

(2019) 03 CAT CK 0024

In the Central Administrative Tribunal

Case No : Original Application No. 659 Of 2019 With Miscellaneous Application No. 604, 739 Of 2019

Aditya Suresh Rao Kaware

APPELLANT

Vs

Delhi Western Railway, Railway Recruitment Cell And Other

RESPONDENT

Date of Decision : 05-03-2019

Acts Referred:

Citation : (2019) 03 CAT CK 0024

Hon'ble Judges : Nita Chowdhury, J;S.N. Terdal, J

Bench : Division Bench

Advocate : SK Rungta, Prashant Singh

Final Decision : Dismissed

Judgement

Nita Chowdhury, J

1. MA No. 739/2019 for joining together is allowed for the reasons recorded therein. When the matter is taken up, Sr. Counsel, Mr. S.K. Rungta, appeared and ready to advance his arguments on the the OA itself. Accordingly, he was heard..

2. This OA has been filed by the applicants, seeking the following reliefs:-

"a) Allow the application.

b) Set-aside/quash the impugned rejection letters dt. 4.5.2015 and impugned medical reports and review medical reports declaring the applicants unfit for the posts of Khallasi (Engg./Mech/Elect/S&T/Comml/Optd. Deptt. of Division) and Helper-II/Khallasi (Engg./Mech/Elect/S&T Workshop); and

c) Consequently direct the respondents to appoint the applicants for appointments to the posts of posts of Khallasi (Engg./Mech/Elect/S&T/Comml/Optd. Deptt. of Division) and Helper-II/Khallasi (Engg./Mech/Elect/S&T Workshop) notified vide Employment Notice No. RRC/WR/02/2013 dt. 30.11.13 on the basis of their performance in the recruitment tests in question with all

consequential benefits and seniority treating their appointments on the date when other candidates were appointed as a result of the selection process in question;

d) Grant any other relief which Your Lordship deem fit and proper in the circumstances of the case.

e) Award the cost."

4. Mr. S.K. Rungta, Sr. Counsel for the applicant was heard on the impugned order passed by the respondents in which it has been stated as under:-

"Sub: Recruitment of erstwhile Group 'D' posts in Grade Pay Rs.1800/- against Employment Notice No.2/2013 - Medical Unfitness With reference to above, after Document Verification you had been directed to Railway Health Unit for Medical Examination as a part of next procedural prescribed in Employment notification. After Medical examination, the competent Medical Authority has found you unfit in VH/Low Vision medical category. Thereafter you have been re-examined by a Medical Committee consisting of 03 Medical Officers who have also found you Unfit. A copy of Medical Committee's report is attached herewith for information. If desired, you may submit an appeal against the decision of Medical Authority/Medical Committee to the Chief Medical Director through Chairman, Railway Recruitment Cell at the above address within 15 days of receipt of this letter. Your appeal will not be taken into consideration unless a civil/private medical practitioner's certificate is attached with a clear declaration by the medical practitioner that it has been given with full knowledge of the fact that you have been declared unfit for VH/Low Vision medical category by the Railway Medical Authority."

5. In the case of other applicants also, similar orders with the change of their names, all dated 04.05.2018, have also been issued. We sought to know from the counsel as to why the applicants did not file any appeal against the said order when there is a clear-cut provision to submit an appeal against the decision of the Medical Authority/Medical Committee to the Chief Medical Director through Chairman, RRC within a period of 15 days of receipt of this letter. Sr. Counsel for the applicants replied that the applicants did not challenge the same as they felt that the order of the respondents was wrong and it would not be worthwhile to challenge the same because only due to the poor vision, the applicants have applied against the posts under VH/Low Vision category. We are not satisfied with the reasoning given by the respondents for not submitting an appeal against the decision of the Medical Board.

6. It is a well settled law that the Tribunal cannot sit over the opinion of the Medical Board. In the case of Secretary, Ministry of Defence & Ors. v. Damodaran A.V (Dead) through LRs, 2009(13) SCR 416, the Hon'ble Supreme Court clearly held that the Medical Board is an expert body and its opinion is entitled to be given the due weightage while examining the medical issues. In the case of Controller of Defence Accounts (Pension) and others v. S. Balachandran Nair

reported in AIR 2005 SC 4391 and the decision in Union of India and another v. Baljit Singh reported in 1996 (11) SCC 315, it is held that Medical Board's opinion cannot be substituted by the court in order to arrive at a contrary finding.

7. In view of the above decisions of the Hon?ble Supreme Court, there is no ground to interfere with the decision of the Medical Board. Hence, the OA is dismissed at the admission stage itself. MA for COD is disposed of accordingly.