



**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**

O.A. 863 of 2013



**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member**

Shri Ranjit Kr. Rajak,
Son of Sri Yogendra Prasad Rajak,
Aged about 36 years,
Residing at 1/2C, Cossipore Road,
Kolkata 700 002, Un-Employed.

..... Applicant.

Versus

1. Union of India
through the General Manager,
Northern Railway,
New Delhi – 110 001.
2. The Divisional Railway Manager,
Northern Railway,
New Delhi – 110 001.
3. The Sr. Divisional Personnel Officer,
Northern Railway,
New Delhi – 110 001

..... Respondents.

For the applicant : Mr. A. Chakraborty, Counsel

For the respondents : None

Reserved on : 23.09.2019

Date of Order : 9.01.2020

ORDER

Per : Bidisha Banerjee, Judicial Member

This application has been preferred to seek the following reliefs:

"8.a) An order do issue directing the respondents to offer alternative appointment in favour of the applicant as he was declared medically fit in Cey-One category with restriction."

2. The case of the applicant in a nutshell, is thus:

The applicant was selected through RRB/CDG for appointment to the post of Commercial Apprentice against Direct Recruitment Quota. He was sent for medical test. He was declared fit in Cey-one category.

The applicant was empanelled for appointment to the post of Commercial Apprentice. He was declared fit in Cey-one Category. He completed 1st Phase Training Course. During Practical Line Training he fell ill and again he was sent for Medical examination. He was declared fit in Cey-one Category under restriction of para 574 of IREM-2000 vide CMS/Delhi's letter No.54 Med/MB/Decat/RKR/09 dated 16.12.2009.

The applicant submits that he may be accommodated in any alternative post as he was declared medically fit with Cey-One with some restriction.

3. He had preferred an application under RTI Act. The Sr. DPO, on 25.6.13

responded in a manner which depicts that a commercial apprentice found fit in C-

1 with restrictions was treated as a medically unfit candidate empanelled by RRB.

The letter reads as under:

"

NORTHERN RAILWAY

L.No. 729E/25/1613 P-2
Date 25/06/2013

DRM OFFICE
New Delhi

Sh. Pradip Kumar Dubey,
National President, Protection for Democratic Human Rights of India.
I/I, Jagannath Temple road, cossipore, Kolkata – 700 002.

Sub:- Seeking information under RTI Act 2005

Ref: Your request date 09/05/2013 received through Sr. DMM-Cum-PIO vide ID NO. 13/1511 dt 11/06/2013.

In reference to your request dtd 09/05/2013 received through PIO under above said ID, regarding sought information therein, it is hereby apprised that no such letter containing No. 1091/PDHRI/CC'WB/2013 available on record of this office. Moreover the copy of the same letter has also not received with your present request dtd 09/05/2013.

However, as you asked, in the matter of providing service re-joining date to Mr. Ranjit Kumar Rajak, it is mentioned that in his case the recommendations of Medical Board were received vide No.54-Med/MB/RKR/2009 date 15.12.2009 as under:

In view of the above findings, the members of the Medical Board are of the opinion that Sh. Ranjit Kumar Rajak, S/o Sh. Yogender Prasad Rajak, Commercial Apprentice NDLS under SS SMQI, is fit in his original category Cee-one under restriction of para 574 of IRMM-2000".

Regarding Alternative appointment to medically unfit candidate empanelled by RRB, and RRCs on Group 'C' and 'D' posts Railway B'd instructions received vide letter no F(RRB)2005/25 18/dated 28-7-2020 concludes with the remarks that Therefore, in the above section, request for alternative appointment of medically unfit candidates should not be considered in any case (photocopy) attached.



Moreover the Sr DCM had also considered his case and decided that in case the Medical conditions of the employees consists public dealing he cannot be attend as O.A.

For Sr. Divl Personnel Officer
N. Rly New Delhi"

4. The RBO which formed the basis of the aforesaid letter, is extracted bereinbelow for clarity:



GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. E(RRB)/2005/25/18

New Delhi, Date: 28.07.2010

The General Manager (P)
South Eastern Railway,
Garden Reach,
Kolkata

Sub.: Alternative appointment to medically unfit candidates empanelled by RRBs and RRCs in Group 'C' and 'D' posts – regarding.

