

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/01175/2014

HYDERABAD, this the 12th day of October, 2020



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

Parre Prathap S/o P.Naraiah,
Aged about 37 years,
Occ : Dy.Chief Ticket Inspector,
O/o Chief Ticket Inspector/GNT,
Guntur Division, South Central Railway,
Guntur.

...Applicant

(By Advocate : Mrs.S.Anuradha)

Vs.

1. Union of India rep. by its
The General Manager, South Central Railway,
Rail Nilayam, III Floor, Secunderabad-500 071.
2. The Divisional Railway Manager,
Guntur Division, South Central Railway,
Guntur.
3. The Senior Divisional Personnel Officer,
Guntur Division, South Central Railway,
Guntur.

....Respondents

(By Advocate : Mrs. A.P. Lakshmi, SC for Railways)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed aggrieved by the direction of the 3rd respondent to the applicant to appear for the Medical Test for Group B Technical post.

3. Brief facts of the case are that the applicant, who is working for the respondents, appeared for the written examination for the post of Assistant Commercial Manager (for short “**ACM**”) under 30% LDC Exam quota and he was not intimated about the outcome of the results of the written examination. However, basing on the orders in the OA No.1445/2013 filed by one Sri Uday Kumar, the respondents issued letter dt. 24.9.2014 by considering 5 candidates from SC/ST category for viva-voce under the “best amongst the failures” scheme in the selection contemplated for the ACM Post. Applicant’s name appeared at Sl. No. 3 of the said letter. The impugned letter indicated that all the five candidates should be relieved for medical examination for the post of Group B Technical. All the candidates appeared at the medical test on 26.09.2014. Applicant claims that for a non safety post no medical examination is required under relevant rules. However, respondents forced the applicant to appear for medical examination in which he failed. Aggrieved over the same, OA has been filed.

4. The contentions of the applicant are that the Railway Board letter dt. 31.07.2013, circulated vide Serial Circular No. 69/2013 of S.C. Railway clarified that the Group B post of ACM in the Transportation (Commercial) Department shall be treated as non-safety category post when selections are



conducted stream-wise for applicability of the scheme “Best amongst failures”. The CAT Chennai Bench also held in the case of Sri D. Thangarajan v. Union of India & ors reported in 2006 (92) SLJ 133 CAT that the post of ACM does not come under the safety category. The syllabus and the questions asked in the written examination were related to non-safety subjects. Even from the Indian Railway Commercial Manual Vol. II, it would be evident that the duties of ACM do not involve train working duties or trolley inspection in open line. Therefore, by no stretch of imagination, the post of ACM can be classified as safety category. Further, in respect of non-safety category, only SC/ST employees are given pre-promotional training. In the instant case, applicant along with other SC/ST candidates underwent pre-promotional training. This would show that the Group B post for which the selection took place was a non-safety category post and therefore, the action of the respondents in directing the applicant to attend medical examination for Group B Technical along with other SC/ST candidates from the list of “Best amongst the failures”, is irregular.

5. Respondents in the reply statement submitted that the applicant, who belongs to SC community, while working as Dy. CTI, appeared for the examination to the post of ACM against 30% LDCE quota in the year 2011 against the notification dt 18.05.2011. He could not secure minimum qualifying marks prescribed for selection. However, he was considered for selection under the “Best amongst the failures” scheme in terms of the Tribunal order dt. 22.08.2014 in OA 1445/2013, filed by Sri T. Uday Kumar. Accordingly, applicant along with 4 others were directed to

appear in the examination in “Group B Technical”. These directions were in consonance with the para 530(a) of Indian Railway Medical Manual (for short “IRMM”), which classifies the posts into two categories for the purpose of examination of visual acuity of railway employees promoted from non-gazetted to gazetted post. The standard of medical examination prescribed for the post of ACM is as per Paras 530(a), 531 and 532 of IRMM. Applicant was declared medically unfit under para 530(a) and 532 of IRMM vide medical certificate dt. 30.09.2014. The said declaration attained finality as there was no challenge by way of an appeal to the higher medical authorities by the applicant. The post of ACM shall be treated as non safety post only for the purpose of applying the “Scheme of best amongst the failures“ as per the instructions of the Railway Board dt.31.07.2013, circulated vide SC No. 69/2013 of Chief Personnel Officer, SC Railway. The list of candidates belonging to the SC/ST category, who could not secure minimum qualifying marks were identified and alerted for the viva-voce to assess their eligibility for the selection under the best amongst the failure policy. For the post of Group B Technical for which the applicant appeared in the exam, the prescribed medical examination has to be cleared for selection. The judgment quoted by the applicant in the matter of D. Thangarajan v. Union of India is not applicable to the case of the applicant since in the case cited, the issue is whether the post of ACM is safety or non safety category and not about the medical examination.

