

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 12th day of November 2002.

Original Application no. 362 of 1999.

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

Dinesh Kumar Gupta, S/o M.P. Gupta,
R/o 40A Bhawapur, Nihalpur, Allahabad.

... Applicant

By Adv : O.P. Gupta

Versus

1. Divisional Railway Manager, N.Rly,
Lucknow Division, Lucknow.
2. General Manager (P) Northern Railway,
Baroda House, New Delhi.
3. Union of India through Secretary,
Ministry of Railway, Govt. of India,
New Delhi.

... Respondents.

By Adv : Shri A K Gaur

O R D E R

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

In this OA, filed under section 19 of the A.T. Act, 1985,
the applicant has sought following reliefs:-

- i. To quash the impugned rejection order dated 8.3.1999 passed by G.M.(P) Baroda House (A-7) and respondents may further be directed to provide opportunity to the applicant for medical examination of lower category such as B-1, B-2 or C-1 C-2 and to give alternative appointment on the post, immediately, for which he is medically found fit.
- ii. Any other order or direction which the Hon'ble Tribunal may deem fit and proper may also be passed.

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iii. Cost of this application may also be given to the applicant.

2. The facts, in short, giving rise to this OA are that the Railway Recruitment Board (in short RRB) Allahabad issued notification on 31.7.1993 (Ann A1) for filling up the vacancies of different categories of posts including the post of Assistant Station Master (in short ASM). The applicant applied for the ^{post of ASM only} same, appeared in the written test and also interviewed and was informed vide letter dated 24.11.1994 that he had been selected for the post of ASM and he obtained 26th position in merit out of 52 candidates. The applicant was directed by the D.R.M., Northern Railway, Lucknow by letter dated 15.6.1995 to produce the original certificates. The applicant produced the same and was directed to appear before Chief Medical Officer, Lucknow for medical examination. The applicant was examined for medical category A-2 which is required for the post of ASM and he was not found fit. The applicant sent several representations to the respondents for appointment in alternative category for which he could be found medically fit, but no action was taken. The applicant made a representation on 1.12.1997 to General Manager, Northern Railway, Baroda House, New Delhi, wherein he claimed the benefit of circular dated 23.11.1979 (Ann A6) and to provide him an alternative appointment as per his medical category. The applicant again filed a representation before General Manager, Northern Railway, Baroda House, New Delhi, on 1.12.1998 and his request has been rejected vide impugned letter dated 8.3.1999. Hence, this OA which has been contested by the respondents by filing counter affidavit.

3. ^{Sub} ^{the} The OP Gupta, learned counsel for the applicant submitted that the applicant secured 26th position out of 52 candidates and since it was not within the power of D.R.M.

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Northern Railway, Lucknow, to provide alternative category appointment to the applicant. His case should have been considered by the General Manager, Northern Railway, Baroda House, New Delhi, in response to the letter of D.R.M. Lucknow dated 17.4.1996 (Ann A4). Shri OP Gupta, argued that in the impugned letter the grounds for rejecting the request of the applicant for alternative appointment have been mentioned that the applicant belongs to General Category and also the rules do not permit for providing an alternative appointment. The letter dated 8.3.1999 is a ^hcryptic^h and is liable to be quashed because the applicant belongs to OBC which is clear from the certificate placed as annexure A8 and also that the rules are in his favour.

4. Resisting the claim of the applicant Shri A.K. Gaur submitted that the applicant applied only for ASMs post and not for any other category. The rules on which the applicant is placing reliance are applicable in those cases were the applicant, as per notification, had appeared for other categories also and a combined merit list was issued. He appeared only for ASM category and, therefore, his case for alternative appointment cannot be considered. He further submitted that the circular dated 1.12.1999 is not applicable in respect of the applicant. The effective date for this circular is 1.12.1999 and it cannot ^{have effect} affect prospectively. Learned counsel for the respondents also submitted that the case of the applicant was considered at the highest level i.e. by the General Manager, Northern Railway, New Delhi and it appears that while applying for the post of ASM, the applicant did not disclose his category at all. Besides what is relevant in this respect is, as to what category had he shown in his application form. The learned counsel for the respondents summing up his arguments submitted that the applicant is not entitled for the relief ^{which} as he has sought for and the OA is

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liable to be dismissed.

5. We have heard learned counsel for the parties, considered their submissions and closely perused records.

6. Admittedly, the applicant was selected for the post of ASM and his name was placed in the panel of 1993. The question before us is whether the applicant is entitled for the benefit for appointment in an alternative category or not. It is correct that the applicant appeared only for ASM category and not for any other category. However, once he was found medically unfit, the DRM, Northern Railway, Lucknow sent a letter to General Manager (P), Headquarter Office, New Delhi on 17.4.1996. In para 2 of the same letter the following has been written :-

"This is, however, reiterated that Shri Dinesh Kumar Gupta was selected on a post of ASM by Railway Recruitment Board and was directed to Lucknow Division for appointment, but unfortunately he was declared unsuccessful in the Medical Examination i.e. in A-2. D.R.M./Lko has no power to allow him (Sri D.K. Gupta) on an alternative post and as such his request for an alternative appointment is not within the competency of the division."

7. From the above it appears that the correspondence was going on between Office of the D.R.M. and General Manager about an alternative appointment. Therefore, we are of the ^{for the applicant} _{view} ^{opinion} that the case of the applicant appears to be covered by Rules on the subject.

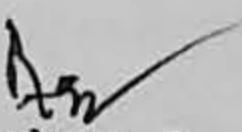
8. We have also perused the circular of the Railway Board dated 23.11.1979. The perusal of the same reveals that no distinction of category i.e. General or SC or ST or OBC has been made for its applicability. Therefore, in our opinion

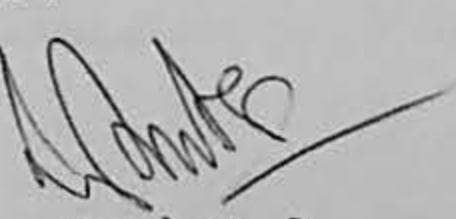
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the provisions of this circular are applicable in the case of the applicant. Here we would like to point out that one of the grounds taken in the impugned order for rejecting the claim of the applicant is that the applicant belongs to General Category, which he is not. The respondents should have given the basis of their findings that the applicant belongs to General Category and also the relevant rule under which the benefits of alternate appointment cannot be given to a general candidate. Also in our opinion, since there is no distinction laid down in the circular dated 23.11.1979 (Ann A6) about its applicability, we do not accept the same as a valid ground for rejection of the representation by respondents.

9. In the facts and circumstances and our aforesaid discussion the OA is partly allowed. The impugned letter dated 8.3.1999 (Ann A7) is quashed. The matter is remanded back to respondent no. 2 to examine the issue in totality with reference to rules on the subject and consider the case of the applicant for alternate appointment. The respondent no. 2 shall pass a reasoned and speaking order within a period of ^{in three} ~~three~~ months from the date of communication of this order. The O.A. is disposed of accordingly.

10. There shall be no order as to costs.


Member J


Member A

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