Ref.: SE.Rly.'s letter No. P/Rectt/Com/Poly/Pt.VI/195 dated 05.04.2010.

Please refer to your letter under reference on the above subject. The discretionary powers earlier delegated to General Managers of all Zonal Railway/Production Units for considering such cases for providing alternative appointment in same grade to medically unfit empanelled candidates have been ceased to exist with immediate effect from the date of issue of Board's Circular No.99/E(RRB)/25/12 dated 25.05.2009(RBE No 90 /RRCB No 01/2009).

Prior to issue of Board's instructions dated 25.05.2009, General Managers of Zonal Railways were authorized to consider requests from such candidates for appointment in alternative category in same grade provided there is an acute shortage of staff in the alternative post. When the delegated powers ceased to exist with the issue of Board's instructions *ibid*, it is immaterial whether case occurred before 25.05.2009 or after 25.05.2009. Therefore, in the above scenarios, request for alternative appointment of medically unfit candidates should not be considered in any case.

Compliance of above instructions may please be ensured.

Sd/-
(Bansi Lal)
Joint Director, Estt. (RRB)
Railway Board"

5. The fitness certificate issued by Railway Medical Examiner on 8.12.08, to the applicant as in Annexure A-1 to the O.A. denotes as under:

FITNESS UNFITNESS CERTIFICATE FOR APPOINTMENT
AS A NON-GAZETTED RAILWAY EMPLOYEE

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Hospital Delhi 268995Health Unit No. 729E/25/1613/P7

I do hereby certify that I have examined (Name) Ranjit Kr. Rajak, son of Sri Yogendra Prasad Rajak (dated) 2/4/75 a Candidate for appointment in alternative Commercial Apprentice Branch/Department whose signature/left thumb impression has been appended below in any presence.

Fit for such appointment."

6. After being declared 'fit' the applicant was even ordered to be posted, as under, vide order dated 9.3.09 communicated from DRM office (Annexure A-2):

NORTHERN RAILWAY

DRM Office
New Delhi

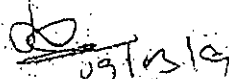
NOTICE

The following Commercial Apprentice Grade Rs. 5500-9000 who were selected from RRB/CDG & booked for CA/2 class of training course for 24 months from 13/12/2008 to 16/12/2009. After completion of said training course they have reported this office on 17/02/2009 and are now booked for practical line training & posted at station shown against each and detail of line training programme of 20 months for Commercial Apprentice selected against Direct Recruitment Quota is enclosed as annexure-A.

S.No.	Name/Father Name	Station of line training	Leave availed from 17/02/2009 to till date
1	Sh. Mahabir Singh	Under CM/SM/QI	Nil
2	Sh. Ranjit Kumar Rajak	Under CM/SM/QI	17/02/09 to 20/02/09
3	Sh. Yogendra Prasad Rajak	Under CM/SM/QI	02/03/09 to 06/03/09

They are entitled for stipend Rs 5000/-PM+ DP, DA as admissible under extant rule. The same may be charged from 17/02/2009 to till date & thereafter from the date of reporting/resumption Under CM/IDB, SM/QI (as they were remained waiting for orders of practical line training).

This has the approval of Competent Authority.


 For Divl Personnel Officer
 N.Rly. New Delhi

7. On 16.12.2009 a decategorisation order was issued by the Chief Medical Superintendent; Delhi as under:

Northern Railway
No.54-Med/MB/Decat/RRB/09
Dated - 16.12.09

Divl. Hospital
Delhi

The Sr. DPO/N, Rly.
DRM Office,
New Delhi.



Sub:- De-categorization of Sri Ranjit Kumar Rajak, S/o Sh. Ygender Prasad Rajak, Commercial Apprentice/NDLS under SS/SMOL.

Medical Board of above named employee has been done on 27.11.09 by standing medical board at Divl. Hospital Delhi. Findings of the medical board accepted by the undersigned are reproduced below.

"In view of the above findings, the members of the Medical Board are of the opinion that Sh. Ranjit Kumar Rajak, S/o Sh. Yogender Prasad Rajak, Commercial Apprentice/NDLS under SS/SMOL is fit for duty in his original category Cee-one under restriction of para 574 of IRMM-2000."

