

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 02<sup>ND</sup> DAY OF MAY, 2025**

**PRESENT**

**THE HON'BLE MR JUSTICE V KAMESWAR RAO**

**AND**

**THE HON'BLE MR JUSTICE T.M.NADAF**

**WRIT PETITION NO.25044 OF 2022 (S-CAT)**

**BETWEEN:**

RISHI KUMAR  
AGED 30 YEARS  
S/O SRI. MANOJ KUMAR  
R/O BHAKLI (PO) KHASLI TALUK  
REWARI DIST,  
HARYANA – 123 302

...PETITIONER

(BY SRI. ACHAPPA P B, ADVOCATE)

**AND**

1. UNION OF INDIA  
S W RAILWAY  
GADAG ROAD,  
HUBBALLI – 580 020  
REPRESENTED BY  
GENERAL MANAGER
2. THE CHAIRMAN  
RAILWAY RECRUITMENT BOARD  
#18, MILLERS ROAD  
BENGALURU – 560 046
3. CHIEF MEDICAL OFFICER  
CENTRAL RAILWAY HOSPITAL  
SW RAILWAY  
HUBBALLI – 580 020

... RESPONDENTS

(BY SRI. H.SHANTHI BHUSHAN, DSGI FOR R1-R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE  
CONSTITUTION OF INDIA PRAYING TO A WRIT OF CERTIORARI,

QUASHING THE ORDER DATED 20.09.2022 IN OA NO.170/00545/2020 PASSED BY THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL (CAT) AT BENGALURU, PRODUCED HERewith AS ANNEXURE-A, AND ALLOW THE OA NO.170/00545/2020 AND ETC

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 01.04.2025 AND COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT' THIS DAY, **T.M. NADAF J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE V KAMESWAR RAO  
AND  
HON'BLE MR. JUSTICE T.M.NADAF

**CAV ORDER**

**( PER: THE HON'BLE MR JUSTICE T.M.NADAF )**

This petition is by the unsuccessful applicant calling in question the order dated 20.09.2022, in Original Application No.170/00545/2020, passed by the Central Administrative Tribunal, Bengaluru, (for short 'CAT') vide Annexure-A to the writ petition, whereby the application filed by the petitioner seeking to quash the speaking order of ACMS/PME.RH/SBC received through e-mail on 28.08.2020, vide Annexure-A6, was dismissed.

2. The petitioner filed this petition seeking the following relief:

*"(a) A writ of certiorari, quashing the order dated 20.09.2022 in OA.No.170/00545/2020 passed by the Hon'ble Central Administrative Tribunal (CAT) at Bengaluru, produced herewith as **Annexure A**, and allow the OA.No.170/00545/2020, and*

*(b) Direct the respondents to include the name of the Petitioner in the Select List for recruitment for the post of Asst Loco Pilot as per the Centralised Employment Notification No.*

*CEN 01/18 issued by the Railway Recruitment Board (RRB), dated 03.02.2018;*

*(c) Grant such other writs or orders as this Hon'ble court deems fit in the circumstances of the case, in the interest of justice."*

3. A brief outline of facts leading to the present petition as per the petitioner are as under:

In response to the Centralized Employment Notification issued by the Railway Recruitment Board ('RRB' for short) on 03.02.2018, the applicant being one of the aspirants to the post of Assistant Loco Pilot ('ALP' for short) in Railway Department applied for the said post. He has cleared first stage and second stage i.e., computer based test and aptitude test. He was short-listed for verification of documents and certificates and thereafter for medical examination. Subsequent to the verification of the documents, the applicant/petitioner was intimated to appear for the medical examination at Railway Hospital on 05.09.2019. Subsequent to the examination, he was communicated through email on 22.11.2019, by the second respondent – Chairman, RRB that, he was found unfit in Aye-one, Bee-one medical tests due to stuttering / stammering. In the communication, he was informed that if he is dissatisfied with the said communication, he may prefer an appeal before the Chief Medical Director, South Central Railway, Hubballi through respondent No.2. As per the communication, the petitioner

preferred an appeal on 12.12.2019, against the decision of the Medical Board seeking for re-examination, along with the Medical Certificate issued by the Senior Medical Officer, Civil Hospital, Rewari wherein the said hospital has remarked "stuttering is very mild (not significant)".

4. It was the case of the applicant before the Appellate Authority that as per the certificate issued by the PG Institute of Medical Education and Research, Chandigarh, he was diagnosed as having mild stuttering. In the said medical certificate there was a note which specifies that, stuttering was not considered as medical disability. The appeal preferred by the applicant / petitioner was considered and he was advised to attend for re-examination on 09.03.2020 at Railway Hospital, Bengaluru. Subsequently, he was referred to All India Institute of Speech and Hearing, on 10.03.2020, for thorough examination by the experts and specialists. The experts on examination furnished a revaluation report on 11.03.2020, stating that the applicant is having mild stuttering and stuttering as a condition will not affect the work efficiency of the petitioner, as per Annexure-A4.

5. It was his case that, he was informed by the RRB that he would be communicated further, however, as he did not receive any

information even after considerable time, he has approached respondent No.3 - Chief Medical Officer, Bengaluru, as well as the Chief Medical Superintendent of the Railway Hospital, Bengaluru, for their intervention through email, however there was no response, then he has sought for result of the re-examination from RRB on 28.08.2020. In response to his request, RRB communicated a speaking order received from the office of the Chief Medical Superintendent, Railway Hospital, Bangalore, wherein he has been medically assessed as unfit for Aye-one and Bee-one, as per Annexure-A6, due to speech fluent disorder for the post of ALP.

