

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD**

(THIS THE 18<sup>TH</sup> DAY OF OCTOBER, 2011)

**Present**

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**

**HON'BLE MR. SHASHI PRAKASH, MEMBER (A)**

**Original Application No.627 OF 2005**

(U/S 19, Administrative Tribunal Act, 1985)

Prem Pal Singh, Son of Sri Deo Karan,  
Resident of House No.11-D, rest Camp, Railway Colony,  
Tundla, Firozabad.

.....Applicant

**V E R S U S**

1. Union of India through the General Manager, (North Central Railway, Allahabad.
2. The Divisional Railway Manager, North Central Railway, Allahabad Division, Allahabad.
3. The Sr. Divisional Mechanical Engineer,  
North Central Railway, Allahabad Division, DRM Office,  
Allahabad.
4. The Divisional Personnel Officer,  
North Central Railway, Allahabad Division, DRM Office,  
Allahabad.

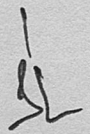
.....Respondents

Advocates for the Applicant:-

Sri Satish Dwivedi

Advocate for the Respondents:-

Sri S.K. Chaturvedi





**ORDER**

**(DELIVERED BY MR. SANJEEV KAUSHIK, MEMBER (J))**

The matter pertains to the year 2005. On earlier occasion also the matter has been got adjourned. Today also Sri Satish Dwivedi counsel for the applicant has circulated the adjournment slip on the ground of illness which is ~~not~~ opposed by Shri S.K. Chaturvedi learned counsel for the respondents, therefore, we proceed to hear the matter on merits.

2. By way of the instant original application filed under section 19 of Administrative Tribunal's Act, 1985 the applicant seeks quashing of the order dated 19.01.2005 and seeks further direction to the respondents to consider the application dated 19.6.2004 of applicant under the "SAFETY RELATED RETIRMENT SCHEME" dated 2.1.2004 and pass appropriate order on the application of voluntary retirement.

3. The case set up by the applicant is that initially the applicant joined the respondent department on 25.1.1968. After putting 36 years 5 months and 25 days of service, while he was working as Senior Crew Controller (Operating), North Central Railway, Tundla as a Diesel Driver, he made an application on 19.6.2004 for seeking voluntary retirement and to give appointment to his son Munna Lal under the instructions dated 2.1.2004. The application submitted by the

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applicant was rejected by the respondents without considering the same in the light of scheme dated 2.1.2004 in an illegal and arbitrary manner. Hence the OA.

4. Pursuance to the notice, the respondents were represented through Shri Chaturvedi. It is averred in the counter affidavit that the applicant was declared medically unfit on 15.07.2003 while he was working as Driver. His case was considered for giving him appointment on alternative post on being declared medically de-categorised and accordingly, the respondents passed an order whereby the applicant was posted as Power Controller in the Pay Scale 6500-10500/-, he also joined as such on 29.11.2004. The instructions dated 2.1.2004 is applicable with regard to Driver and Gangman who ~~was~~ <sup>are</sup> declared medically unfit. Since the applicant has already been appointed as Power Controller after he was declared medically unfit, therefore, question does not arise to consider his case in the said category as on the date of issuance of instructions dated 2.1.2004 he was not working as Driver.

5. We have considered the rival submissions made by counsel for the respective parties and gone through the record. Admittedly, the applicant was declared medically unfit on 15.7.2003 and after considering his claim in terms of rule, he was appointed as Power Controller and he assumed the duty

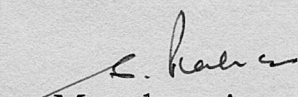
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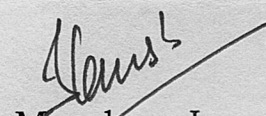


for 29.11.2004. The arguments of the applicant's counsel for applying the instructions dated 2.1.2004 in case of the applicant cannot be accepted as the applicant was declared medically unfit on 15.7.2003 and he was given appointment on 29.11.2004 which he joined. Nowhere in the instructions dated 2.1.2004, it is stated that the same is applicable retrospectively. It is settled law that if there is no provision carved out in the instructions for applying the same retrospectively the courts cannot direct the respondents to apply the same retrospectively. Even otherwise, on the date of instructions dated 2.1.2004 the applicant was not working as Driver as his case was under process and was approved for appointment to the post of Power Controller which the applicant accepted with open eye.

6. In view of the above, we find no reason to interfere with the decision taken by the respondents.

7. OA is dismissed. No Costs.

  
Member-A

  
Member-J

/ns/