

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.169/2021

This the 28th day of June, 2021

**CORAM : Hon'ble Shri J.V.Bhairavia, Member (J)
Hon'ble Dr. A.K.Dubey, Member (A)**

Shri Jayanti Lal Devasi
Male, aged about 40 years
S/o. Shri Chelaram Devasi
Occupation : Watchman, SSE/OHE/TRD,
Western Railways, Ahmedabad.
Residing at : 3rd floor, Krishna Flats,
Rambag, Maninagar,
Ahmedabad 380 008. Applicant

(By Advocate : Shri Rahul Sharma)

VERSUS

Divisional Railway Manager (E)
DRM, Office (Western Railways)
Near Chamunda Bridge,
Opp. G.C.S.Hospital
Naroda Road, Amdupura,
Ahmedabad – 382 345. Respondent

(By Advocate : Shri M.J. Patel)

ORDER (ORAL)

Per : Hon'ble Shri J.V. Bhairavia, Member (J)

1. Counsel for the parties submit that pleadings are complete in this OA and matter may be taken up for final hearing. With the consent of both the parties, the matter is taken up for hearing.

2. Counsel for the applicant, Shri Rahul Sharma mainly submits that the applicant may be allowed to participate in the LDCE for selection for promotion to the post of Jr.Clerk, which is now likely to be scheduled on 03.07.2021 on the ground that due to his physical disability, he may not be in a position to take the requisite Trade Test for promotion in regular channel. Therefore, he requests the respondent authority to allow him to appear in the LDCE examination for further promotion otherwise he has to remain as a Chowkidar in the department forever.
3. Counsel for the applicant, Shri Rahul Sharma submits that under the provisions of PWD Act, 2016, the respondents i.e. employers of the applicant are in statutory obligation to keep certain posts earmarked for being filled up by only disable persons such as Liftman, Draftary, Office Clerk, Care Taker etc.. The same is accepted by the Railway Board vide their decision dated 28.06.1979, as referred in IRMM sub-para 7 of Para 511 (Annexure A/13 refers).
4. Further, counsel for the applicant, Shri Rahul Sharma submits that if the applicant is not allowed to participate in the said LDCE for promotion, this will be tantamount to denial of promotion opportunity to a disable employee. The said eventuality would not be in accordance with the mandate and spirit of PWD Act, 2016, as also Articles 14 & 21 of the Constitution of India.
5. On the otherhand, standing counsel for the respondents, Shri M.J.Patel submits that there is an alternative channel of promotion available to the Chowkidars working with the department. The applicant herein is working

as Chowkidar and he has alternative channel for his career progression. The LDCE notified by the respondents is not for such an employee who has alternative channel of promotion. So far as the grievance of the applicant that due to his disability, he may not be able to meet with requisite Trade Test for promotion available under the regular channel of promotion is concerned, the same is his apprehension and as such, it cannot be based for claiming right to appear in the LDCE which is meant for the employees who have no channel of promotion. He further submits that impugned notification has been issued by the Electrical Department to conduct LDCE for selection for promotion to the post of Junior Clerk, which is now scheduled on 03.07.2021. As such, the applicant herein belongs to Personnel Department (i.e. Establishment Department) and as per the Avenue of Promotion Chart (in short AVC) produced as Annexure R/1 with the reply of the respondents which indicates that 50% staff shall be considered for promotion from the feeding cadre on Seniority cum Trade Test basis as per Para 159 of IREM, Volume –I (RBE No.02/2014). So far as the apprehension of the applicant that Trade Test referred in the said AVC would cause difficulty in getting him eligible for promotion is concerned, the same is premature at this stage. The applicant can apply as and when the department declares or earmarked vacancy for promotion in Personnel Department (Establishment Department) and the case of the applicant being disabled person, can be considered in terms of the PWD Act, 2016. Therefore, he requests that the applicant is not entitled for any relief sought in this OA.

6. We have heard the parties and perused the materials on record. It is not in dispute that the applicant is working as Chowkidar in Personnel Department (Establishment Department) and has disability of more than 40% as per the Certificate No.C-337, dated 18.8.2004 issued by Medical & Health Department, Medical Board's Certificate on permanent disability, Government of Rajasthan (Annexure A/3). Certificate is issued under the provision of PWD's Act, 1995. There cannot be any dispute with respect to mandate of PWD's Act to protect the right of progression of disable persons including the employees working with the Government.
7. At this stage, we take note of the Railway Board's own decision to earmark specific post for physical challenged employees. The impugned notification issued by the Electrical Department and the applicant herein working under the Personnel Department (Establishment Department), we do not find any infirmity in not accepting the application of the applicant seeking permission to allow him to participate in the LDCE which is published by Electrical Department which is separate division.
8. In view of the aforesaid factual matrix of the case, the OA stands dismissed. No order as to costs.

(A.K.Dubey)
Member (A)

(J.V.Bhairavia)
Member (J)