

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 21st day of October, 2011

Present:

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER- J
HON'BLE MR. SHASHI PRAKASH, MEMBER-A**

ORIGINAL APPLICATION NO. 314 of 2007

Sunil Kumar Patel, aged about 25 years, son of Shri Phool Chand Patel, resident of 448/384/42, Indrapuri Colony, New Baihrana, Allahabad.Applicant.

V E R S U S

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, North Railway, New Delhi
3. Railway Recruitment Board, Nawab Yusuf Road, Annexe, Civil Lines, Allahabad through its Chairman. Respondents

Advocate for the Applicant:

Sri Vikash Budhwar

Advocate for the Respondents:

Sri K.P. Singh

Sri Anil Kumar

O R D E R

By Hon'ble Mr. Sanjeev Kaushik, JM

By way of the instant original application filed under section 19 of Administrative Tribunals Act 1985, the applicant seeks quashing of the order dated 09.02.2007 passed by respondent No. 1 (Annexure A-1) with further prayer for a direction to the respondents to consider the case of the applicant for recruitment on the alternative job in the post of Depo Material Superintendent Gr. I in pay scale of Rs. 6500-10500 with all consequential benefits.

2. The skeleton facts of the case are that the applicant, who belongs to O.B.C category, applied in pursuance to advertisement

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issued by the Railway Recruitment Board, Chandigarh for filling up the post of Section Engineer (Signal). He was allotted roll number for appearing in the examination to be held on 27.02.2005. By letter dated 01.04.2005 the applicant was called for verification of original papers on 09.05.2005. By another letter dated 17.06.2005 (Annexure-2 of O.A), the applicant was informed that he has been selected for the post of Section Engineer (Signal) in the grade Rs. 6500-10500 and his name has been placed provisionally in the panel of selected candidates. By letter dated 08.08.2005 the applicant was directed to appear for medical examination on 22.08.2005. The applicant vide letter dated 13.09.2005 (Annexure-3 of O.A) was informed that he has been found medically unfit for required category for AYE-I, AYE-II, AYE-III and B-I against which the applicant made a representation on 23.09.2005 to respondent No. 1 and on 06.10.2006 to the Divisional Personnel Officer, Northern Railway, New Delhi. It is submitted that the respondent No. 2 referred the matter of the applicant to respondent No. 1. Thereafter the applicant again made a representation to respondent No. 1 on 09.12.2005, 24.01.2006 and lastly on 07.02.2006. The applicant also stated to have made a representation to the Chairman, Railway Recruitment Board on 12.04.2006 in this regard. On 12.06.2006 the applicant was informed by the D.R.M. (Personnel), New Delhi that there was no post lying vacant with the respondents' department. The applicant did not stop here and repeatedly made representation thereafter. He also sought information under R.T.I Act, which was replied by the respondents and ultimately the instant original application has been filed.



3. In pursuance to the notice the respondents appeared and filed detailed counter affidavit and contested the claim of the applicant. In the CA it is the categorical case of the respondents that the applicant was provisionally selected subject to verification of the documents and subject to medical fitness. When the applicant was sent for medical examination, he was declared medically unfit. Therefore, he was not issued appointment letter for the post in question. It is also admitted that the applicant made a representation on 02.11.2005 seeking alternative job on being declared medically unfit for Section Engineer (Signal), which was considered and by letter dated 12.02.2006 it was informed that there was no vacancy to provide alternative job to the applicant. In para 14 of the CA, the respondents have taken a categorical stand that there was no vacancy having B-2 and below medical classification available in Delhi Division and D.R.M., Lucknow has also informed that large number of medically de-categorized staff are waiting for alternative appointment. Therefore, the case of the applicant cannot be considered.

4. Non appeared on behalf of the applicant even in the revised list. Sri Anil Kumar appeared on behalf respondents. By exercising power under rule 15(i) of C.A.T (Procedure) Rules 1987, we proceed to decide the case.

5. Sri Anil Kumar, learned counsel for the respondents argued that the applicant was only selected and placed in the panel of selected candidates provisionally subject to clearance of three conditions, which is stipulated in the offer of appointment. Since the applicant was declared medically unfit therefore, he was not given

appointment as Section Engineer (Signal). The case of the applicant for alternative appointment was considered and rejected by the competent authority as the applicant was not entitled for any appointment in lieu that he has been declared medically unfit for the post in question, for which he was selected but was never appointed.

6. We have considered the averments made by the applicant in original application as well as the arguments raised by the learned counsel for respondents.

7. The applicant was selected for the post of Section Engineer (Signal) and was issued a letter on 17.06.2005 indicating therein that he has been selected for the post in question and his name has placed provisionally on the panel of selected candidates subject to fulfillment of certain conditions. Relevant extract of the letter dated 17.06.2005 reads as under : -

“ On the basis of selection conducted by Railway Recruitment Board Chandigarh, your name has been placed on the panel of provisionally selected candidates. Your name has been forwarded to the

**The General Manager (P)
Northern Railway
Baroda House
New Delhi**

For issuing you the offer of appointment subject to availability of vacancies and after completion of necessary requisite formalities like final verification of certificates, medical fitness etc. Further correspondence in this regard in future should be addressed directly to above office only.”.

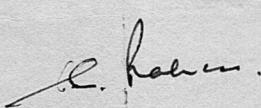
8. Pursuance to the letter dated 17.06.2005 the applicant was subject to medical test wherein he was declared medically unfit for AYE-I, AYE-II, AYE-III and B-I by letter dated 13.09.2005 and by the impugned order dated 09.02.2007 the applicant was informed that since he was declared medically unfit in requisite categories,

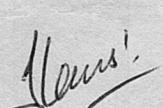
therefore, he cannot be appointed on the post in question. It is settled law that merely having the name in select list does not create vested right because offer of appointment was subject to fulfillment of conditions. Once the right to appoint is conditional and candidate did not fulfill then he is not entitled for appointment. Admittedly the applicant's name was put in panel of selected candidates, which was subjected to fulfillment of certain conditions and the applicant did not fulfill the same as he was declared medically unfit. Therefore, we are of the considered view that the applicant has no case.

9. With regard to alternative appointment, we are of the opinion, the alternative appointment is not admissible to the applicant as the applicant has not been inducted in service pursuance to the appointment letter then the applicant cannot seek alternative appointment on being declared medically unfit for the post to which he applied for and selected subject to fulfillment of requisite conditions. The concept of alternative appointment on being declared medically unfit cannot be made applicable in the case of the applicant.

10. In view of the above we find no reason to interfere with the impugned order dated 09.02.2007. Accordingly the O.A is dismissed.

No order as to costs.


(Shashi Prakash)
Member-A


(Sanjeev Kaushik)
Member-J

/Anand/