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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.1662/2004

M.A. NO.1411/2004

with

O.A. NO.493/2006

This the 10th day of May 2007

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

HON'BLE SHRI N. D. DAYAL, MEMBER (A)

O.A. NO.1662/2004

Niranjan Kumar Namdeo S/O Hukam Chand Namdeo,
15/12 Near Tower, Khair Pass,
Old Chandrawal, Mall Road,
Civil Lines, Delhi-6.

... Applicant

(By Shri B.S.Maine, Advocate)

Versus

1. Union of India through
Secretary, Railway Board,
Ministry of Railways, Rail Bhawan,
New Delhi-110001.

2. General Manager,
Central Railway,
CST, Mumbai.

... Respondents

(By Shri H. K. Gangwani, Advocate)

O.A. NO.493/2006

Neeraj Sharma S/O C. M. Sharma,
R/O 3 Shiv shakti Vihar,
Lajpat Nagar, Sahibabad,
Ghaziabad (UP).

... Applicant

(By Shri B. S. Mainee, Advocate)

Versus

1. Union of India through
Secretary, Railway Board,
Ministry of Railways, Rail Bhawan,
Raisina Road, New Delhi-110001.



2. General Manager,
West Central Railway,
Jabalpore.
3. Chairman,
Railway Recruitment Board,
D-15, Machna Colony
(Near Bus Stop No.6),
Shivaji Nagar, Bhopal-462016.

... Respondents

(By Shri Rajender Khatter, Advocate)

ORDER

Hon'ble Shri N. D. Dayal, Member (A):

These two Applications are being considered together as the grounds taken by the applicants therein are similar in terms of the facts and law.

2. The applicant in OA No.1662/2004 was selected for the post of Enquiry-cum-Reservation Clerk (ECRC) through the Railway Recruitment Board (RRB), Ajmer against Employment Notice No.1/1995 and he was No.58 in order of merit on the panel. Since there were no vacancies in Western Railway, the applicant accepted offer on Central Railway and underwent medical examination where he was declared unfit for the post in C-I category.

3. By a representation dated 11.9.1998, the applicant requested for an alternative job in lower medical category like clerk, commercial clerk, stenographer etc., which was rejected on 30.9.1998 in accordance with the Railway Board instructions dated 4.1.1985. It is stated that the Railway Board by circular dated 20.8.1999 had reviewed the policy in accordance with which the applicant was eligible. Later on, following direction to the applicant by letter of 25.9.2000 he appeared for medical examination on 28.9.2000 and was found fit for category C-II as per certificate at Annexure A-4. Thereafter a number of representations were made in 2001, 2002 and also to the Minister of Railways but there was no response even to subsequent representations in 2003 and 2004.

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Finally, his case was turned down by the order of 12.4.2004 informing him that the facility of alternative appointment to general and OBC candidates was extended by the Ministry from 20.8.1999 whereas the applicant had been declared medically unfit for the post of ECRC prior to the instructions on 13.2.1998. As such, his request could not be agreed. The applicant has submitted that even prior to the instructions of 20.8.1999 there was an earlier circular of 23.11.1979 as well which supports his case. The applicant has, therefore, prayed for a direction upon the respondents to consider his case for alternative job as per Railway Board instructions dated 23.11.1979 and 20.8.1999 in medical classification C-II for which he has been found fit.

4. The applicant in OA No.493/2006 was selected for appointment to the post of Assistant Station Master (ASM) against Employment Notice No.5/1990 through the RRB, Bhopal and recommended to the Central Railway. An appointment letter was issued on 6.2.1992 and in pursuance thereof he appeared for a medical examination but was not found fit in classification A-II which is stated to be a very high standard of fitness. He, therefore, sought alternative job in categories for which medical classification is B-I and B-II by representation dated 26.6.1992 and followed up by reminder in 1993 and appeal to the General Manager, Central Railway in 1994 and even thereafter on 7.3.1995. Subsequently, he made a representation on 6.7.2000 because others had been given such appointment and also made a representation to DRM, Central Railway, Bhopal. RRB, Bhopal wrongly informed that his documents were not available after which he sent the details with full particulars and then to the General Manager, West Central Railway, Jabalpur after re-organization of Zones. He relied upon Railway Board circular dated 20.8.1999 and the matter was referred to Railway Board but was rejected on 9.6.2004 stating that the instructions of 20.8.1999 were applicable only prospectively and would not apply to the applicant

