

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A.722 of 1996

Present : Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman.
Hon'ble Mr. S. Dasgupta, Administrative Member.

AJOY CHAKRABORTY S/o
Shri Krishnadhan Chakraborty,
residing at Village Manmatha
Nagar, P.O. Dankuni, Dist.
Hooghly, West Bengal.

... Applicant

Vs.

1. Union of India through the General Manager, Eastern Railway, 17, Netaji Subhas Road, Calcutta-1.
2. The Chief Personnel Officer, Eastern Railway, 17, N.S. Road, Calcutta-700 001.
3. The Chief Works Manager, Eastern Railway, Liluah Workshop, P.O. Liluah, Dist. Howrah.

... Respondents

For the applicant : Mr. B. Mukherjee, counsel.

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

Heard on : 11.2.1998

Order on : 27.2.1998

ORDER

S.N. Mallick, V.C.

The applicant's grievance is that the respondents, authorities of the Eastern Railway, have not considered his representations requesting them to absorb him in any alternative post in C-II medical category ^{Group 'D' category being fit under} in spite of clear order of the Chief Personnel Officer, respondent no.2, to take

...2/-

action for his absorption in the alternative post as per letter dated 21.1.1994 (annexure 'A/7').

2. The case of the applicant is as follows - He appeared in the interview in the Liluah Workshop of Eastern Railway alongwith 932 candidates for absorption for the post of Khalasi in Group-D. The date is, however, not disclosed. A panel was prepared after the interview and was published on 9.1.1981 specifying the candidates including the applicant for being absorbed as labourer in the Group-D post in Liluah Workshop. He being successful, he was given provisional appointment under letter no.LE 206/2/employment/81/339 dated 14.1.1982 subject to passing the medical examination. In the medical examination, he was found unfit for C-I medical category ~~post~~ for defective eyesight but was found fit for C-II medical category ~~post~~. It is the further case of the applicant that in spite of his passing C-II medical category, he was not allowed to resume his duties nor was he given any appointment in C-II medical category ^{alternative} ^{being fit}. The applicant relying upon the rules contained in Establishment Manual Chapter X page 58 (old) and Chapter XIII page 158 of the new Manual alleges that when a candidate is found fit in C-II category, he should have ~~been~~ given alternative job other than the post of Khalasi, namely, Peon, Hospital Staff, Canteen Boy, etc. The applicant accordingly submitted a number of representations dating from 17.1.1991 to the Railway authorities to provide him with an alternative job in C-II medical category as Hospital Staff, Peon, etc. in Group-D post which were lying vacant in the Liluah Workshop, Canteen and in Liluah Railway Hospital. It is further alleged that certain other candidates ^{who} were not found fit in C-I medical category but were found fit in C-II vision tests, were provided with alternative jobs by the Railway authorities to his exclusion thus violating the provisions of Articles 14 and 16 of the Constitution of India. It is further stated that one Swapan Mondal who failed in C-I medical examination, was absorbed as a Canteen Boy in Liluah Workshop for

having been found fit in C-II medical category in 1985-86. According to the applicant, those who were declared fit in C-II category in the panel prepared in 1981-82, have been absorbed in alternative job in 1985 to his exclusion, which is an act of discrimination on the part of the respondents and is violative of Articles 14 and 16 of the Constitution of India. The names of the candidates so employed were given by the applicant in his representation dated 7.7.1993 to the respondent no.3 (annexure A/5). There were some correspondence on the subject between the C.P.O. and the Chief Works. Manager, Liluah Workshop (respondent no.3). According to the applicant, the Rule for alternative appointment on being fit in C-II medical category instead of C-I medical category was prevailing in 1981 alike in 1985 and as such, he was entitled to be given appointment in Group-D alternative post but this right has been denied to him. Accordingly, the applicant moved this Tribunal by filing O.A.1508 of 1994 which was disposed of at the admission stage by an order dated 17.1.1995 by another Bench of this Tribunal (annexure 'A/1'). The directions were as follows :-

"Since the matter is already under consideration before the respondents particularly the respondent no.3 herein, the application is disposed of at the admission stage with the direction that the respondent no.3 shall treat the application as a representation of the applicant and dispose of the same within a period of three months from the date of communication of this order. In case it is not possible for the respondent no.3 to accede to the prayer of the applicant, he shall give a speaking order which shall be communicated to the applicant within two months thereafter. Liberty is given to the applicant to approach this Tribunal in case he has any grievance against that speaking order."

The respondent authorities rejected the case of the applicant by passing a speaking order which is to be found at page 26 being annexure 'A/2'. According to the applicant, the said speaking order dated 2.1.1996 is vague, misleading and arbitrary. According to him, he is fit to be appointed in any alternative job in Group-D post for being fit in medical C-II category and it is his main allegation that he has been arbitrarily discriminated by the respondent authorities who have given alternative appointments

in Group-D posts to some other candidates who were found unfit in C-I medical category test but were found fit in C-II medical category test.