6. As per the petitioner, the medical examination for the post of ALP is to declare him fit in AYE-one medical examination, is for vision test which is required in the interest of public safety. The medical examination includes MMR/x-ray(chest)/ECG, urine examination, blood sugar examination, fundus examination or any other investigations/ observation as deemed fit by the medical examiner, keeping in mind hypertension, diabetes, ischemic heart disease, hearing, mental condition / reaction of the candidate. But it does not say anything about the speech. Despite this, the RRB declared the applicant unfit, due to stammering which has resulted in denial of the post of ALP, is violative of Article-16 of Constitution of India.

7. It is his further case that there are many persons in railways with the same condition of stuttering appointed in various posts, as stammering is not considered as disqualification for holding any posts in railways. He further contends that some of the persons have been recruited to the post as ALP in places like Ahmedabad with stuttering speech, as fit to hold the post by the concerned Medical Board Of Railways, however, a different treatment has been meted out at the hands of South Western Railway.

8. He further states that, as per paragraph No.510(1)(A) of Indian Railway Medical Manual, only vision test is required for Aye-One medical examination, in the interest of public safety. The post of ALP does not involve public contact as stated in the speaking order, the only categories of Station Master, Guard, Ticket Examiners, etc., will have public contact. The decision of the Medical Examination Board is not based on ground reality and purely on apprehension and their own individual perceptions. With this, the petitioner called in question the speaking order at Annexure-A6 before the CAT in Original Application No.170/2020.

9. In response to the notice, the RRB appeared through its counsel and filed reply statement to the application. The RRB has

taken a specific contention that though the applicant was qualified in the computer based test, aptitude test and document verification, however he was declared unfit in the medical examination owing to speech disorder on the basis of the report of the Railway Hospital, Mysuru on 31.08.2019. The petitioner was given an opportunity of appeal before the Chief Medical Officer, wherein he was permitted for re-examination. In the said re-examination, he was found to have stuttering which is a speech disorder. Stuttering is a developmental speech disorder involving frequent problems with normal fluency and flow of speech. Person with stuttering may also stop during speech and make no sound for certain syllables. Stuttering individual repeats, prolongs words, syllables or phrases. The frequency of speaker's fluencies, as well as their intensity and duration vary markedly from situation to situation and from day to day. Stuttering increases during telephonic conversation. Even with speech therapy stuttering relapses to various degrees later.

10. It is the specific contention of the RRB that, as per Indian Railway Medical Manual ('IRMM' for short) Volume-1, paragraph - 511(3)(i), the medical examiner while evaluating a candidate has to ascertain whether there is any speech defect. As per IRMM Volume-I, Annexure-III (paragraph Nos.509, 512) at 12.14, "persons with impediments like stammering are not suitable for jobs involving

contact with public.” It was the specific case of the RRB that two tests are necessarily to be conducted before recruitment to ALP. First test i.e., ‘Aye-One’ medical category examination is done in the interest of public safety and ‘Bee-One’ medical category examination is done in the interest of the candidate himself. Though the job of ALP does not involve direct contact with the public, however, the job involves constant communication with Onboard Loco Pilots, Guards, Station Masters, Points man, Train Passing staff in the stations and staff at Railway Crossing gates. Absence of a clear audible speech may lead to accidents of trains, endangering lives of the passengers. Also inability to communicate properly may lead to obstruction in trains and delay in train movements. So far as Bee-One medical category examination is done in the interest of candidate himself or for his fellow workers or both. Candidate for Bee-One medical category examination required to have a fluent speech without any impediments. As such the decision taken by the Divisional Medical Committee, declaring the applicant as unfit in Aye-One and Bee-One medical category examination, is in accordance with law and do not call for any interference.

11. RRB further states that, though the petitioner was declared as unfit at the first examination, he was afforded an opportunity of filing an appeal before the Chief Medical Officer along



with the certificates issued by other Medical Institutions, through the – RRB. The appeal preferred by the petitioner along with the concerned Medical Certificates submitted by him, have been forwarded to RRB to the Chief Medical Superintendent, Bengaluru wherein the petitioner was called for medical re-examination. The applicant – petitioner attended the medical re-examination conducted by the Medical Board in class Aye-one, Bee-one on 09.03.2020 at Divisional Railway Hospital, Bengaluru. He was further examined by a Specialist Medical Board, comprising of three ENT Surgeons. On evaluation, it was found that, his speech was monotonous with fluency mildly affected. He was referred to All India Institute of Speech And Hearing, ('AIISH' for short) Mysuru on 11.03.2020, for re-evaluation, wherein the said institute has made a subsequent provisional diagnosis, recommended fluency shaping and stuttering Modification Therapy and follow-up after six months.

