

Central Administrative Tribunal, Principal Bench

Original Application No.854 of 2000

New Delhi, this the 17th day of August, 2001

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. M.P. Singh, Member (A)

Shri Harish Sharma
Assistant Workshop Manager
Northern Railway Workshop
Jagadhari

- Applicant

(By Advocate: Shri B.S. Mainee)

Versus

Union of India:through

1. The Secretary
Railway Board
Ministry of Railways
Rail Bhawan
New Delhi
2. The General Manager
Northern Railway,
Baroda House, New Delhi

- Respondents

(By Advocate - Shri R.P. Aggarwal)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act as he is aggrieved of an order dated 17.11.99 issued by the General Manager (P), Northern Railway, New Delhi, rejecting his representation for promotion to senior scale.

2. Facts in brief, as alleged by the applicant, are that he joined the railways as a Train Examiner in the year 1980 and by the dint of his hard work and dedication, has reached to the post of Senior Lecturer in the System Training School, Lucknow in the grade of Rs.2000-3200. The next higher post to which the applicant was eligible is A.M.E. which is a group 'B' gazetted post. The post of A.M.E. is filled up by two modes i.e. 75% by normal

selection and 25% by holding Limited Departmental Competitive Examination (in short 'LDCE'). The applicant appeared in the LDCE held on 5.8.89 and 6.8.89 and he was one of the lucky candidates who qualified the same. Thereafter an interview was held and he qualified the interview also and his name was shown at sr.no.12 of the Carrier and Wagon Section as per Annexure A-2. He was also given posting at Delhi. However in accordance with the rules and regulations, before a group 'C' employee is promoted to group 'B' post, he/she is subjected to medical examination. The applicant had been declared unfit in medical B-1 examination, however, the respondents recommended his case for promotion on ad-hoc basis keeping in view his outstanding performance. The Railway Board also approved the ad-hoc promotion of the applicant vide Annexure A-5. While approving the promotion of the applicant, the Railway Board had put up certain conditions that the applicant has to be given such posting where his medical shortcomings will not hinder his smooth and efficient functioning and the applicant was also required to give an undertaking to the effect that he will not claim for consideration for higher grades such as senior scale group 'A'/junior scale as long as his medical shortcomings continue. Accordingly the applicant gave an undertaking and he was posted as Assistant Works Manager, Jagadhari Workshop vide Annexure A-6.

3. It is pleaded that applicant had been declared medically unfit only on the ground that Intra-Ocular Lens (in short 'IOL') had been planted in his left eye. The applicant made an appeal to waive of the disability of IOL

as the so-called disability was not coming in the way of his functioning as A.M.E. The said representation was rejected vide Annexure A-7. Despite that, the applicant continued to work as Asstt. Works Manager in a satisfactory manner. It is pleaded that in the meanwhile because of the technological advancement, the Railway Board had issued orders for permitting IOL for various categories. It was permitted for medical categories B-2 and below and in certain circumstances, in A-3 category also vide Annexure A-8. Again vide letter dated 30.5.97, the Railway Board reiterated that the use of IOL is permitted for category B-1 also provided the periodical medical examination of such employee is done annually irrespective of the fact whether IOL is in interior chamber or in posterior chamber, as per Annexure A-9. It is submitted that the medical classification/requirement in B-1 category is more strict than the medical category in case of promotion from Group 'C' to Group 'B'.

4. The applicant submits that when the IOL has been permitted in B-1 category, the question of denial of the same relaxation in respect of promotion from group 'C' to group 'B' is absolutely unreasonable and arbitrary. The applicant again submitted a representation in January, 1998 requesting the Railway Board to consider his case in the light of the actual performance and various relaxation having been granted by the Railway Board in respect of employees with IOL. The applicant further pleads that the General Manager, Northern Railway had also recommended his case for regularisation in group 'B' service. Similarly, the Chief Mechanical Engineer, Northern Railway is also stated to have recommended his case to the Railway Board.

But before the recommendations of the Northern Railway were decided, the Railway Board itself issued an order dated 20.5.99 in terms of which it was decided that an employee with posterior chamber IOL may be declared fit for gazetted technical category provided the corrected or uncorrected visual acuity complies with the medical standards laid down for gazetted technical posts. However, the Railway Board decided that the said amendment would be applicable from the date of issue of letter and old cases shall not be re-opened. The applicant then made another representation dated 20.10.99 requesting for lifting the embargo of IOL so far as his case for regularisation and promotion was concerned but his representation had been rejected.

5. In the grounds to challenge the impugned order, the applicant has submitted that though he had given an undertaking that he will not claim for consideration to higher grades such as senior scale group 'A'/junior scale as long as his medical shortcomings continue but he submits that in accordance with the latest Railway Board instructions, the said medical shortcomings ceased to continue because the Railway Board has now laid down that an employee with posterior chamber I.O.L. may be declared fit for gazetted technical category provided the corrected or uncorrected visual acuity complies with the medical standard. Applicant has submitted that since his case had already been recommended by the General Manager and the Chief Mechanical Engineer, so he should have been given regular promotion to group 'B' post. It is also stated that the respondents have failed to appreciate the Railway Board instructions dated 20.5.99 while deciding his representation. It is, therefore, prayed that the

impugned order be quashed and respondents be directed to regularise the services of the applicant as Group 'B' officer from the date from which he is working on ad-hoc basis and consider him for promotion from the date from which his juniors had been promoted with all consequential benefits.