6. Heard both the counsel and perused the pleadings on record.

7(I) The dispute is about the conduct of medical examination for the post of ACM. Applicant pleads that the said post is a non-safety post and



therefore, no medical test is required. However, the applicant along with 4 others were forced to take the examination, which is against the rules, is the contention of the applicant. *Per contra*, respondents state that, as per Para 530 of IRMM, for the purpose of examination of visual acuity of Railway employees promoted from non-gazetted to gazetted posts, the later are divided into two categories as follows:



- (a) All posts in Mechanical, Electrical, Civil and S & T Engg. and Traffic (Transportation and Commercial) Department;
- (b) All posts in other departments which are not connected with train working or use of trolley on open line.

The posts which are falling in the Department having technical nature of work have been placed in the category (a) above, which includes, among others, Traffic (Transportation and Commercial) Department as well. The posts belonging to Department carrying on the duties of functions of non-technical are included in category (b) above. Promotion of the applicant is to the post of ACM which is included in category (a) as per the above classification. Under the aforesaid categorisation, the applicant was made to appear for the medical examination and found to be unfit for the post of ACM Group B Technical vide paras 530(a), 531 and 532 of IRMM vide medical certificate dt. 30.09.2014. It is also to be noted that the provisions of the IRMM have not been challenged in the OA. The post of ACM is made non-safety only for the purpose of applicability of best amongst the failures scheme in order to enable the SC/ ST employees to be selected for the post of ACM. However, there is no relaxation in regard to the medical examination prescribed for the post. This is what has

been conveyed vide Railway Board letter dt. 31.07.2013 (RBE No. 76/2013) circulated vide Serial Circular No. 69/2013 which has been relied upon by the applicant.

II. Pre-selection/ pre-promotional training is given to SC/ST candidates not only for non-safety category but for safety category posts too. This is a privilege extended to SC/ST employees under the Rules. The objective of medical examination of the employees promoted from non-gazetted to gazetted posts falling under category (a) of para 530 is to ensure that they are not suffering from any chronic/ acute illness, which would interfere with the efficient performance of their duties after promotion. The idea is to ensure that the persons selected for the post is having good health and sound mind and free from any physical defect which would likely to impair efficient discharge of official duties assigned. With this perspective, medical standard “Group B Technical” is prescribed for the post of ACM, which falls under the category (a) of para 530 of IRMM. The judgment relied upon by the applicant delivered by the Chennai Bench of this Tribunal in D. Thangarajan v. Union of India is not applicable as the facts, circumstances and the legal question attended to, are different

III. In fact, the Lucknow Bench of this Tribunal in the case of Lallan Ram v. Union of India in OA No. 276/2006, vide order dt. 9.1.2014, relied upon by the respondents has held that, once an employee has been declared unfit for Group B post falling in para 530(a) of IRMM, then, it is for the employee to file an appeal within the prescribed time against the findings of medical report declaring him unfit. In the present case, the applicant has not even preferred an appeal. However, during the course of hearing,



learned counsel for the applicant prayed to allow the applicant to prefer an appeal to the higher medical authorities. As respondents have been considerate in considering the Best amongst the failures for selection to the post of ACM, we are of the view that the respondents may like to entertain an appeal from the applicant though the time period for preferring such appeal would have lapsed. May be because of his ignorance of rules, the applicant would not have appealed in time. However, the objective of the respondents is to encourage SC/ST employees to get selected to the post. Hence, the observation.

IV. Keeping this in view, we direct the respondents to allow the applicant to make an appeal to the higher medical authorities in regard to the medical test he underwent. The applicant shall submit an appeal, if he so desires, within a period of one month from the date of receipt of this order and the concerned medical authority shall dispose of the same by medically examining the fitness of the applicant for the post in question as per relevant rules of the respondents organization, within a period of four months from the date of receipt of such appeal. This order shall be treated as order *in personam*. In view of the peculiar facts and circumstances of the case, we have ordered as above.

V. With the above direction, the OA is disposed of with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER
evr

(ASHISH KALIA)
JUDICIAL MEMBER