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who was declared unfit in A-II medical category on 19.2.1992. It was further clarified that RRB, Bombay had taken a common examination by Employment Notice No.1/1987 under Category IV for ASM as well as Senior Clerk and, therefore, as per letter of 4.1.1985 medically unfit candidates selected for ASM could be considered only for the other alternative posts included in the common examination. The applicant has also referred to circular dated 23.11.1979 and to the case of one Shri R.K.Gupta who had failed to qualify the medical examination for the post of Guard and was offered alternative job of Junior Clerk in a lower grade. The applicant, therefore, prays for direction upon the respondents to consider his case for alternative appointment in a suitable category for which he was found medically fit.

5. In their reply in OA No.1662/2004 the respondents have further clarified that the notification No.1/1995 was exclusively for the category of ECRC and, therefore, the applicant cannot be given alternative appointment. It has been repeatedly stressed that request of candidates found medically unfit on dates earlier to the issue of instructions dated 20.8.1999, giving authority to the General Managers to consider the requests from candidates of non-technical categories for alternative posts subject to other eligibility conditions, cannot be acceded to because there would be a large number of such candidates over the years prior to 20.8.1999 who would then seek similar benefit resulting in administrative chaos. Besides, it is clarified that the instructions dated 23.11.1979 apply to those who failed to qualify in psychological test for the technical post of ASM. A reference has been made to the decision of the Mumbai Bench of this Tribunal in OA No.396/2001 dated 3.7.2002 in the case of *Hemant Kumar v Union of India & Others*, wherein the Tribunal held that the candidates empanelled prior to the letter dated 20.8.1999 cannot claim the benefit on retrospective basis.

6. In the reply filed in OA No.493/2006 it is contended that since the applicant was declared medically unfit in 1992 and filed the OA in 2006, the claim was barred by delay and laches in terms of the settled law in that regard. It has been explained that the letter dated 23.11.1979 is admissible only for a combined selection and for the post of ASM a separate examination is conducted. Besides, in terms of the rules in vogue at the relevant time, a candidate selected by RRB who failed in the medical was not to be re-examined for lower medical category and alternative job. The offer of alternative appointment is also dependant upon the position in the merit list and the case of Shri R.K.Gupta would not support the case of the applicant merely on the basis of letter dated 1.5.1996 (Annexure A-16) wherein some information was called for about his appointment.

7. In his rejoinder the applicant in OA No.1662/2004 has taken the stand that his case was still pending when the Railway Board circular dated 20.8.1999 was issued and he had been sent for medical examination in the year 2000 for lower category. Further the Railway Board instructions of 23.11.1979 have not been placed before the Mumbai Bench of this Tribunal in OA No.396/2001 and, therefore, the case of the applicant deserves consideration.

8. The applicant in OA No.493/2006 has argued in the rejoinder that his case was rejected on 7.10.2005 by the General Manager, West Central Railway, Jabalpur, and earlier on 9.6.2004 by the Railway Board and, therefore, the OA cannot be barred by limitation. He has also taken the plea that the representation of the applicant was still pending when the circular dated 20.8.1999 had been issued and, therefore, he cannot be denied his claim.

9. We have heard the learned counsel for both sides and perused the pleadings. The counsel for the applicants stressed that their claims were covered

by earlier instructions of the Railway Board dated 10.11.1976 as well. It was argued that the cases of the applicants were pending on 20.08.1999 and could be considered by the General Manager. The counsel for respondents relied upon the stand taken in their replies to oppose the contentions raised by the applicants mainly on account of the instructions of 20.08.1999 being prospective and earlier instructions of 23.11.1979 applicable for combined selection only, besides the judgement by the coordinate bench in *Hemant Kumar (supra)* was in their favour. Various citations were referred on the question of limitation against the OAs.