A note is made in the said recommendation which reads as under:

*"Note; this is to clarify that stuttering is a variable speech disorder which varies from situation to situation and from person to person. Majority of persons who stutter improve with speech therapy. However, the chances of improvement depends on multiple factors such as; using therapy techniques in all situations, confidence, speaking situation, listener's reaction, supportive environment etc."*

12. Subsequent to the recommendations, the RRB sought for clarification in order to eradicate any of the confusions, only with a

view to consider the candidature of the petitioner by a letter dated 03.06.2020, on three points which reads as follows:

- i. Speech therapy for 06 months duration; will it cure the stammering.*
- ii. Does stuttering increase during stress/work pressure/tension/ demanding situations.*
- iii. Is stuttering completely curable.*

13. In response to the letter supra, the RRB received report from Doctor Sangeetha Mahesh, HOD-Clinical Services, AIISH, Mysuru, as per Annexure-R2, which reads as under:

*"With reference to the above, we hereby enclose the answers to the clarification regarding stuttering with ascertained literature along with references.*

*Question1: speech therapy for 06 months duration, will it cure stammering?*

*Answer 1: treatment of stuttering includes the use of fluency enhancing strategies or stuttering modification strategies. Treatment for stuttering can be intensive (i.e., many hours every day for relatively few weeks) or extensive (i.e., one or two hours per week for several months to over years) and can involve both individual as well as group treatment sessions (St. Louis & Westbrook, 1987). Some individuals might require just few hours of therapy and some might require up to 1 year. An Indian study conducted by Arya & Geetha, 2013 reported that there is a significant decrease in dysfluencies with treatment. The effectiveness of the treatment on personal factors of an individual (e.g.: motivation, necessity*

*of treatment, personality, self monitoring, sensitivity, confidence etc).*

*Thus, answering to your first question, stuttering may or may not recover with the duration of 6 months as it depends on several personal factors as mentioned above.*

*Question 2: Does stammering increase during stress/ work pressure/ tension/ demanding situations?*

*Answer 2: Stuttering is highly variable speech disorder. The frequency of a speaker's disfluencies, as well as their intensity and duration, vary markedly from situation to situation and from day to day (Bloodstein & Bernstein Ratner, 2008; Costello & Ingham, 1984; Yaruss, 1997a). Frequency of stuttering varies with emotion and stress (Blood, Wertz, Blood, Bennett, & Simpson, 1997; Ezrati-Vinacour & Levin, 2004; Vanryckeghem, Hylebos, Brutten, & Peleman, 2001; Constantino, Leslie,, Quesal, & Yaruss, 2016).*

*Several studies have highlighted that person with stuttering exhibits more stuttering in a social situational context. Individuals have reported telephonic conversations to be more problematic (Diehl, Robb, Lewis, & Ormond, 2019). Ladouceur et al. (1982) also reported that adults with stuttering stuttered significantly more during telephone, conversations than during face-to-face interviews.*

*Thus opining to your second question, situational variability and stress induced conditions increase the dysfluencies or stuttering.*

*Question 3: Is stuttering completely curable?*

*Answer 3: In a speech fluency disorder we address the measure of treatment in terms of recovery. Any restoration to a former or better condition can be termed as recovery. The recovery rate in young adults with stuttering is reported to be 80% (Sheehan & Martin, 1986) - 94% (Mansson, 2005). As reported by Finn (1997) support from family and friends, proper rest, moderate exercise, nutrition, psychiatric/psychological support are all vital components in maintaining recovery from nutrition, therapy, proper supervision, and stuttering. Persons with stuttering may recover and show improvement soon after their therapy, though they may later relapse to various degrees.*

*As reported by Kamhi (1982), occurrence of relapse could be due to weak establishment and transfer of new speaking modes, failure to develop or to use self-monitoring adequately, the client's dissatisfaction with the new speech mode, failure to eradicate social avoidance behavior, and variability in the speech production mechanisms*

*Thus answering to your third question, an individual with stuttering may recover with the fluency of 80-94% however, relapse must also be considered. The occurrence of relapse can be reduced with regular follow-ups and monitoring of the speech fluency strategies.*

14. With this, the learned counsel for RRB states that, considering all the reports, the Chief Medical Officers passed a speaking order, which does not call for any interference and sought for dismissal of the application.

15. It was urged by the petitioner, before the Central Administration Tribunal that, he has been evaluated to be suffering from very mild stuttering, which according him will not affect his work efficiency as ALP. The Medical Certificate issued by the Civil Hospital, Rewari and PGI, Chandigarh, states that he suffers a very mild stuttering and same is not considered as a medical disability according to the Gazette of India. He further urges that the AIISH, Mysuru, to whom reference was made by Specialist Medical Board, Bengaluru, has also confirmed that the petitioner suffers from mild stuttering and, in general, stuttering as a condition will not affect the work efficiency of the client. It is his case that, as per the report of AIISH, Mysuru, stuttering is a variable disorder which varies from situation to situation and from person to person. It was his further contention before the Tribunal that there are chances of improvement by speech therapy.

