

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 22nd day of April 2002

Original Application no. 1138 of 1998.

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr. A.K. Bhatnagar, Member (J)

1. Jitendra Varshney, S/o Sri Khajanchi Lal,
working as Chief Booking Supervisor,
Northern Railway, Aligarh.
2. Prithvi Ram, S/o Sri Bishuni Ram,
Working as Chief Inspector of Ticket (Admin.),
Northern Railway, Allahabad.
3. Brij Kishore, S/o Shri Bishambhar Dayal,
working as Chief Booking Supervisor,
Northern Railway, Etawah.

... Applicants

By Adv : Sri S. Agarwal & Sri C.P. Gupta

V E R S U S

1. Union of India through General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Chief Personnel Officer, Northern Railway,
Baroda House, New Delhi.
3. Secretary Railway Board, Rail Bhawan,
New Delhi.
4. Divisional Railway Manager, Northern Railway,
Allahabad.

... Respondents

By Adv : Sri A.K. Gaur

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O R D E R

Hon'ble Maj Gen K.K. Srivastava, A.M.

In this O.A. filed under section 19 of the A.T. Act, 1985, the applicants have challenged the order dated 5.10.1998 (Ann A-1) alongwith the Railway Board letters dated 16.6.1997 and 16/17.9.1997 (Ann A1/A & A1/B) and have prayed that the respondents be directed to issue medical memo of Medical Examination for non technical category under para 531 (b) of Indian Railway Medical Manual 1981 and applicants be promoted to suitable post in Group 'B' in view of Railway Board Directions issued vide letter dated 28.1.2000.

2. The facts, in short, giving rise to this OA are that applicant no. 1 Sri Jitendra Varshney posted as Chief Booking Supervisor, Northern Railway, Aligarh, applicant no. 2 Sri Prithvi Ram, posted as Chief Inspector Ticket (Admin.) Northern Railway, Allahabad and applicant no. 3 Sri Brij Kishore posted as Chief Booking Supervisor Northern Railway Etawah were entitled to appear in the selection for the post of Assistant Commercial Manager against 70% quota for the year 1998-2000 vide circular no. 752E/67-XXVI/ E i A dated 3.7.1998 issued by General Manager, N. Rly., New Delhi. Applicants applied against the above posts and on account of their seniority they were called for written test on 22.8.1998 and its supplementary examination held on 19.9.1998. The result of the written test was declared vide their letter dated 30.9.1998 and the applicants were placed at sl no. 17, 28 and 9 respectively. Direction to all successful candidates was given vide the same letter that they should get their medical examination done before viva voce in terms of latest ^{instructions} ~~instructions~~ contained in Railway Board letter dated 31.10.1991 circulated under

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PS 10517 and the fit/unfit certificate was required to reach the office of respondent no. 2 by 15.10.1998. As per the circular dated 31.10.1991 (ie PS 10517), if a group 'C' employee qualifying the selection for promotion in group 'B' does not pass the prescribed medical standard he should not be posted to group 'B' post even on adhoc basis. The applicant protested verbally but respondent no. 4 Divisional Railway Manager (in short DRM) N. Rly., Allahabad issued Medical Memo for examination for technical categories ie posts connected with train passing under para 531 (a) of Indian Railway Medical Manual 1981 instead under para 531 (b) and the Railway Medical Officer declared the applicants unfit in colour vision. The applicants, apprehending that they were being denied a chance to appear in viva voce; filed this OA and thus Tribunal by an interim order dated 20.10.1998 directed the respondents to allow the applicants to appear in the viva voce test without declaring their result. The claim of the applicants has been contested by respondents by filing counter reply.

3. Heard Sri Sudhir Agarwal, learned counsel for the applicant and Sri A.K. Gaur, learned counsel for the respondents and perused records.

4. Sri Sudhir Agarwal, learned counsel for the applicant submitted that by the impugned letter dated 5.10.1998 revising the medical classification for promotion from Group 'C' to Group 'B' treating the post as under technical category despite the fact that the posts are not concerned with train working or use of trolley on line is arbitrary in nature. Similarly the letter of Railway Board dated 16.6.1997 (Ann A-1/A) and 16/17.9.1997 (Ann A-1/B) are also arbitrary in nature. Sri Sudhir Agarwal submitted that Railway Board vide their letter dated 4.4.1981 (PS 7802) have specified Group 'B'

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post of following departments under safety category :-

1. Civil Engineering	2. Mechanical Engineering
3. Signal and Telecommuni-	4. Electrical Engineering
cation	
5. Transportation (Traffic)	

Therefore, Group 'B' posts of other departments fall under non safety category. Thus the posts connected with train working or use of trolley on open line are classified as technical Group 'B' and rest as non technical categories.

Besides classification of staff for vision test has been made vide para 503 of Indian Railway Medical Manual 1981 and therein also the posts have been classified as technical services and non technical services further. Even vide Railway Board letter dated 7.8.1996 (PS 11228/96) classification of technical services and non technical services has been made with relation to safety category posts and defined in PS 7802. The perusal of above circulars will reveal that the post of commercial departments fall under non safety category, hence group 'B' service of commercial department are covered under the ^{an} ~~previ~~ ^{an} of non safety categories ie non technical services. The learned counsel submitted that the above contention is fully supported by paras 503 and 531 of Indian Railway Medical Manual 1981.

