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

% **Decision delivered on:20.09.2024**

+ **W.P.(C) 13271/2024, CM APPL. 55414/2024**

UNION OF INDIA & ORS.

.....Petitioners

Through: Mr. Nitinja Choudhary, Senior
Panel Counsel with Ms. Vidhi
Gupta, Government Pleader and
Rahul Maurya, Advocate.

versus

YOGESH KUMAR

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (O R A L)

CM APPL. 55416/2024

1. The present application has been filed by the petitioner under Section 5 of the Limitation Act read with Section 151 CPC seeking condonation of delay of 210 days in re-filing the present petition.
2. In view of the reasons stated in the present application and since we are inclined to dispose of the present petition today itself, the present application seeking condonation of delay of 210 days in re-filing the present petition stands allowed. Accordingly, the present application



stands disposed of.

CM APPL. 55415/2024 (exemption)

3. Allowed, subject to all just exceptions.
4. Accordingly, the application stands disposed of.

W.P.(C) 13271/2024, CM APPL. 55414/2024

5. By way of the present writ petition filed under Article 226 of the Constitution of India, the petitioners have sought the following relief:

“(i) issue an appropriate writ, order or direction thereby setting aside the impugned Order dated 21.04.2023 passed by the Central Administrative Tribunal, Principal Bench in OA No. 648/2018, titled "Yogesh Kumar V s UOI.”

6. The main ground to file the present petition challenging the impugned order dated 21.04.2023 passed by the learned Central Administrative Tribunal (hereinafter referred to as “learned Tribunal) is that in the office letter dated 11.07.2017, issued by Chairman, Railway Recruitment Cell, Northern Railway, it is stated that the posts of ASM and Goods Guard require educational qualification of graduation and medical fitness in Aye-two medical category. For said purpose, a candidate who is not graduate and/or not fit in medical category of Aye-Two is not eligible to be considered for these posts. There may be candidates who were sent for medical examination in Aye-two and below category and were not found fit in Aye-two but found fit in lower medical category Bee-One, Bee-two, Cey-one, Cey-two etc. However,



these candidates are not eligible to participate in the selection process. Also, there may be few candidates who were not sent for Medical Examination in Aye-two or above medical category and accordingly declared fit in the specified medical category for which sent for medical Examination. The claim of such candidates to participate in the Aptitude test could not be rejected outrightly without getting them medically examined in Aye-two medical category.

7. The case of the respondent before the learned Tribunal was that the petitioner no.2 had issued a Notification GDCE No.03/2016/GDCE for appointment/promotion to the post of Goods Guard and Assistant Station Master in Grade Pay of Rs.2800 and notified 102 and 168 posts respectively. The respondent belongs to Reserved Category and applied for the post of Assistant Station Master (“ASM”). Out of 168 posts, 21 posts were reserved for Schedule Caste category.

8. The further case of the respondent before the learned Tribunal was that he was initially selected as ESM grade-II in the year 2008 and appointed in Firozpur Division of Northern Railway, and was working as ESM grade-I under Firozpur Division after being found fit and selected as ESM Grade-III in Northern Railway in the year 2008 and the respondent was declared medically fit for the above post vide medical examination certificate dated 16.05.2008.

9. As per the Notification dated 21.12.2016, the respondent had applied to the post of ASM under reserved SC category for which 21



posts had been reserved. Being found eligible, the respondent was called for written examination on 10.06.2017 and the respondent obtained 67.36 marks out of 100 in the said written examination. On the basis of marks of written examination, the respondent was short listed for Aptitude test to the post of ASM. The respondent was declared qualified in aptitude test and on 24.10.2017, he was called for verification of documents and after the same, status report was issued wherein it had been mentioned that the candidature of the respondent was rejected for want of medical fitness in Aye Two medical category as he was not examined in Aye Two category at the time of his initial appointment in Railways subject to his place in merit.