16. In reply, the RRB contended before the Tribunal that, though he has cleared all the tests and also passed through the document verification, but for the speech disorder, he was declared unfit, which is subsequent to the certificate issued by the concerned Medical Board and Experts which have been considered by the Chief Medical Officer in speaking order. The main contention of the respondent before the Tribunal is that, the person who is appointed

as a ALP shall be in constant communication with various Control Board, Station Masters, Signal Guard, etc. It is their specific contention that to the query as to, whether the stammering increases during the stress/ work pressure/tension or demanding situations and whether stuttering is completely curable, the Senior Medical Officer has responded and clarified the said question in clear terms that, several studies have highlighted that persons with stuttering exhibits more stuttering in a social situational context, individuals have reported telephonic conversations to be more problematic, also reported that the adults with stuttering, stutters significantly more during the day time conversations, than during face to face interviews and there may be a situation variability in stress induced conditions, increase the dysfluencies or stuttering and further stated that individual with stuttering may recover with the fluency of 80 to 94%, however, relapse must also be considered. The occurrence of relapse can be reduced with the regular follow-ups and monitoring of speech fluency strategies. After considering all these medical reports, the Medical Board is of the opinion that the candidate as unfit for the post of ALP. Accordingly, his candidature was rejected which is in accordance with the Rules prescribed as stated supra and the procedure envisaged for the selection of the candidate.

17. The Central Administrative Tribunal after hearing both the sides dismissed the application stating that the recommendations of the Railway Medical Board which has been accepted by the RRB, in declaring the candidate as unfit for the post of ALP cannot be termed as unreasonable or arbitrary. The reasons for the said order contained in paragraph Nos. 9 to 13, which reads as follows:

*"9. The medical examination has concluded that there is no doubt that the candidate is suffering from stuttering which is classified as a speech defect. All the medical reports uniformly convey this condition. The Doctors of the Civil Hospital Rewari as well as PGI, Chandigarh, have opined that the candidate suffers from mild stuttering, which is not considered as a medical disability. On the other hand, the Railway Medical Board has given a specific view after looking into the reports of these Doctors as well as the specialist from All India Institute of Speech and Hearing, Mysore, that the job requirement of Assistant Loco Pilot, for which the applicant is a candidate, (involves constant communication with on board fellow staff LP/ ALP train passing staff in the station etc., and absence of clear and smooth speech may lead to accidents of trains endangering lives of the passengers.*

*10. After this opinion of the Railway Medical Board, with CMS/SBC, Chairman RRB has declared him unfit for the job of ALP/Tech in Aye-One and Bee-One medical categories, rendering him unfit for the post of ALP which admittedly requires Aye-One category of medical fitness.*

11. The respondents have entirely followed the prescribed process for medical evaluation in this case. The applicant was initially examined by Railway Hospital Mysore which opined that the applicant be evaluated by a Divisional Medical Committee consisting of Senior doctors, including an ENT specialist. The Divisional Medical Committee, Railway Hospital, Mysore declared him unfit for A-1 and B-I category due to stammering. On appeal, his re-medical examination was conducted by the Divisional Railway Hospital, Bangalore by three Member Committee of ENT Specialists. They also referred the applicant for an independent opinion from the All-India Institute of Speech and Hearing at Mysuru. After this detailed medical examination and obtaining of a separate opinion from the expert of All India Institute of Speech and Hearing, Mysore, the applicant has been declared as medically unfit under Aye-One and Bee-One medical category, which renders him unfit for the post of ALP. The applicant has not alleged any malafide in the process of medical examination. He has however prayed for a reconsideration of the medical assessment by the Respondents on the ground that his speech defect is minor and hence cannot be construed to be an impediment in his functioning as an ALP.

12. Matters relating to the medical evaluation of candidates in the recruitment process involve expert determination. We need to be very cautious in supplanting the process adopted by the recruiting agency and substituting it by a Court mandated review or a re-medical evaluation. In the present case, the prescribed process of medical evaluation has been followed by the Respondents. The expert medical opinion of the medical board set up by the respondents is that the



*candidate is medically unfit for the post of Assistant Loco Pilot. It has been assessed that his speech defect could affect his functioning as an Assistant Loco Pilot, particularly in times of stress, and keeping the nature of his duties, could endanger the lives of passengers. There is no malafide alleged by the applicant on the part of the respondents. The prescribed process has also been duly followed. In such a case, therefore, there appears to be little scope or reason to have any further interference.*

*13. The Honourable Allahabad High Court in the case of Vivek Kumar Vs. State of U.P. and Others 2020 ADJ Online 0073 had interalia observed as under:*

*"7. The scope of interference in matters relating to assessment of fitness by a Medical Board constituted under the statutory rules in exercise of powers under writ jurisdiction, in our opinion, would be extremely limited.*

*8. The Courts have, time and again, emphasized the need for caution when candidates seek to assail the correctness of the findings of a Medical Board constituted under a recruitment process adopted by the State authorities, on the basis of some medical report obtained by them.*

*11. In a case where a recruitment process has been carried out as per prescribed statutory rules where under a procedure has been prescribed for testing the medical fitness of candidates by a duly constituted Medical Board, the report of the Medical Board is not to be normally interfered with, and that too, solely on the basis of a claim sought to be set up by a candidate on the basis of some subsequent report(s) procured by him from a private practitioner(s).*

*12. It is not the case of the petitioner that the decision of the Medical Board was arbitrary, capricious or not in accordance with the procedure under the relevant statutory recruitment rules."*

18. Calling in question the order passed by the Central Administrative Tribunal, the petitioner has preferred this petition.

19. Heard Shri.Ajith Achappa P.B., learned counsel appearing for the petitioner and Shri.H.Shanthi Bhushan, learned DSGI appearing for Respondent nos.1 to 3.