6. Respondents are contesting the OA. They admit that the applicant while working as Sr. Lecturer, had appeared in the LDCE for group 'B' post and he had qualified the same. His posting order was also issued but the same was subject to his passing the prescribed medical examination. It is further stated that for promotion to group 'B' post, an employee is required to pass the medical examination prescribed in the Indian Railway Medical Manual. According to Railway Board's letter dated 16.12.83 (Annexure R-1 to the counter), in exceptional cases an employee who did not come up to the prescribed medical standard, could be considered with the approval of the Railway Board for promotion to group 'B' on ad-hoc basis provided a suitable post was available and the employee gave an undertaking in writing, that he will not claim for regularisation to group 'B' or induction in Group 'A' as long as the medical shortcomings continue. Since the applicant did not pass the prescribed medical examination, in terms of Railway Board's letter dated 16.12.83, he was given promotion to group 'B' on ad-hoc basis subject to giving the requisite undertaking. The question with regard to permission to IOL for promotion from non-gazetted to gazetted posts was considered time and again and it was decided by the Ministry of Railways that use of IOL may not be permitted to such staff vide letter dated 15.10.92.

7. The issue was again considered vide letter dated 7.2.96 wherein use of IOL was permitted in certain cases. Due to advancement of medical science and technical services, the Railway Board issued an order vide letter dated 21.5.99 in terms of which an employee with posterior chamber IOL may be declared fit for gazetted technical category provided the corrected or uncorrected visual acuity complies with the medical standards laid down. This order has been made effective prospectively. The applicant till the issue of letter dated 20.5.99 was not fit for regularisation in Group 'B' post of AME or promotion to group 'A'. His medical shortcomings had been removed not by way of any improvement in his eyes but only by way of an order issued by the Railway Board on 21.5.99 and in accordance with the same, the applicant would be considered for regularisation in Group 'B' and further promotion on the basis of said regularisation. So it is prayed that the OA has no merits.

8. We have heard learned counsel for the parties and gone through the records.

9. The only short question which requires consideration by this court is whether the applicant can be said to be medically fit for being regularised in group 'B' post with retrospective effect in view of the latest order issued by the Railway Board on 21.5.99 and whether this order can be implemented with retrospective effect. Learned counsel appearing for the applicant submitted that since the applicant had been working on a group 'B' post in most satisfactory manner and his appeal and representation

was still pending, so his case had not been closed and now as per the latest Railway Board's instructions dated 20.5.99, an employee with posterior chamber IOL might be declared fit, so applicant is entitled for being considered for regularisation from the date he had been promoted on ad-hoc basis.

10. On the contrary, learned counsel for the respondents submitted that Railway Ministry had been considering cases of IOL category candidates from time to time and wherever and whenever the Ministry had found that a candidate with IOL could work on a post regularly, had been given promotion with respect to a particular post. In this case, due to advancement in technology, while the department had come to the conclusion that a person with posterior chamber IOL could be declared medically fit for promotion w.e.f. 20.5.99, but a specific embargo had also been put that this will not reopen the old cases and that if the applicant is allowed regularisation with retrospective effect, it will amount to reopening of old cases which is not permissible under law.

11. We have considered rival contentions of the parties and have given our thoughtful consideration to the matter. It is an admitted case of the parties that it was for the first time on 20.5.99 that the Railway Board had decided that a person with IOL could be considered for promotion provided he complies with the medical standards laid down for gazetted technical posts. The Railway had also taken a decision that this amendment will be prospective and old cases will not be reopened. It has been so stated in para 4.22 by the applicant himself in his

O.A. but still he is insisting that this amendment should have been applicable from the date he had been promoted to group 'B' post as his case was pending consideration.

12. To our mind, this contention of the applicant has no merits because he himself admits that by virtue of advancement in technology, the railway Board had relaxed medical standards for technical posts in group 'B' and for the first time in 1999, those candidates who were having IOL in their posterior chamber were considered fit for promotion to group 'B' posts with certain conditions with regard to their visual acuity. But when the applicant was promoted, probably by that time the technology had not progressed upto the standard to which it has progressed as on 20.5.99 and it is so evident by the fact that the Ministry had been considering the persons with IOL from time to time in certain other categories of posts as the applicant himself admits that earlier vide letter dated 7.2.96, IOL was permitted in certain circumstances for some other categories. Use of IOL was permitted for medical categories B-2 and below of non-gazetted vide letter dated 26.1.88. Similarly vide another letter dated 30.5.97, the Railway Board permitted use of IOL for category B-1 also.

13. It was the discretion of the railway authorities as to from what date the instructions of 20.5.99 declaring an employee with posterior chamber IOL fit for gazetted technical category, should be made applicable. The applicant cannot ask that this relaxation should be applied in his case with retrospective effect. Hence seeking relaxation in medical standards from the date he had been given ad-hoc promotion when according to the

k

(K)

applicant himself the letter dated 20.5.99 was made applicable prospectively. By judicial interference we cannot make it applicable from retrospective effect, as that would amount to amending the instruction on the subject by this Tribunal.

14. In the result, we find applicant has no case. The OA thus fails and is accordingly dismissed. No costs.

M.P. Singh
(M.P. Singh)
Member(A)

Kuldeep Singh
(Kuldeep Singh)
Member(J)

/dkm/