

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the day of 1995.

Original Application no. 952 of 1992.

Hon'ble Dr. R.K. Saxena, Judicial Member
Hon'ble Mr. S. Dayal, Administrative Member.

Chandra Kant Chaturvedi, S/o Sri Panchanan Chaulie,
R/o Railway Quarter no. 245-C, Near N.E. Rly., Girls
Inter College, Gorakhpur.

... Applicant.

C/A Shri S. Kumar.

Versus

1. Union of India through Secretary, Railway Board,
Ministry of Railways, New Delhi.
2. Chairman, Railway Board, Ministry of Railway, New
Delhi.
3. General Manager, Northern Eastern Railway, Gorakhpur.

... Respondents.

C/R Shri G.P. Agarwal.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the
Administrative Tribunals Act, 1985.

2. The applicant seeks following reliefs through
this application:-

- i. A direction to the respondents to appoint the
applicant on the alternative post of Inspector
of works(Non-trolley) in the grade of Rs. 1400-
2300 as the applicant fulfills all the prescribed
qualifications and is medically fit for the post.
- ii. A direction to the respondents to give seniority

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and fixation of pay for the post of Inspector of works (Non-trolley) w.e.f. 19.01.89.

3. The facts of the case as narrated in the application are that the applicant appeared for the post of Inspector of Works (Grade-III) before the Railway Recruitment Board, Patna, for service in the Eastern Railway. He was selected for the post which was in the payscale of Rs. 1400-2300 and was given appointment letter to join, subject to being found medically fit, in A-3 category. The applicant was declared medically unfit and was not appointed on the post of Inspector of Works (Trolley). The applicant made a request for appointment as Inspector of Works (Non-Trolley) which required medical category of C-1 in which the applicant was placed but his request was not accepted. The applicant appeared in the meantime for the post of Permanent Way Inspector, grade-III, in the scale of Rs. 1400-2300 before the Railway Recruitment Board, Muzaffarnagar for North Eastern Railway. The applicant was selected for the post but could not qualify in prescribed A-2 category of medical fitness. The applicant made an application to the General Manager for appointment in the alternate category for the post of Inspector of Works (non-trolley) as the educational qualification, age limit and other qualifications for both the post were the same. He gave instance of persons who were given alternative appointments. He made another application on 19.01.89 stating that there was a vacancy of Inspector of Works (non-trolley) in the civil engineering department and he was diploma holder in civil engineering with first division marks. His application was recommended by the office of the General Manager.

The Chief Personal Officer wrote to the Railway Board

that the applicant could not be given alternative appointment by making a wrong interpretation of Railway Board Circular dated 04.01.85. The applicant's request for alternative appointment was rejected by letter of the Railway Board dated 21.11.90 which was communicated to the applicant by General Manager's letter dated 10.07.91. It is claimed that Railway Board's circular dated 26.10.62 and relevant provisions of Indian Railway Medical ^{Manual} provide for consideration in the alternative category. The circulars of Railway Board dated 23.11.79 and 04.01.85 are claimed to have no application to technical categories. It is claimed that the respondents have appointed one Shri Ashok Kumar as I.O.W. Grade III (non-trolley) in the grade of Rs. 1400-2300 after he had been declared unfit for the post of I.O.W Grade III.

4. The arguments of Shri Sanjay Kumar, learned counsel for the applicant and Shri G.P. Agarwal, learned counsel for the respondents were heard.

5. A perusal of Railway Board's letter no. E(NG)/58/RCI/25 dated 10.07.58 (Annexure A-6) shows that it laid down that from ~~then on~~ direct recruits failing to pass the prescribed medical examination, should not be considered for appointment in the alternate category. These instructions were reviewed by Railway Board's letter no. E(NG)62/RCI/95 dated October, 1962 (Annexure A-7) and were partially modified to provide for consideration of a candidate selected for technical category but failing to clear the prescribed medical examination for an alternative technical category provided he possessed the requisite qualification and there was shortage in that category. Paragraph 509 of Indian Railways

Medical Manual Note 2 also provides for consideration of a candidate of a technical category, failing in the medical examination prescribed for that category, for an alternative ^{for} technical category if he is found medically fit that category, possesses the requisite qualifications and there is shortage in that category. (Annexure A-8). It is quite clear from the language of letter dated October, 1962 and paragraph 509 of Indian Railway Medical manual that there is no recruitment that the candidate should have qualified through the same examination. It is thus clear that the ground taken by the learned counsel for the respondents during argument that medical declassification was available only to employees selected for I.O.W. and that it was applicable to employees and not to new recruits, is not valid in this case in view of the provisions in Annexure A-7 and A-8. The learned counsel for the respondent has cited the judgement of Apex Court in State of Bihar and others Vs. The Secretariat Assistant Successful Examinees Union 1986 and others, AIR 1994 SC 736 to bring home the point that a candidate selected and ~~enpanelled~~ does not acquire any indefeasible right of appointment. The case, however, related to the question of number of vacancies to be necessarily filled from amongst candidates of a particular examination-those existing or envisaged at the time of issuance of advertisement or those existing at the ~~time~~ of declaration of result. The ration of this decision is clearly not applicable to the present case because the Railway Administration has provided for consideration of technical candidates failing for one category but qualifying for some other category subject to conditions stipulated.