10. It is observed that the claim of the applicants for appointment in alternative job of lower medical category was initially turned down by orders dated 30.9.1998 and 9.6.2004. However, the order of 30.9.1998 informed ineligibility in terms of letter of 4.1.1985 whereas a subsequent order of 12.4.2004 communicated different grounds that the applicant was declared medically unfit one and a half years prior to the date of circular dated 20.8.1999. Therefore, OA No.1662/2004 filed on 6.7.2004 within a few months thereafter may not be regarded as beyond the period of limitation. Similarly in the case of OA No.493/2006 filed on 4.1.2006 wherein the order of rejection dated 9.6.2004 has been supplied only with the letter of 7.10.2005.

11. On merits, the issue in these two OAs revolves around the applicability of the instructions of the Railways which provide for alternative appointment in a lower medical category job subject to certain conditions specified therein as well as the validity of the contention taken by the applicants that their cases were pending consideration at the time when the order dated 20.8.1999 was issued.

12. It would be useful at this stage to reproduce the Railway Board instructions dated 23.11.1979 available at Annexure A-10 in OA No.1662/2004

and the Railway Board instructions dated 20.8.1999 available at Annexure A-3 of the same OA as under:

Instructions dated 23.11.1979:

“Sub: Employment of medically unfitted direct recruits in alternative categories.

The Board in their letter No.E(NG)III-76/RC1/16 dated 10.11.76 decided that recruitment to all popular categories including that of ASMs, Guards and Signalers should be through a combined selection and candidates should be asked to indicate their preferences for the categories advertised, so that those who fail to qualify in psychological test for ASMs could be accommodated in other categories as per their options. The Board have been receiving representations from candidates empanelled for ASMs category on being found medically unfit, for their appointment in alternative categories, since Board's extant orders No.E(NG)58/RC1/25 dated 10.7.58 placed an embargo on such alternative appointment. It is felt that the orders of 10.7.58 are unfair to a candidate selected for posts with higher medical classification even though he could have been recommended for post with lower medical classification on the basis of merit position. The Board have reviewed the matter and have decided that the candidates who are higher up in combined merit list when found medically unfit for posts with higher medical classification should be offered appointment in posts for which they are medically fit. This may be done by the CPOs against vacancies for which Railway Service Commission recruits have not joined provided the merit order position is clear. Where this is not clear or where they have to be adjusted against other vacancies reported to the Railway Service Commission, this should be done in consultation with the Railway Service Commission.

Pending claims from medically unfitted candidates may also be dealt with on these lines.”

The instructions dated 23.11.1979 make a mention of Railway Board letter dated 10.11.1976 on the same subject copy of which has been produced during the hearing, which reads as under:

“Sub: Recruitment to non-technical popular Class III categories
– Holding of Mass Examination.

In terms of Board's letter No.E(NG)63/RR1/35 dated 9.7.64 separate examinations are to be held for recruitment of ASMs/Signallars and for recruitment to other popular categories like Guards, Commercial Clerks, Train Clerks etc. The Ministry

of Railways have decided that the recruitment to all popular categories should hereafter be through one selection. Since the candidates will be asked to indicate their preference for the categories advertised, candidates failing in the psychological test for ASM can now be accommodated in other jobs in accordance with their merit position."

Instruction dated 20.08.1999:

"At present, General Managers are authorized to consider requests from candidates empanelled by RRBs but failing in prescribed medical examination, for appointment in alternative technical categories, and SC/ST candidates in non-selection categories also, subject to certain conditions.

2. Board have reviewed the policy, keeping in view high cost of recruitment and the need to adopt uniform policy for all candidates and for all categories of recruitment. It has consequently been decided that the General Managers shall henceforth have the authority to consider requests from candidates of non-technical categories also, who fail in prescribed medical examination after empanelment by RRB, for their appointment in alternative category, subject to fulfillment of the prescribed medical standard educational requirement and other eligibility criteria for the same grade post in alternative category. Such consideration shall be on the same lines as hitherto done for technical categories. The decision of the General Manager regarding availability and identification of the vacancy in alternative grade, including other relevant factors required to be considered shall be final."