5. Sri Sudhir Agarwal, further submitted that this Tribunal New Bombay Bench has held that group 'B' post of Commercial department is non safety. The amendment ordered vide Railway Board letter dated 16/17.9.1997 (Ann A-1/B) will ^{an} ~~curtail~~ the prospects of promotion of group 'C' employees of commercial department though they may be medically fit under para 531 (b) of Indian Railway Medical Manual. Railway Board vide its letter dated 16.12.1983 has vested the General Manager with the power of relaxation in Medical standard with

^{Mr} of Railways

approval from Ministry. Recently Railway Board has reiterated the above mentioned condition in the posting of group 'B' officers vide order dated 28.1.2000. One of the conditions mentioned therein ~~was~~ ^{is} that availability of a suitable post in group 'B' where the employees could be put to work efficiently and effectively. Number of Group 'C' employees have been promoted under such circumstances. Accordingly applicant's case should also be considered.

6. The learned counsel finally submitted that applicant no. 3 has ^{represented} reported on 11.2.2000 and 19.2.2000 to the respondents but no response has been received from respondents so far.

7. Sri A.K. Gaur, learned counsel for the respondents, resisting the claim of the applicants, submitted that Railway Board letter dated 31.10.1991 circulated under PS no. 10517 has been issued in the light of the need to maintain a high standard of efficiency and fitness of the officers at gazetted level. Traffic department ^uincludes transportation and Commercial. Group 'B' officers of Mechanical and Traffic departments are eligible for further promotion to group 'A' Junior scale, Senior scale and even higher grades where the posts are ^uinterchangeable. Sri Gaur further submitted that even at the level of Group 'B' the requirement of train working or use of trolley in open line in commercial department and workshop cannot always be ruled out. Therefore, in case of promotion to group 'B' posts in Mechanical (workshop) department and traffic (commercial) department candidate should be medically examined under Para 531 (A) for viva voce as per ^uinstructions of Railway Board contained in letter dated 31.10.1991. In support of his argument Sri Gaur submitted that this Tribunal Hyderabad Bench by its order

dated 9.3.1998 in OA 309 of 1995 has decided the same very issue and has held that the applicant who belong to commercial side on promotion to ACM have to undergo medical examination as per para 531 of Indian Railway Medical Manual 1981 before *viva voce*.

8. The learned counsel for the respondents also submitted that the case of the applicants was ~~considered~~ in view of para 531 of Indian Railway Medical Manual 1981 as amended by notification dated 16/17-9-1997. The action of the respondents is legal and in accordance with rules.

9. We have carefully considered the submissions of the learned counsel for the parties and closely perused records.

10. The main controversy in this case is whether a group 'C' candidate of Commercial Department, after qualifying in the written test has to fulfil the medical standards laid down in para 531 of the Indian Railway Medical Manual 1981 or not. This ~~issued~~ has been dealt with ^{in detail} by this Tribunal, Hyderabad Bench, in order dated 9.3.1998 in OA no. 309 of 1995. We would like to quote the relevant para of the said judgment:-

"10. From the above explanation it is evident that the Assistant Commercial Officer though promoted from a lower grade of Group 'C' of the commercial department even before his promotion to Group 'A' status is likely to be posted in the operating branch which requires fulfilment of the conditions laid down in para 531 of the IRMM. If that be the case, the applicant cannot escape the rigours of the medical examination as laid down in para 531 of the IRMM when considered for promotion as Assistant commercial Manager though he was borne on the Group 'C' cadre of the commercial branch. Hence it has to be held that the rejection of the case of the applicant

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for consideration to the post of ACM is in order as he is not medically fit."

11. While we are in respectful agreement with the decision of Hyderabad Bench in OA 309 of 1995, we would like to point out that number of cases have been decided in favour of candidates relaxing the medical norms as per the guidelines laid down by Railway Board vide letter dated 28.1.2000 (Ann A-15). At the time this Tribunal Hyderabad Bench delivered the judgment the letter dated 28.1.2000 was non-existent. After issue of this letter and grant of concession to certain candidates the situation has changed. In the light of Railway Board letter dated 28.1.2000 the case of applicants merit consideration by the respondents for promotion from group 'C' to group 'B' if there are suitable posts in group 'B' available where they could be put to work efficiently and effectively without the specific medical short ^{comings} ~~comings~~ noticed on their part proving a drawback/handicap to the Railway working.

12. We would also like to observe here that the respondents are duty bound to decide the representations dated 11.2.2000 and 19.2.2000 of applicant no. 3 by a reasoned order.

13. In the facts and circumstances and our aforesaid discussion OA is allowed. Respondents are directed to consider the case of the applicants for promotion from Group 'C' to Group 'B' in commercial department subject to permissible medical standards required for non technical category and their clearing the viva voce within a period of three months from the date this order is filed before them. The respondents are given liberty to obtain necessary undertaking as has been done in certain cases. No order as to costs.

Member (J)

Member (A)

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