20. Shri.Ajith Achappa P.B., submits that the petitioner has passed in all the examinations/in all the tests conducted by RRB. He has also cleared the document verification, but was declared unfit on account of speech stuttering. He contends that as per the guidelines envisaged in IRMM Annexure-P of paragraph No.509, the Guideline 12.14 provides for speech and which states that persons with impediments like stammering are not suitable for jobs involving contact with public. The post for which the petitioner applied does not involve contact with public and the said guideline does not provide stammering as a disqualification for the candidates who do not come in contact with public. The nature of job with which the post is identified, does not involve any direct contact with the public. However, on the other hand, it involves constant

communication with the Board, Fellows staffs, LP/ALP staff, Loco Pilots, Assistant Loco Pilots, Train Passing Staff in the station, staff at a railway crossing gates on the upcoming trains or following Loco Pilots/Assistant Loco Pilots.

21. He further argues that, the Medical Board of the respondents, the Appellate Authority as well as the CAT have completely lost sight of the guideline, which has resulted in rejecting of the candidature of the petitioner, who is otherwise befit the post. All the medical reports issued by the AIISH, Mysuru clearly states that there is a mild stuttering, which cannot be a disqualification to declare the petitioner as unfit for the post.

22. He further argues that this Court on 14.08.2023, after hearing the parties, directed the respondent - RRB to submit the petitioner for further / fresh medical examination. The order dated 14.08.2023 reads as follows:

*"Heard Shri N.Khetty, learned counsel for the petitioner and Shri Nishan Unni, learned CGC for respondents.*

*After substantial hearing, to a specific query posed by this Court to the learned Standing Counsel for the Railways, whether the petitioner would be fit for the post of (i) Assistant Loco Pilot (ALP) Aey-One (ii) Technical Grade-III, Signal and Telecommunication Department (Bee-One), learned Standing Counsel for Railways submits that pending consideration of*

*this writ petition, if a direction is issued to the Railways to have a fresh medical examination, the same shall be undertaken.*

*In the light of the above, we direct that petitioner shall be referred to All India Institute of Speech and Hearing, Mysuru, for fresh medical examination by giving specific details of duties and responsibilities of both posts and seeking a specific opinion whether the petitioner would be medically fit for appointment to either or both posts.*

*The Institute shall be at liberty to conduct scientific/medical examination, if required."*

23. As per the directions of this Court, the petitioner was subjected to fresh medical examination, on 12.01.2024, at AIISH, Mysuru. The petitioner submitted a copy of the report along with a memo dated 10.06.2024, as Annexure-D. As per the report, the provisional diagnosis shows that 'clinically fluent speech'. At remarks, it is stated that during the clinical interview, the client was able to maintain fluency in his speech without any dysfluencies. Also, that the client is using slow rate of speech and following the prolonged speech technique. In general, this will not affect the physical work efficiency of the client. As per the report, dated 07.02.2024, on the medical examination conducted on 12.01.2024, in terms of the order passed by this court on 14.08.2023, the

learned counsel submits that the stammering/stuttering and stressing speech, which is mild in nature, will not affect the physical work efficiency of the petitioner.

24. To buttress his contentions, he has relied upon the judgment of the Hon'ble Apex Court in the case of **Mohammed Ibrahim v. Chairman And Managing Director and Others**<sup>1</sup> and argues that as per the judgment of the Hon'ble Apex Court supra, subsequent to the coming into force of the Disabilities Act, and, people who do not qualify under the said act, would be termed as disabled are to be deemed as persons of ability or else they would become excluded class of people who are neither able or disabled, which cannot be sustained or permitted. He stresses upon paragraph No.20 of the judgment, wherein the Hon'ble Apex Court has held that the Court has to travel beyond the provisions of the Disabilities Act and discern a principle which can be rationally applied. He further argues that the Hon'ble Apex Court in Paragraph no. 14 of the said judgment, while referring the case of **Pranay Kumar Poder vs. State of Tripura**<sup>2</sup> in an identical case of color vision deficiency, held that colour vision deficiency is neither impairment of vision and in that sense falling within the disability

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<sup>1</sup> Civil Appeal No.6785-2023

<sup>2</sup> 2017 (2) SCR 797

spectrum calling for treatment under the Rights of Persons with Disabilities Act, 2016, nor is it of such condition as to bar sufficiently qualified persons' entitlement to be employed in an organization that can accommodate the educational attainments and talents. As per the judgment, he urges that the petitioner not being barred under Disabilities Act'2016, the petitioner cannot be held to be disabled / unfit on the pretext of he having an alleged problem of suffering and more so when the severity is denoted as 'no deficiency'. Further, he relied on the judgment rendered by the Central Administrative Tribunal, Hyderabad in the case of **DVS Shiva Prasad Vs. Union of India and Others<sup>3</sup>**, wherein the Tribunal has held that, stammering will not be counted as a disqualification for appointment as Guard in Railways, because generally he does not come in direct contact with public, further held that the prescribed A-2 standard mentioned above is sight only and therefore slight speech defect could not be taken into effect particularly when the employment notice was silent about it.