10. Further case of the respondent before the learned Tribunal was that after being declared successful in written examination, aptitude test and documents verification, merit for provisional empanelment was declared and 21 candidates of reserved categories had been placed at S.No.14 (3002300704). The DPO/FZR issued a medical memo to the respondent for re-medical examination in Aye Two category on 20.11.2017. After medication examination, the respondent was declared medically fit in Aye Two category. However, after being declared successful in the entire selection process including medical examination in Aye Two category for the appointment, the petitioners showed reluctance to issue the appointment letter on the baseless ground.

11. Being aggrieved, the respondent submitted a representation dated



05.01.2018 before the Chairman, Railway Recruitment Cell.

12. It was also the case of the respondent as stated in the rejoinder before the learned Tribunal that the respondent was found fit in the medical examination in Aye two category on 20.11.2017. There was no precondition in the Annexure A-2 (*which was filed before the learned Tribunal*) that the respondent should have passed medical examination in Aye Two category at the time when he was initially appointed in the Railways. There was a provision in paragraphs 517 and 519 of Indian Railway Medical Manual (IRMM, 2000) for medical re-examination at the time of promotion to the higher post. The rejection of candidature of the respondent was contrary to the provision of IRMM and the denial of promotion/section to the post of ASM was arbitrary, malafide, illegal and in violation of Article 14 & 16 of Constitution of India. As per provision of paragraph 3.4 of Notification dated 21.12.2016, there was no condition of medical fitness in Aye Two category at the time of entry in Railway service.

13. The case of the petitioners herein before the learned Tribunal as stated in their counter-affidavit (*which was filed before the learned Tribunal*) was that a selection process for Departmental candidates to fill up 270 vacancies in Pay Band-I Rs.5200-20200 GP Rs.2800/- Group 'C' Post was initiated vide notification No.03/2016/GDCE. It was notified in the notification itself under paragraph 3 (sub-para 3.2 & 3.4) that Railway Employees who were fit in medical category Aye-Two and



Graduate were eligible to apply through their respective departments where they were working.

14. In the said notification, detailed information for the candidates was given. The notification clearly stipulated how to apply, general conditions and invalid applications etc. with specific information that mere selection and empanelment did not confer any right of appointment to the candidate. Admission of the candidates at all stage of recruitment would be purely provisionally subject to satisfying the prescribed conditions.

15. It was also the case of the petitioners herein before the learned Tribunal that most of the candidates were allowed provisionally, keeping in view the large number of employees, subject to final verification of their eligibility conditions at later stage keeping in view that the number of candidates reduces at every state of selection. The respondent herein submitted his online application and was allowed to appear provisionally. The medical and educational record was called for all 1379 candidates shortlisted in Aptitude Test after written examination.

16. Learned counsel appearing on behalf of the petitioners submitted before the learned Tribunal that during verification it was observed that respondent herein did not fulfil the eligibility condition of medical fitness in Aye-two medical category, as he had already been examined in Aye-one medical category, higher than required eligibility fitness category i.e. Aye Two, earlier at the time of appointment and was



declared fit in Aye-three and below medical category vide Railway medical Memo No.263690 dated 16.05.2008.

17. It was further submitted on behalf of the petitioners (*as stated in the affidavit filed before the learned Tribunal*) that the Establishment office at Ferozpur Division allowed the respondent for medical examination as a fresh candidate on the basis of letter dated 05.10.2017 of Chairman/RRC, even without referring to the earlier issued fitness certificate to the working employee of railways. Copies of medical memo and medical fit/medical unfit memo were directed to be filed to explain whether these candidates had been examined in medical category of Aye-Two and declared fit in Aye-Two at the time of initial appointment.

18. As per notification of RRC dated 11.07.2017, the posts of ASM and Goods Guard required educational qualification of graduation and medical fitness in Aye two medical category. For this reason, a candidate who was not a graduate and/or not fit for medical category of Aye Two, was not eligible to be considered for these posts. There may be candidates who were sent for medical examination in Aye two and below category and were not found fit in Aye two but found fit in lower medical category i.e. Bee-One, Bee-two, Cey-one and Cye two etc. These candidates were not eligible to participate in the selection process. Also, there might be a few candidates who were not sent for Medical Examination in Aye-two or above medical category and accordingly,



declared fit in the specified medical category for which they were sent. The claim of such candidates to participate in the Aptitude test could not be rejected.