13. It is seen that by instructions dated 23.11.1979 it was recollected that in terms of letter of 10.11.1976 recruitment to all popular categories including ASMs, Guards and Signalers was to be through a combined selection and candidates would be asked to indicate their preference for the advertised categories so that those who failed to qualify in psychological test for ASM could be accommodated in other categories as per their options. In view of representations that were being received from those empanelled for ASM category but found medically unfit and as there was an embargo on alternative appointments, the Railway Board decided on review that candidates who are higher up in the combined merit list if found medically unfit for posts with higher medical qualification, should be offered appointment in posts for which they are

medically fit against vacancies for which recruits have not joined and provided that the merit order position is clear. If it is not clear or if they have to be adjusted against other vacancies reported to the Railway Service Commission, this should be done in consultation with the Railway Service Commission. Thus, the facility was extended to that extent for adjustment against other vacancies reported to the Railway Service Commission also and apparently not restricted to vacancies within the same combined selection against which the recruits had not joined. This order provides that pending claims be dealt with on these lines. Although the claims of the two applicants arose thereafter and before 20.08.1999 there is no indication that these provisions contained in instructions of 23.11.1979 were kept in view nor is there any reference in the impugned order.

14. The applicability of the circular dated 20.8.1999 in the case of a candidate who was declared medically unfit on a date prior to the same but his request for fresh medical examination was still pending, has been considered by the Mumbai Bench of this Tribunal in *Hemant Kumar* (supra) as under:


“5. We have considered the arguments made by the learned counsel on both sides and have carefully gone through the impugned order and specially the circular depended upon by both sides viz. circular dated 20/8/99 (Annexure A-4) and circular dated 7/8/2000 (Annexure A-7). It is seen that a policy decision has been taken through the letter at Annexure A-4 and General Managers are authorized to consider request from candidates empanelled for particular posts from Railway Recruitment Board, but failing in prescribed medical examination for appointment, for alternative categories of posts. The order made extends orders to non technical posts; earlier such instructions existed only for technical categories. There is some substance in the argument taken by the Respondents that if at all the benefit of such circular can be claimed it can only be with prospective effect. The decision declaring applicant medically unfit relates to the date of 24/7/1997 and this circular is dated 20/8/1999. It is a well settled principle that all such instructions envisaging change in policy concessions take prospective effect. In this regard one of the points made on behalf of the Applicant was that when the circular came to be issued, the applicant's request for a fresh medical examination was still pending. This is a point that will not help the Applicant's case as no provision has been shown for

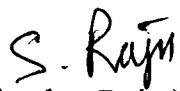
a right for medical re-examination. Hence this point cannot be considered.”

The Railway Board instructions of 23.11.1979 do not appear to have been noticed in that OA.

15. It is felt that even though the applicants were found medically unfit prior to the issue of instructions dated 20.8.1999, their cases were at that time subject to the Railway Board instructions dated 23.11.1979 whereby the earlier position was reviewed and alternative appointment appears to have been extended to other vacancies outside the combined selection as well. A combined selection was envisaged for various popular categories and although the case of ASMs was particularly mentioned, other categories have not been specifically excluded. The orders of 20.08.1999 are, however, explicit in this regard. The impugned orders of 09.06.2004 indicated combined selection of ASM and Sr.Clerk and the applicant in OA 493/06 was selected for the post of ASM itself.

16. In view of the above, the impugned orders dated 9.6.2004 and 7.10.2005 in OA No.493/2006 as well as dated 30.09.1998 and 12.04.2004 in OA 1662/2004 are set aside and the respondents are directed to consider the case of the applicants for alternative appointment in suitable category for which they have been found medically fit in the light of Railway Board instructions dated 23.11.1979 and the relevant eligibility criteria and pass appropriate orders within a period of three months from the date of receipt of a copy of this order. No costs.


(N. D. Dayal)
Member (A)


(Shanker Raju)
Member (J)

/as/