25. Refuting the submissions of the learned counsel appearing for the petitioner, Sri.Shantibhushan, vehemently submits that, the selection was done in accordance with the Rules and Guidelines set forth by the IRMM and as per the Guidelines, a

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<sup>3</sup> (1993) 23 Administrative Tribunals Cases 23

person having deficiency in speech or stammering is not fit for the post of ALP, as same requires constant communication with Controlling Board, Station Master, Signal Guard, Oncoming Loco Pilot and any shortcomings would be vulnerable to the public interest and safety of passengers travelling in the train and so also cause obstructions in the smooth running of the trains over the tracks, causing obstructions in movements. The RRB declared the petitioner unfit after receiving the concerned reports from the experts in the field and satisfying itself on each queries. That apart, on the appeal filed by the petitioner against the first certificate of declaring him unfit, he was re-examined and after receipt of report and recommendation the CMO by a speaking order declared him as unfit. The reason for the rejection of the appeal was stated as the frequency of stuttering varies with emotion and stress, the frequency of the speaker's dysfluencies as well as their intensity and duration vary markedly from situation to situation and from day to day, stuttering increases during telephonic conversations even with speech therapy stuttering relapses to various degrees later.

26. He further states that, the order clearly states that as per IRMM, Volume-I, page-53, paragraph no.501(3) the main objective of medical examination is to secure continuous effective service and in the case of candidates for permanent appointment to prevent

early pension or payment in case of premature death. In this case stammering is likely to interfere with the continuous effective service, as IRMM Volume-1, Page-511(3)(i), states that "person with impediments like stammering are not suitable for jobs involving contact with public." Aye-One medical category is a public safety category in which the candidate should have a speech without any impediments. The job in Aye-one involves constantly communicating with on board loco pilots, guards, station masters, points man, train passing staff in the stations and staff at railway crossing gates. Absence of clear and smooth speech may lead to accidents of trains endangering lives of passengers. As a candidate he had to undergo Bee-One medical category examination which involves Technician Grade-III, Signal And Telecommunication Department, wherein the ability to speak smoothly is required for communicating signal including temporary and permanent caution order, condition of tracks including obstruction over the tracks and upcoming trains.

27. Sri. H.Shanthi Bhushan, furnished a copy of duties of Diesel Assistant, wherein he submits that the duties of ALP are also similar to that of the duties of Diesel Assistant. So far as Diesel Assistant ON RUN, has to perform several duties, which are enumerated under the head 'ON RUN', in Sl.Nos.1 to 15. The same are extracted for the easy reference:



*"1. He shall assist the driver in sighting the signal aspects. He shall call out the aspects displayed by the signals/caution boards/speed boards/ speed indicators from the sighting distance loudly. He shall not engage himself in any other activity while approaching signals/cautious driving area.*

*2. He shall look back frequently during the journey to see whether the train is following in a safe and proper manner; especially on curvature where full train length is visible he will ensure that the train is complete.*

*When a train passes a gang working on the line or a manned level crossing gate, the Assistant driver shall look back to ascertain if everything is all right with the train and if any signal is being exhibited, warning them of any danger of an accident.*

*3. He shall keep watch on the trains passing through other lines and inform driver if any abnormality is noticed. He shall exhibit danger signal to the guard of the other trains if required.*

*4. He shall exchange signals on behalf of driver when deputed by the driver.*

*5. He shall be responsible for attending any irregularity on line like ACP, hose pipe disconnection, brake binding hot axle, fire fighting etc.*

*6. He shall be extremely cautious and vigilant during all types of abnormal working like single line working, total failure of communication, signal defect, load parting, load dividing breakdowns, accidents etc.*

*7. He will drain MR1, MR2, J filter cocks, check fuel balance, examine under-frame equipment and shall feel the axle boxes for warm running whenever the train stops for more than 15 minutes (in case he is working on mail/express, passenger trains, the time limit shall not apply due to predetermined halts.)*

*8. He shall record in the repair book every 30 minutes, the various oil and air pressures, speed, notch etc. He shall also record timings of train movement.*

9. *He will keep the driver's cab clean and tidy to ensure proper work environment.*

10. *He shall uncouple the locomotive when it has to detached for loco purposes.*

11. *If a driver becomes incapacitated while the engine is in motion, the assistant driver if duly qualified may work the train to the next station cautiously if the assistant driver is not duly qualified he shall bring the train to a stop and arrange to protect the train as per extent instructions. He shall then send a message to the station master of the nearest station to make arrangements for a driver to take over train and for so doing he may take the assistance of the guard.*

12. *On single line Section where ball-token has to be collected on run he will ensure that previous ball-token is handed over to the authorized station staff and proper fresh ball-token is collected.*

13. *In case the loco shuts down or fails on graded section in consultation with driver, he will apply hand brakes and wooden wedges and pin down wagons to avoid running away of the train.*

14. *In case of derailment involving his train, he shall help the driver.*

a. *In switching on flasher light.*

b. *Switching on and off head-light if flasher light has failed.*

*Protecting adjacent line on multiple line sections at the earliest and his own line in single line section in the direction of traffic.*

*Assisting the driver in passing memo to the train driver of other lines/through other railway staff through field phone/nearest level, crossing gate/personally to advice control and nearest station.*

15. *If, for any reason during the run, there is a likelihood of the train running past signal at danger or running on to an*

*abstraction, he shall use his discretion to apply emergency brakes without waiting to be warned by the driver to take emergent action to stop the train.*

*The above duty list is not exhaustive and is subject to instructions issued by local power officers and other instructions issued by H.Q. either through G & SR or other means.”*

He relied on the judgment of Hon’ble Apex Court in the case of **SECRETARY, MINISTRY OF DEFENSE AND OTHERS VS. A.V. DAMODHARAN**<sup>4</sup> wherein the Hon’ble Apex Court held that the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence.