6. The counter reply of the respondents shows that the respondents had rejected the case of the applicant for alternative appointment on the ground that letters dated 23.11.79 and 04.01.85 of the Railway Board were applicable both to technical and non-technical categories (Paragraph 11 of the counter reply). It has also been stated in the counter reply that Railway Board's letter dated 10.07.58 and 26.10.62 have been superseded by Railway Board's subsequent letters dated 23.11.79 and 04.01.85. It is stated that because of these letters, the applicant's case could not be accepted because PWI, Grade III and I.O.W Grade III (nontrolly) were recruited through different examinations conducted by Railway Recruitment Board. It has been stated in the Counter Reply that Apprentice T.I. could be given alternative appointment in the category of Commercial Inspector because they were recruited through a common examination (Para 6 of counter reply). The tenor of letter no. E (NG)/III-79-RS-C/63 dated 23.11.79 is for liberalisation of existing restrictions on popular categories due to operation of provisions of letter dated E (NG) 58/RCI/25 dated 10.07.58 in case of popular categories (Annexures A-5 and A-6) respectively). It has to be remembered that the restrictions imposed by letter dated 10.07.58 were already liberalised by letter dated October, 1962, in case of technical categories. Therefore, the suggestion made in the counter reply that letter dated 23.11.79 superseded letter dated October 1962 cannot be accepted. The letter of Railway Board dated 04.01.85 is a clarification issued with regard to Railway Board's letter dated 23.11.79 and states that alternative employment can be offered only in those categories for which common examination is held on the basis of position of the candidates in the merit list. It was

mentioned that instructions dated 23.11.79 would not apply to Assistant Station Master as separate examination was held for them but would apply in case of Traffic/Commercial apprentices, Grades, Clerks Grade I, Senior Clerks and Enquiry and Reservation Clerks who were recruited through a separate examination. Thus this letter does not apply to technical categories. The case of the applicant has, therefore, to be considered by the Railway Board in terms of instructions dated October 1962 and paragraph 509 of the Indian Railways Medical Manual.

7. The issue about discrimination raised by the applicant on the basis of treatment given to T.I. and C.I. is not applicable to his case as the Railway Board had issued separate instructions for technical categories. The question of discrimination of the case of the applicant from the case of one Shri Ashok Kumar has been dealt with in paragraph 18 of the counter reply. It has been mentioned that Shri Ashok Kumar was selected for the post of I.O.W. and was given appointment for the post of I.O.W. (non-trolley) and, therefore, it was not a case of alternative appointment. It is stated that the applicant himself was selected for the post of I.O.W. grade III in 1987 in the pay scale of Rs. 1400-2300 and since he did not qualify in medical category A-III but qualified in medical category C-1, he was offered alternative appointment in the category of Draftman in the pay scale of 1200-2040 but he had refused the offer of appointment. It is clear from this that the applicant's case was treated differently by Eastern Railway in 1987 from the case of Shri Ashok Kumar by Northern Railway 1992 although the same instructions of Railway Board applied to both the cases. An offer of a post requiring lower educational qualification

and lower scale of pay as would be the case with the post of Draftsman is not proper compliance of instructions of the Railway Board in its letter dated October 1962 and of the relevant provisions of Indian Railway Medical Manual and is in any case a treatment radically different from the one given to Shri Ashok Kumar suggesting discrimination.

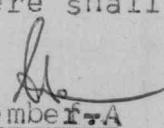
8. An issue which has been raised by the respondents is that he cannot be considered for I.O.W. (Trolley) because he had qualified in the examination for PWI grade III. The question of alternative appointment would arise only if a candidate is to be considered for categories for which he had not appeared and qualified in terms of instructions contained in the instructions of the Railway Board of October 1962 and relevant provisions of Indian Railway Medical Manual. The requirements for consideration for alternative appointments laid down in these documents are that the candidate should have failed in the medical examination prescribed for the category for which he was selected, he should have been found medically fit for that category for which alternative appointment is being considered, he should possess requisite qualifications for the alternative category and there should be shortage in that category. The requirements of requisite qualifications and shortage in the category require clarification. The qualifications have to be seen on the date of consideration of eligibility of the candidate in the recruitment examination in which he had appeared and qualified which in this case is the recruitment examination of PWI Grade III. However, since the appointment would necessarily have to be given

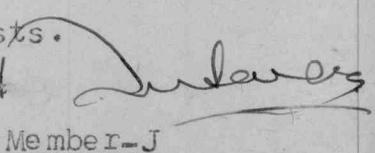
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on a later date, the disqualification of maximum age limit should be relaxed for the candidate if he was within the age limit of the alternative category on the date mentioned in the foregoing sentence. Shortage in the category for which the candidate is being considered for alternative appointment would mean the posts in that category could not be filled up by direct recruitment for amongst the candidates recommended for appointment by the Railway Recruitment Board in an examination for that category on or after the date of request made by the candidate for alternate appointment which in this was 10.01.89 (Annexure A-2).

9. In this view of the matter, the order of the Deputy Director (Establishment) of the Railway Board rejecting the proposal of the General Manager, Northern Eastern Railway, Gorakhpur, for giving alternative appointment to the applicant by letter dated 21.11.90 (Annexure A-9) and the letter of the General Manager (P), NER, Gorakhpur, dated 10.07.91 communicating the rejection of the request of the applicant for alternative appointment are set aside. The respondents are directed to consider the case of the applicant for appointment, if necessary by relaxation of the eligibility condition regarding maximum age, to the post of Inspector of Works (non trolley) or any other equivalent post in accordance with the provisions of Railway Board letter of October 1962, if shortage existed after direct recruitments made on or after 19.01.89 in the cadre of Inspector of Works (non-trolley) or equivalent.

10. There shall be no order as to costs.


Member F-A


Member J

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