In case the employee is not satisfied with the decision of the undersigned, he may make an appeal within seven days from the date of decision for reconsideration by the Chief Medical Director/N Rly. This appeal shall be routed through the Divisional Branch Officer of the employee concerned and CMS/DLI.

Sd/-
(Dr. S.K. Gadi)
Chief Medical Superintendent
Delhi"

8. The restriction as mentioned in the aforesaid order, in terms of para 574 of Indian Railway Medial Manual (IRMM in short) stipulates the following:

"574. List of posts in which staff having recovered from mental disease should not employed:-"

- (a) Any duty which will entail the charge of a locomotive or a moving vehicle, for example Driver, shunter, Guard etc.,
- (b) Any duties connected with locomotives or moving vehicles where interference by the employee in charge may result in disaster.
- (c) Any duties connected with signalling.
- (d) Any duties in connection with running trains which would subject the individual to great mental strain for example :
"control duty".
- (e) Any technical duties involving more than ordinary strain and self control.
- (f) Any duties connected with the travelling public which demand a firm control over temperament for example. Platform inspector, Assistant station master, Booking clerk, Ticket collector, etc.
- (g) Any duties which involve a higher financial responsibility than ordinary clerical duties, for example Pay clerk, Clash witness. Etc.
- (h) Any duties in which loss of control or a relapse of the disorder may result in loss of life and damage to the property.
- (i) Any other employment in the Railways, which although not specified above, is considered by the head of the department or the Divisional Railway Manager to be unsuitable for the Railway employee who has been subject to mental instability and is quite possibly liable to recurrence."

9. An order dated 17.3.10 reads as under:

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Northern Railway

Divl. Office
New Delhi

No. 729E/25/1613/P-2

Dated: /3/10



The Chief Medical Supdt.,
Northern Railway
Divl. Hospital
Delhi.

Sub:- Re-medical Examination of Sh. Ranjit Kumar Rajak S/o Sh. Yogendra Prasad Rajak
Commercial Apprentice.

Ref:- Your office letter No.54-Med/MB/Decat/RKR/09 DT. 16/12/09

Sh. Ranjit Kumar Rajak S/o Yagtendra Prasad Rajak is empanelled candidate for the post of Commercial Apprentice Gr. Rs. 9300-34800 + 4200-GP & was declared fit in C-I category vide Memo No.268995 dt.8/12/08. But during the training he felt ill & again was sent for Medical examination. He was declared fit in Cey-one category under restriction of Para 574 of IRMM-2000 vide CMS/Delhi's letter No. 54-Med/MB/Decat/RKR/09 dated 16/12/09.

Accordingly as per approval of Competent authority the above named employee is sent to your office for the re-medical examination. Copy of your letter No.54-Med/MB/Decat/RKR/09 Dt. 16.12.09 along with request of employee is sent herewith for further necessary action.

After re-medical, the position may be advised to this office promptly.

DA/As above

Sd/-
For Divl. Railway Manager
New Delhi."

10. The orders enumerated supra, explicitly demonstrate that the applicant was selected for appointment as Commercial Apprentice on being found medically fit, in C-I category. When he was sent for Medical Exam, he was already an 'employee' of Railways. As he fell ill while under training, he was found fit in C-I category with some restrictions.

Therefore, it was not a case where he was found "unfit" as an "empanelled candidate".

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Such being the position we fail to comprehend how Board order dt. 26.7.2010 extracted supra would come into play. As such it is hard to believe that the applicant cannot be accommodated against any suitable category in terms of his medical report.

11. The respondents vide their orders under challenge and the reply filed herein have been categorical in rejecting his claim on the ground that 574 of IREM is applicable to him and he could not be utilised in Commercial Department.

12. We fail to comprehend how he could be brought within the ambit of para 574 that deals with "Mental disease" or be treated as an "empanelled" employee and not an Medically decategorised Apprentice. As such he could have been fairly adjusted against any suitable category as found fit.

13. Hence we direct the respondents particularly the Sr. DPO, to consider his placement in any suitable alternative post, after his Medical examination treating him as Medically decatgorised employee, within 3 month from the date of receipt of this order.

14. We make it clear that the applicant shall have no claim for the period he was out of employment, and the orders to be issued by the respondents shall be prospective. We make order as to no costs.

(Dr. N. Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

drh