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**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO.392 OF 2005

ALLAHABAD THIS THE 20th DAY OF OCTOBER 2006.

HON'BLE DR. G.C. SRIVASTAVA, VICE-CHAIRMAN

HON'BLE MR. A.K. BHATNAGAR, MEMBER-(J)

Nirbhay Mathur s/o V.K. Mathur 418/1C, Saket Nagar,
Dhoomanganj, Allahabad (U.P) 211011.

.....Applicant.

(By Advocates: Sri R.N Pandey/Sri S. Srivastava)

Versus.

1. Union of India, through General Manager (P) Northern Central Railway (N.C.R.) Allahabad.
2. General Manager (P), Northern Railway, Head Quarter, Baroda House, New Delhi.
3. Divisional Railway Manager (D.R.M), N.C.R. Northern Railway, Moradabad.
4. Secretary, Railway Board, New Delhi.
5. Chairman, Railway Recruitment Board, Allahabad.

.....Respondents

(By Advocate: Sri A. Tripathi)

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O R D E R**By DR. G.C. SRIVASTAVA, VICE-CHAIRMAN**

This O.A. has been filed challenging the rejection of the applicant's representation for an alternative appointment. The decision in this regard was communicated to the applicant through order dated 2.12.2004 (Annexure A-I). The applicant has, through this O.A prayed for following relief(s):-

"That a declaration may issue directing the respondents to consider the case of applicant forthwith, and issue appointment letter for alternative post (A-3 and below) on the basis of departmental circular dated 20.8.1999 and to issue the appointment and joining of the said post. After quashing the impugned order dated 2.12.2004 passed by respondent NO.2".

2. The case of the applicant is that he was selected for the post of Assistant Station Master (For short A.S.M) by Railway Recruitment Board, Allahabad but he was found medically unfit for that appointment. Thereafter, the applicant submitted a representation dated 26.3.2004 (Annexure A-VI) requesting consideration for appointment in an alternative category in the same grade in accordance with the Railway Board Circular dated 20.8.1999. This request has been rejected by the impugned order dated 02.12.2004 on the ground that because of subsequent circular dated 4.9.2001 issued by Railway Board, candidates selected for A.S.Ms etc. are not eligible for any alternative appointment, if they failed in the final medical examination. Earlier, the applicant had filed O.A. No.947/04 as he did not receive any

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response to the representations submitted by him on different dates starting from 11.9.2002. The aforesaid O.A. was disposed of by this Tribunal on 27.8.2004 with the direction to the respondents to decide the representation by passing a reasoned and detailed order. The impugned order was passed in pursuance of the direction of the Tribunal.

3. The main contention of the applicant is that one Om Prakash, who was also selected for the post of A.S.M alongwith the applicant and was found medically unfit, was subsequently given an alternative appointment and therefore, the denial of the same benefit to the applicant is discriminatory and violative of principles of natural justice and is not sustainable in the eyes of law.

4. In their reply, the respondents have submitted that although under Railway Board Circular dated 20.9.1999, General Managers were authorised to consider request from candidates empanelled by the R.R.B for appointment in alternative category, this policy has been revised by another circular issued by the Railway Board on 4.9.2001 (Annexure R-IV) whereby it has been decided that A.S.Ms etc. will not be eligible for any alternative appointment, if they fail in the final medical examination conducted by the Railways. In accordance with this direction, the request of the applicant was

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rejected. Regarding the case of Om Prakash cited by the applicant, the contention of the respondents is that an alternative appointment had to be given to Om Prakash in pursuance of the order of this Tribunal passed on 19.12.2003 in O.A. NO.1529/03.

5. We have heard the arguments advanced by the counsel of both the parties and have also gone through their pleadings and material on record.

6. It is a fact that the Railway Board revised its policy through Circular dated 04.09.2001 clarifying that candidates selected for categories of A.S.Ms etc. will not be eligible for alternative appointment, if they fail in the final medical examination. Admittedly, the selection of candidate was made on the basis of Preliminary Written Examination held on 8.7.2001, Main Written Examination held on 24.11.2002 and Psycho-Analytical Test and Interview held from 2.2.2002 to 13.2.2002. This selection was done in response to the Employment Notice No.3/95-96. Thus, the selection process in the instant case started much before the issue of revised guidelines by the Railway Board regarding alternative appointment. In the circular dated 4.9.2001, it has been mentioned in paragraph 5 that:

"The fact that candidates who fail in the medical examination for these categories will not be eligible for any alternative appointment on the Railways should be mentioned clearly in the employment notice so as to

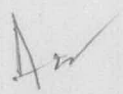
discourage these candidates who do not fulfil the medical requirement from applying".

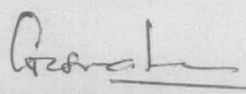
7. Since the Employment Notice in the instant case was issued much before the issue of these revised guidelines, obviously this fact could not have been mentioned in the said notice. Accordingly, it will be unreasonable to expect that candidates would be aware of this revised policy; instead general impression must have been that they would be considered for alternative appointment if they do not clear the medical test. It is, therefore, unjustified on the part of the respondents to insist on implementation of these revised guidelines in the case of the applicant.
8. It is also noticed that in the case of Om Prakash cited by the applicant, the direction of the Tribunal in O.A. No.1529/03 was only to consider the applicant's representation for alternative appointment. The respondents, however, thought it fit to give him alternative appointment, as has been admitted by them in their counter reply. No convincing ground has been cited by the respondents for treating the case of the applicant differently except that the instructions of the Railway Board have been revised. As has already been mentioned by us, these instructions were revised much after the Employment Notice in the instant case was issued and therefore, rightly these revised instructions have not been applied by the respondents in the case of Om
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Prakash. It will be an act of gross discrimination and violation of principles of natural justice if the case of the applicant is treated differently from that of Om Prakash. We are, therefore, of the considered view that the case of the applicant has to be considered at par with that of Om Prakash and his representation for alternative appointment should be decided in the same manner as has been done in the case of Om Prakash.

9. We, accordingly, allow this O.A. and direct the respondents to consider the case of the applicant for alternative appointment treating it at par with that of Om Prakash. This exercise should be completed within a period of three months and the decision should be communicated to the applicant and follow up action taken expeditiously within the aforementioned period.

No costs.


Member-J


Vice-Chairman.

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