned in the present writ action, the learned Tribunal dismissed the Original Application of the petitioners at the admission stage itself, solely on the ground that the petitioners ought to have challenged their rejection on the basis of medical reports by way of an internal appeal because the Medical Board being an expert body, the



Tribunal could not substitute its view over that of the Medical Board. Hence, the present petition.

3. On behalf of respondents, a counter-affidavit was filed, pleading as follows. The petitioners, if aggrieved by the medical reports, certifying them to be with poor vision in low vision category, ought to have challenged the same by way of appeal instead of approaching the learned Tribunal. The Western Railways Recruitment Cell by way of Employment Notification dated 30.11.2013 had notified vacancies in compliance with Section 33 of the Persons with Disabilities Act, 1995, which mandates reservation of not less than 1% vacancies for persons who are blind and those with low vision. And the posts of *khalasi*/helper were identified by the Railway Board as the posts suitable for low vision according to Notification no. 2/2013 dated 30.11.2013. Since the said notification was circulated after a gap of two years by the Board vide letter dated 30.03.2015, a clarification was obtained and in response the Railway Board specified vide letter dated 06.10.2015 that the recruitment should be completed according to the criteria applicable on the date of notification, therefore, the successful candidates including the petitioners were invited for document verification followed by medical examination. In the medical examination, followed by a review medical examination, the petitioners were found not fit for low vision category on account of poor vision and petitioners were accordingly informed vide letter dated 04.05.2015, further informing them that they could submit an appeal before Chief Medical Director, but they opted not to file appeal. The vacancies notified for visually handicapped candidates were only for the candidates with low vision and not for blind candidates, so the petitioners were not found fit.



4. During final arguments, learned senior counsel for petitioners took us through the above mentioned circumstances and contended that the impugned order is not sustainable in the eyes of law. There was no occasion for the petitioners to challenge the medical reports by way of an internal appeal since even if the medical condition of the petitioners is treated to be completely blind, they would still be entitled to recruitment and to that extent the impugned order is liable to be set aside. Learned senior counsel for petitioners placed reliance on the judgment of a co-ordinate bench of this Court in the case of *Union of India & Ors vs Tara Chauhan*, WP(C) 5111/2014, decided on 19.08.2014 and contended that in compliance of the directions issued in the said judgment, the Ministry of Social Justice and Empowerment of the Government of India issued Office Memorandum dated 04.03.2015, whereby the post of *khalasi*/helper in the departments of Mechanical (W), S&T (W), Engineering (W) and Stores were approved suitable for blind and low vision candidates.

5. On the other hand, learned counsel for respondents supported the impugned order and contended that the present petition is completely devoid of merits. It was argued that since the process of recruitment started much prior to the year 2015, the Office Memorandum dated 04.03.2015 is not applicable in the case of the petitioners. However, learned counsel for respondents admitted during the arguments that out of 57 reserved vacancies for visually handicapped, 28 vacancies could not be filled and had to be carried forward and that subsequent recruitments are being conducted in accordance with the Office Memorandum dated 04.03.2015.



6. In the above backdrop, the issue before this court is as to whether the action of the respondents rejecting the candidature of blind candidates (*including the petitioners herein*) on the ground that under the Rule position prior to 04.03.2015, it is only the persons with low vision and not the blind persons who are qualified to be recruited as *khalasi*/helper is justified.

7. In our considered view, the learned Tribunal erred in rejecting the pleas of the petitioners at the doorstep itself solely on the ground that the petitioners ought to have raised the issue by way of internal appeal instead of approaching the learned Tribunal. For, even if the finding of the Medical Board and the Review Medical Board to the effect that the petitioners were found to be with poor vision in low vision category is taken to be falling in the category of blind, the issue was whether on account of blindness, the petitioners could be denied recruitment.

8. In our considered view, the entire issue has to be examined keeping in mind that the employment given by the State to physically challenged persons is not a matter of sympathy, much less charity. It is the bounden duty of the State to give preferential treatment to such persons in order to provide them with level playing field. It is their right. There is plethora of examples where persons with disabilities taken in employment proved to be treasure for the State in terms of competence and productivity. In order to ensure equal distribution of opportunities, the State has to act in equitable manner by providing a buffer to the disability suffered by such individuals.



9. It being the admitted position that under Office Memorandum dated 04.03.2015, the Ministry of Social Justice & Empowerment recognized with detailed reasons that persons with low vision as well as blindness are suitable for the job of *khalasi*/helper, we fail to find reason in the argument that for recruitments prior to 04.03.2015, such criteria cannot be adopted. It is nobody's case that on 04.03.2015, any change occurred in the job profile of *khalasi*/helper on account of which even a blind person can be recruited for that work.

10. Further, as mentioned above, according to the respondents, 28 out of 57 vacancies reserved for visually impaired were carried forward and are being filled in accordance with the Office Memorandum dated 04.03.2015. That being so, there is no reason to deny the benefit of the said memorandum to the petitioners, who were candidates for the same 57 vacancies.

11. There is another aspect. The expression "*low vision*" contemplated as part of essential medical requisite in cases of the present nature is a completely vague expression, in the sense that it fails to specify the said vision in optometric figures and in terms of optical power in Diopters. Similarly vague is the expression used in the medical examination reports of the petitioners to the effect "*vision is poor than that of low vision criteria*". The said conclusion recorded in the Medical Examination Reports of the petitioners conveys only to the extent that vision of the petitioners is somewhere between blindness and low vision. In other words, their vision is slightly better than blindness. That being so, there was no reason for the



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respondents to reject candidature of the petitioners for a post reserved for persons with blindness and low vision.

12. In view of above discussion, we are unable to uphold the impugned order, so the same is set aside and the petition is allowed with the direction that after completing all requisite formalities, the respondents shall issue appointment letters to the petitioners for the posts of *khalasi*/helper within a period of four weeks from date of this judgment. Towards cost of litigation, the respondents shall pay to each of these petitioners a sum of Rs. 10,000/- estimated on conservative basis. Pending application stands disposed of.

**GIRISH KATHPALIA
(JUDGE)**

**SURESH KUMAR KAIT
(JUDGE)**

JULY 29, 2024/as/ry