19. The issue before the learned Tribunal was that whether under the criteria for selection, for example written test, verification of medical examination as per selection/promotion, candidature could be denied on the ground that the candidate was not examined in the requisite medical category at the time of initial appointment in the Railways years ago. It is nowhere mentioned that the candidate should be fit in Aye-Two medical Classification at initial recruitment stage as the notification was silent about medical fitness at the time of initial recruitment in the department, irrespective of whether the candidate was examined for the same or not.

20. It is important to note that the medical certificate No.263690 issued to the employee from the Railway Medical Hospital found him fit in Aye-Three category and he was accordingly declared fit for the requisite appointment at that time. There was no mention whether the candidate was also examined for Aye-One and Aye-Two medical categories at that stage. The status of the respondent after document verification with Roll No. and Date of Birth for the GDCE Notification No.03/2016/GDCE on RRC portal was mentioned as follows:

Roll No.	3002300704
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Name	YOGESH KUMAR
Father's Name	RUGGHAD SINGH
Date of Birth	10/5/1985
Status	Your candidature is not "Under consideration" for want of your medical fitness in Aye two medical category as you were not examined in Aye two medical category at the time of your initial appointment in Railways subject to your place in merit.

21. The respondent has drawn attention towards Chairman/RRC letter no.220-E/RRC-GDCE/2014 dated 05.10.2017 which is self explanatory that candidates who are not found to be medically examined in Aye-Two medical category at the time of initial recruitment in Railways are supposed to undergo re-medical examination in Aye-Two medical category with relevant outcome.

22. The Divisional Railway Manager Office, Firozpur also communicated in similar lines to the Chairman, RRC, New Delhi vide their letter No.807E/GDCE/CIC dated 22.11.2017 which is reiterated as follows:

"Sub: General Departmental Competitive Examination (GDCE) for filling up the post of ASM & Goods Guard Grade Rs.5200-20200 GP Rs.2800/- (Pre-Revised) Ref:-Chairman/RRC Letter No.220-E/RRC-DCE/2014, dated 05.10.2017.



In reference to Chairman/RRC letter cited above, it is informed that total 12 candidates names list of FXR division have received for re-medical due to they are not found medically examined in Aye-two medical category at the time of initial appointment in Railway's. Ten (10) candidates out of twelve (12)'s Medical Memo & Fit Memo are being sent herewith as per RRC/NDLS list."

23. Accordingly, it was clarified that the candidates who were not medically examined for Aye-two medical category at the time of initial appointment were supposed to be re-examined for the appropriate medical category afresh.

24. It is pertinent to mention here paragraphs 517 and 518 under Chapter V of Indian Railway Medical Manual, 2000 (hereinafter IRMM), which reads as under:

"517. Re-examination before promotion to a higher medical category:- A Railway employee must not be engaged to work, whether temporarily or permanently, in a class higher than that for which he/she has been certified fit, unless he/she has obtained a certificate of competence in respect of the medical category of the new employment.

518. Re-examination on revision of medical classification:- (I) The staff belonging to an medical category, when brought on to the categories of A-1, A-2 , and A-3 on revision, should be examined immediately on revision."

25. In view of the above, the learned Tribunal opined that the medical certificate at initial recruitment stage for a particular category, without examining the candidates for other higher medical categories or without



specific comments on higher medical category than the requisite medical category required at that stage cannot be a cause of disqualification at a later stage where higher medical category is required for the promotional post.

26. In addition to above, the IRMM provides for “Re-examination before promotion to a higher medical category” and need of appropriate Certificate of competence in respect of medical category. In the present case, the medical Memo No. 390819 issued on 22/11/2017 as regards Fitness in Aye Two appears to have been done accordingly.

27. In view of the above, we find no error or perversity in the order passed by the learned Tribunal.

28. Accordingly, finding no merit in the aforesaid petition, the same is accordingly dismissed. Pending applications also stand disposed of.

29. The petitioners are directed to comply with the directions of the learned Tribunal within four weeks from today.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

SEPTEMBER 20, 2024/ry