28. As per the board members to conclude that the petitioner as unfit for Aye one and Bee One, medical category examination is due to speech fluency disorder, which can aggravate during periods of stress and anxiety, which is in accordance with law and does not call for any interference and the Tribunal after considering the entire material on record passed the order dismissing the application and seeks to dismiss the petition.

29. Having heard the learned counsel for the parties, the only question that arises for our consideration is:

“Whether the declaration by the RRB on the report of Medical Board, as the petitioner unfit for the post of ALP

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<sup>4</sup> 2009(9)SCC 140

is arbitrary and against the principles and Rules of Recruitment and warrants any interference, as sought by the petitioner?

30. Our answer to the question framed is in negative for the following:

### **REASONS**

The undisputed facts are that the petitioner has been qualified in all the tests. He passed through the document verification, but he was held unfit for all opted post due to Aye-one and Bee-one medical category for stuttering. As per the duties on run, issued under the Ministry of Railway Board in No.99/M/Safety/7/2/c/5/c-PI, dated 10.03.2000, there are several duties casted on the ALP which he is duty bound to adhere while discharging his duties. As per the clarification issued by the Head Of Clinical Services, produced at Annexure-R2, on the query of stammering increases during stress/work pressure/tensions/stress demanding situations, the answer is given specifically that situational variability and stress induce conditions increase the dysfluencies of stuttering.

31. As per the, report dated 07.02.2024 on re-evaluation of the petitioner conducted on 12.01.2024, the pre-existing diagnosis states that there is clinically fluent speech. In the remarks column

of the report it is stated that **'during the clinical interview, the client was able to maintain fluency in his speech without any dysfluencies. Also, client is using slow rate of speech and flowing and following the prolonged speech technique'. In general, this will not affect the physical work efficiency of the client (emphasis supplied)**. From the remarks in the report, it is manifestly clear that in the clinical speech, the petitioner was responding slowly, and with prolonged speech technique maintaining his fluency. As per the duties casted On Run stated supra, especially duty Nos.1, 6, 8, 11, 14 and 15, involves stress and work pressure. As per the clarification at Annexure-R2, the situational variability and stress induced conditions increase the dysfluencies or stuttering. A flawless communication is sine-qua-non for the post of ALP. A stress situation is susceptible to disturb mental condition, which could impair a natural/normal speaking capacity and leads to dysfluencies in speech, which may cause in slow communication or prolonged communication or no communication sometimes, with Control Board and other Co-Workers, such as Station Master, Signal Guards, etc. The situations like this cannot be ruled out. Especially, as per duty No.11, 'ON RUN' supra, an ALP who is suffering from speech disorder may not be in a condition to communicate with the Control Board, the said

situations, to get instructions to control the train involving stakes of several passengers travelling on the train.

32. In India, trains are main veins of transportation of common people, utmost care shall to be taken by the Recruitment Board, while appointing pilots as well as ALP, as the job of ALP involves frequent communications with several persons, such as control board and co-workers, etc. Failure in appointing a proper person may endanger the public property, as well as the life of the passengers on board. Considering this object, the RRB on recommendations of the Medical Board declared the petitioner unfit for the job.

33. It is a well settled principle that the employer is the best person to prescribe Rules and qualifications befitting to a job considering the work with which the job is identified. It is well settled principle of law that normally it is for the Recruitment Authority for the State to decide the qualification required and the Courts cannot substitute the requirement on the assessment of what the requirement should be. It is the prerogative of the employer. However, the only test applicable is that whether the exercise done by the employer smells with arbitrariness or involves any discrimination causing injustice to a particular candidate or

involving any bias or malafides on the part of the Recruitment Board.

34. The Tribunal in its order had clearly stated that there is no malafides alleged by the applicant on the part of the respondents. Though an attempt is made in a feeble voice while arguing, so also is *adieu memoria*, by the learned counsel for petitioner that, screening of medical examination report before this Court amounts to bias against the petitioner. On a query on this argument, the petitioner counsel is answer less as he is not having any document or evidence as base for said argument/contention.

35. So far as the judgments relied on by the petitioner, the judgments are distinguishable on facts and principles for more than one reason. In the judgment of Hon'ble Apex Court, in the case of **Mohammed Ibrahim's** referred supra, the candidate was appointed as Assistant Engineer (Electrical) joined the duties, subsequently on medical examination he was found unfit due to defective color vision and he was terminated from the service. On petition before the High Court the learned Single Judge set-aside the order on the premise that there is no base for the discharge on defective color vision and the order passed by the Superintendent Engineer falls short of Medical Expert's report. In appeal the Division

Bench has set-aside the order and the Hon'ble Apex Court set-aside the order of the Division Bench and restored the order of the learned Single Judge and directed the respondent therein to appoint and continue the appellant's service as an Assistant Engineer (Electrical). The distinguishable facts in the judgment of Hon'ble Apex Court in the case of **Mohammed Ibrahim's**, are at paragraph Nos.15, 16 and 27 reads as follows:

*"15. It is further pointed out that in the hierarchy of posts, the junior most would be a lineman: the next in line would be a Technical Assistant, who is a diploma holder; above whom would be the Junior Engineer (Grade-II). It was emphasized that the Junior Engineer (Grade-II) would thus supervise and oversee the work of Technical Assistants and Lineman who would be the individuals or employees responsible to actually visit the site. The AE would be in a position therefore, fourth in the hierarchy above the Lineman, Technical Assistant and Junior Engineer (Grade-II). It was highlighted -based upon the organizational division of the corporation that there are several branches where Assistant Engineers are accommodated. For instance, the AE who functions as a Section Officer, can also be asked to participate as AE (Substation Maintenance). In other words, these posts are inter-changeable. Likewise, the AE (Shift Engineer) is inter-changeable with Substation Maintenance Department AEs. The AEs are also expected to work in the office of the Superintending Engineer (SE). They can be deployed to work as AE (Material Management) or AE (CAUP) in the office of the Executive Engineer or even as AE (General) in the office of*



*the SE office only. The AE (General) in the office of the SE can interchangeably use for AE (Lines) in the Substation.*

*16. It was argued that there are sufficient safeguards to ensure that a person like the appellant can be posted in a position in not merely in one department but several departments or units which may not require actual field participation. It is also emphasized that the mandate of accommodation or reasonable accommodation requires the employer to ensure that every person's talent is utilized to the utmost, within the limitations that she or he is placed inadvertently. Therefore, the employer in the present case, was clearly under a duty to accommodate the appellant and continue with his employment.*

*27. TANGEDCO, during the hearing was unable to show how it employing the appellant in one of the many departments or units [as AE (Material Management) or AE (CAUP) in the office of the Executive Engineer or even as AE (General) in the office of the SE or as AE (General)] is not possible. The hierarchy of posts further indicates that the primary inspection responsibilities of technical nature are upon Junior Engineers, who oversee the work of Technical Assistants, and that of Linemen. It is evident that the AE works at a position of overseeing supervisory work of Junior Engineers. This could involve, at the field stage, satisfaction after visual inspection. Sufficient safeguards (whenever the appellant's services in that regard are absolutely essential, and he is deployed on some occasions) can be taken, to ensure that he is accompanied by those without any colour*

*vision deficiencies or impairments. TANGEDCO's units and organizational structure, in this court's opinion, have sufficient possibility for accommodating the appellant in a unit or department which may not require utilization of skills that involve intense engagement with colour. As stated earlier, these are AE (General) in SE office, AE (CAUP) in EE office; AE (Material Management). The TANGEDCO, is under an obligation to ensure that the appellant is therefore, suitably accommodated in any such general department or establishment."*

36. In the judgment *supra*, there are hierarchy of posts wherein the work of the Assistant Engineer (Electrical) is only supervisory in nature, as there are other Technical Assistant, Junior Engineer Grade-I, Grade-II. The said Juniors could assist the Assistant Engineer in performance of his duties. That apart, there are several other Departments where he can be accommodated. The observations of the Hon'ble Apex Court in the case of **Mohammed Ibrahim's** *supra* at paragraph No.27 extracted above, distinguishes the case on hand from the present case and on the application of the judgment of the Hon'ble Apex Court.

37. In paragraph No.27, the Hon'ble Apex Court in the case of **Mohammed Ibrahim's** *supra*, it is clearly stated that the

Assistant Engineer works at a position of overseeing supervisory work of Junior Engineers. This could involve, at the field stage, satisfaction after visual inspection. Sufficient safeguards (whenever the appellant's services in that regard are absolutely essential, and he is deployed on some occasions) can be taken, to ensure that he is accompanied by those without any colour vision deficiencies or impairments. That apart, TANGEDCO's units and organizational structure, have sufficient possibility for accommodating the appellant therein, in a unit or department which may not require utilization of skills that involve intense engagement with colour. This is a distinguishing factor in the case before the Hon'ble Apex Court for interfering in the order passed by the Division Bench. In the case on hand, the post applied by the petitioner involves an individual duty casted only on him, which involves flawless communication and there could not be any assistance by any other persons.

38. So far as the second judgment relied on by the petitioner rendered by Central Administrative Tribunal, Hyderabad, was pertaining to appointment of a Guard in Railways, who does not come in direct contact with public. The duties appended and identified with the post of Assistant loco-pilot are different than that of a Guard, which involves stress, work pressure tension which varies from situation to situation and day-to-day. In the facts and

circumstances of the case, both the judgments relied on by the petitioner are not applicable to the facts of the case and are manifestly distinguishable.

39. The Tribunal having taken into consideration of all the situations, considered the case of the petitioner, especially in paragraph No.12, which we have extracted above, has rightly come to the conclusion that the declaration of the petitioner as unfit for the post of ALP cannot be held to be unreasonable. We are in complete agreement with the view taken by the Central Administrative Tribunal. In the facts and circumstances, the petition fails and liable to be dismissed, as devoid of merit, accordingly.

40. For the above reasons, we pass the following:

**ORDER**

- i. Petition is ***dismissed*** as devoid of merits.
- ii. In the facts and circumstances of the case, there is no order as to cost.

**Sd/-  
(V KAMESWAR RAO)  
JUDGE**

**Sd/-  
(T.M.NADAF)  
JUDGE**

JJ

CT: BRS