

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2885 of 1991

New Delhi this the 17 Day of October, 1995

Hon'ble Shri A.V. Haridasan, Vice Chairma (J)

Hon'ble Shri R.K. Ahooja, Member (A)

Shri Amiya Kumar Bose,
Son of Late Shri B.N. Bose,
House No. XV 2325,
Laxmi Narain Street,
Paharganj,
New Delhi

.. Applicant

(By Advocate: Shri Ranjan Mukherjee)

Vs

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

... Respondents

(By Advocate: Shri K.K. Patel)

O R D E R

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

The applicant who claims to have commenced service as a casual skilled fitter from 14.1.1967 under the Northern Railway and has been admittedly working as a daily rated skilled staff in the pay scale of Rs. 260-400 from 14.11.1979 is aggrieved by the fact that though as a result of a selection held on 15.1.1981, 16.1.1981 and 10.2.1982 the applicant along with others was found suitable for absorption as Telecommunication Mechanic in the grade of Rs. 260-400 against 25% quota under paragraph

2512(ii) of the Indian Railway Establishment Manual, The respondents have not, so far, regularly absorbed him on the post though persons junior to him in the panel prepared and approved by the General Manager on 28.1.1983 (Annexure I) have been absorbed in regular service. The applicant has stated that the non-absorption of the applicant as Telecommunication Mechanic in spite of the order at Annexure I of the General Manager probably for the reason that in the year 1978 he was declared medically unfit in B-1 category but ^{fit} only in B-2 category is unreasonable, _{✓ x} unjust and opposed to Articles 14 and 16 of the Constitution for the reason that medical category B-1 is required only for signalling staff whereas the applicant is working in Railway Auto Exchange Net Work System and also because under identical circumstances Shri N.R. Mukherjee similarly declared like the applicant unfit under B-1 category but fit under B-2 category was regularly absorbed in service as a TCM. The applicant has stated that in view of the unreasonable attitude adopted by the respondents in spite of the repeated representations made by him, the applicant is even after the service of 22 years continued as a casual labourer without the benefit of promotion and fixation of pay under the revised pay ^{Rules} ~~rules~~ and other benefits available to regular employees under the railways. The applicant, therefore, has prayed that directions may be issued to the respondents to absorb the applicant as Telecommunication Mechanic (III) in the grade of Rs. 260-400 with effect from the relevant date to revise

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his pay and to pay him the consequential arrears and other benefits arising therefrom.

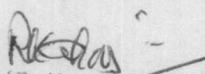
2. We have perused the pleadings and other materials available on record. We have also heard the arguments of Shri Ranjan Mukherjee, Counsel of the applicant and Shri K.K. Patel, Counsel of the Respondents. It is admitted by the respondents that the applicant was found suitable for absorption as TCM in the grade of Rs. 260-400 consequent upon the selection held on 15.1.1981, 16.1.1981 and 10.2.1982. It is evident from Annexure I, the copy of the order dated 28.1.1983 of the General Manager that the applicant was No. 1 in the panel. Though there was a direction in the order dated 28.1.1983 to offer appointment to those whose names are included therein, ~~appointment~~ against 25% of the vacancies as required under paragraph 2512(ii) of the Indian Railway Establishment Manual after observing the requisite formalities regarding medical test etc. admittedly no step has been taken towards absorption of the applicant. Medical examination also was not done after the order dated 28.1.1983. For the reason that the applicant was way back in the year 1978 was declared medically unfit under medical category B-1 and fit only under medical category B-2, the respondents contend that the applicant was not absorbed in service as he was not eligible. ^{The calculation of his date of last} The qualification under medical category B-1 is required only for signalling staff among the TCM and that he being engaged in Railway Auto Exchange Network System

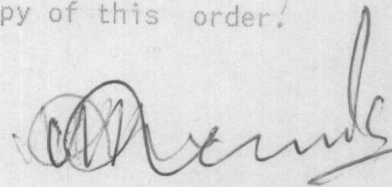
need not qualify under that category for absorption has not been specifically denied by the respondents; Though they have stated in the reply that for absorption as TCM qualification under medical category B-1 is required. The relevant rule or instruction which mandates that for all TCM qualification under medical category B-1 ^{is required} has not been brought to our notice by the learned counsel of the respondents though we have asked him to show us ~~any~~ such rules, if any. Further the specific case of the applicant is that in the case of Shri N.R. Mukherjee who was declared medical unfit under category B-1 but fit under medical category B-2, the railway administration has absorbed him in the regular service. This has not been categorically denied by the respondents. They contended that as Shri Mukherjee belongs to another division, the details are not available. Though the Chairman, Railway Board, Secretary, Ministry of Railways and General Manager are the parties to this application, the respondents have not been able to specifically denying the allegations that in the case of Shri Mukherjee he was absorbed as TCM though declared medically unfit under B-1 category. The applicant though according to the respondents was unfit for absorption as TCM (III) in the grade of Rs. 260-400 is being continued even after 1978 on a casual basis. After continuing the applicant for such a long period, it is unjust and inequitable to refuse to absorb him in the regular service thereby denying him the benefit which regular employees would be entitled to like promotion, pensionary benefits on

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retirement etc. Since the applicant has been for the last 22 years performing the duties of TCM, Grade III though on casual basis, it should be deemed that in his case the qualification under medical category B-1 if at all required has been relaxed. Further as Shri N.R.Mukherjee has been though declared unfit under B-1 category regularised in service as TCM, the respondents would be violating the equality provisions enshrined in Articles 14 and 16 of the Constitution if they do not extend the same treatment to the applicant also.

3. In the conspectus of the facts and circumstances we direct the respondents to absorb the applicant in regular service as TCM, Grade III in the pay scale of Rs. 260-400 with effect from the date on which any person whose name occurs below the applicant's name in the order dated 28.1.1983 (Annexure I) was absorbed to refix his pay accordingly with all consequential benefits. However we direct that the arrears of pay and allowances, if any, consequent on regular absorption and refixation of pay shall be paid to him only with effect from the date one year prior to filing of this application. The aforesaid directions should be complied with by the respondents within a period of two months from the date of communication of a copy of this order. There is no order as to costs.


(R.K. Ahooja)
Member (A)


(A.V. Haridasan)
Vice Chairman (J)