

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.73 of 1996

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman.
Hon'ble Mr. M.S. Mukherjee, Administrative Member.

BIMAL KUMAR SHARMA s/o
Late Kesho Sharma aged
about 40 years working
as Clerk, Gr. I, under
Yard Superintendent/Andal,
Eastern Railway, residing
at no.13, Railway Colony,
Block No.180, Room no.E,
District Burdwan-713321.

... Petitioner

vs.

1. Union of India through the
Secretary/Chairman, Railway Board,
Rail Bhavan, New Delhi.
2. The General Manager, Eastern
Railway, 17, Netaji Subhas Road,
Calcutta-700 001.
3. Chief Medical Director/CCC,
Eastern Railway, 14, Strand Road,
Calcutta-700 001.
4. Sr.Divisional Personnel Officer/
Asansol, DRM Office, Eastern
Railway-713 301.

... Respondents

For the petitioner : Mr.T.N.Bandopadhyay, counsel.
Mr.S.Bhattacharjee, counsel.

For the respondents: Mr.P.K.Arora, counsel.

Heard on : 21.8.1997 and 5.9.1997.

Order on : 18.9.1997

ORDER

A.K.Chatterjee, V.C.

The petitioner after undergoing a medical examination and having found fit in category A-3 in vision test, was appointed as a Trains Clerk by an order dated 15.1.1986 and promoted as Sr.Trains Clerk on 28.8.1989. While working as such, he was empanelled for the post of Goods Guard on 3.5.1995

but before being ^{detailed} detained for training for the ^{post} post, he had to be medically examined and he was declared unfit in category A-2 and A-3 in vision test but found fit in category B-1 without glass. No reason was stated for such ^{de} categorisation, but still he took an appeal to CMD who also confirmed the finding regarding de-categorisation and the petitioner was informed that he was found colour blind by Ishihara chart. The petitioner contends that CMD was not an Ophthalmologist and he was not properly examined either initially by a ^{Dr.} Sr.DMO or by CMD, as a result of which there was erroneous finding and as a matter of fact, he has no visual defect as found by several eye specialists. It is, therefore, prayed that he may be declared fit in category A-2 and other reliefs.

2. The respondents in their reply state that the petitioner was properly examined by the Sr.DMO initially and after preferring the appeal, by the CMD alongwith Dy.CMD and ADMO who was a M.S. in Ophthalmology. It was stated that the colour vision test with proper light by Ishihara chart was conducted and he was found colour blind. In such circumstances, the petitioner was de-categorised and found fit in category B-1 without glass.

3. We have heard the ld.counsel for the parties and perused the records.

4. It is uncontroversial that in 1985 when the petitioner was appointed as Trains Clerk, he was found fit in category A-3 and not disqualified as colour blind. Now the petitioner has stated in the application that colour blindness is a congenital disease which has not been traversed in the reply filed by the respondents. Therefore, it has been urged on behalf of the petitioner that if colour blindness was a congenital disease and the petitioner was not found to be colour blind in 1985 when he was examined for appointment as Trains Clerk, he could not be subsequently found as colour blind in 1995 on examination by the Sr.DMO. This is a substantial argument to which no satisfac-


tory answer could be given on behalf of the respondents. The petitioner has also contended that under the relevant rules, test for colour perception is to be made in a completely dark room with black walls having mat surface, but the petitioner was examined by the Sr.DMD and CMD in their chamber. We are, however, unable to attach much weight to this argument as specific averments in this regard are missing in this application and thus the respondents had no opportunity to controvert it. The ^{contention} ~~confusion~~ of the petitioner that the test held by the CMD after he preferred appeal was liable to be rejected on the ground that he was not a qualified Ophthalmologist, ^{does not} ~~has~~ also ~~not~~ appeared to be of substance because it has been stated in the reply, to which no rejoinder has been given, that the CMD examined the petitioner alongwith the Dy.CMD and ADMD, who was ^{an} M.S. in Ophthalmology. However, if ^{this} ~~this~~ position is accepted that colour blindness with which the petitioner was said to have been ^{affected} ~~inflicted~~ is a congenital disease and there was no finding ^{that} ~~he~~ had any such disease in 1985, the finding of the Sr.DMD as well as the CMD becomes ~~to~~ open to doubt. This is all the more strengthened by the fact that several eye specialists have found the petitioner to have normal colour vision, as stated in the application, which again has not been traversed in the reply. In such circumstances, we are disposed to pass an order for a fresh medical examination of the petitioner.

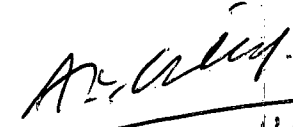
5. It is true that after de-categorisation, the petitioner has been offered a post of Sr.Clerk carrying the same scale of pay of the post from which he was de-categorised and in the new cadre, he has retained his own seniority. However, retention of such seniority only means that seniority in the new cadre will be determined on the basis of his date of appointment, but even on this basis his position in the seniority list of the new cadre, may be quite lower than the ^{position} ~~post~~ held by him in the

seniority list of the cadre from which he has been de-categorised. In such a case, his prospect of further promotion will no doubt be affected. Thus merely on the basis of fact that the petitioner has been given an appointment in a comparable post after decategorisation, does not establish that he cannot have any grievance about decategorisation.

6. On the above premises, we dispose of the O.A. with the order that the respondents shall constitute a special medical board including at least 2 Ophthalmologists to examine the petitioner, within a period of three months from the date of communication of this order and in case he is found fit, he shall be appointed as Goods Guard in his turn.

7. No order is, however, made as to costs.


18/9/97
(M.S. Mukherjee)
Administrative Member


18/9/97
(A.K. Chatterjee)
Vice-Chairman