3. The respondent authorities have filed a reply denying the allegation of discrimination and challenging the right of the applicant to be absorbed in any alternative job on his being found unfit in C-I medical category but fit in C-II medical category. It is the case of the respondents that the applicant was given an offer of appointment as a Khalasi in the Liluah Workshop provisionally subject to his passing the required medical category test. The applicant was found fit in C-II medical category but not in C-I. The respondents have pointed out that according to the applicant after being declared unfit in C-I medical category, he underwent medical treatment in the year 1980 after a lapse of a period of six years and as such, his case was a time barred one. It is the further case of the respondents that according to Railway Establishment Manual, a person after becoming medically fit and absorbed in a post, becomes subsequently decategorised, only then his case can be considered for absorption in an alternative job, but no such facility was applicable to the applicant who was a new entrant and his appointment was provisional depending upon his passing the medical C-I category test. It is denied that any of the empanelled candidates including the applicant declared fit in medical category C-II, were absorbed in the alternative post. It is further stated that the panel being too old, the matter was referred to CPD, Eastern Railway, Calcutta, for considering alternative appointment but it was not considered on the ground that the panel in which the applicant's name appeared, had expired long ago. It is the case of the respondents that as per directions of the Tribunal given in the earlier O.A. being 1508 of 1994, as quoted above, the respondent authorities have carefully considered the case of the petitioner and have rejected the same by passing a speaking order in good faith. There is no rejoinder on the part of the applicant to the reply furnished on behalf of the respondents. f

4. Although the facts of the case have been elaborately noted in the foregoing paragraph, the question involved in the present application is whether the applicant is entitled to get alternative appointment in any Group-D post having been declared unfit in C-I medical category but fit in C-II medical category. On the earlier order of the Tribunal which we have referred to in the foregoing paragraph, the direction on respondent no.3 was to treat the said original application being O.A.1508/1994 as a representation and to dispose of the same within a period of three months from the date of communication of the order. It was further clarified there that in case it was not possible for respondent no.3 to accede to the prayer of the applicant, a speaking order was to be passed by him and the same to be communicated to the applicant within two months thereafter. Liberty was also given to the applicant to approach this Tribunal in case he has any grievance against the speaking order. In the present application, the applicant has repeated the facts which were the subject matter of his earlier application. Against the impugned speaking order at annexure 'A/2', the applicant's allegation is that the said order is vague, misleading and arbitrary. In the impugned speaking order, the entire perspective of the case has been considered by the respondent no.3. We may quote the relevant part of the said impugned speaking order :-

"Shri Ajoy Chakraborty was given provisional appointment against the post of Labourer in scale Rs.196-232/- (RP) vide letter No.LE.206/2/Employment/81/339 dated 14.1.1982, subject to his passing medical examination. Shri Ajoy Chakraborty was sent for medical examination and was found fit in medical category C-2 vide medical memo no.3310 dated 15.1.1982. Since the medical requirement for the post of Labourer is C-1, Shri Ajoy Chakraborty appealed for medical re-examination. The appeal for medical re-examination was not considered by the Chief Medical Officer, Eastern Railway, Calcutta.

There has been no discriminatory treatment against Shri Ajoy Chakraborty as each and every candidate, who was empanelled vide panel order dated 1.9.81 and finally given appointment, was fit in medical category C-1. No appointment was given to any candidate enlisted in the panel dated 1.9.1981, who was found fit in medical category C-2.

Requirement of this workshop at the material time was Labourer only and, therefore, the panel cannot be compared with the requirement of the subsequent panel order issued on 12.7.1985.

Taking all the above facts into account, I have come to the conclusion that the case of Shri Ajoy Chakraborty cannot be considered for appointment."

It is not disputed that the applicant was given provisional appointment against a post of Labourer subject to his passing the medical examination. He was not found fit in medical category C-I but was found fit in C-II medical category. But as the post in which the applicant was provisionally appointed required fitness in C-I medical category, he could no longer be retained in the said post. It is also undisputed that the provisional appointment was given to the applicant on 14.1.1982 and he was empanelled by a list dated 1.9.1981. It is noted in the aforesaid speaking order that no appointment was given to any candidate enlisted in the panel dated 1.9.1981 who was found fit in C-II medical category. It is, however, not disputed that certain appointments were made in respect of some persons who were found fit in C-II medical category as per order dated 12.7.1985. It is undisputed that the panel dated 1.9.1981 was not in existence on 12.7.1985. No material has been produced before us to show that any person from the panel of 1.9.1981 who was found fit in C-II medical category like the present applicant was given any appointment in an alternative job in Group-D. In that view of the matter we do not find any infirmity in the impugned speaking order.

5. The ld.counsel appearing for the respondents has referred to para 9(viii) of the reply. It is the case of the respondents that according to the Indian Railway Establishment Manual, if a person after becoming medically fit is absorbed in a post and if he becomes subsequently decategorised on medical grounds, then only his case can be considered for absorption in an

alternative job. It is the categorical case of the respondent that such facility is not available to a new entrant like the applicant who was admittedly appointed on a provisional basis subject to his passing the required medical test.

6. Mr. B. Mukherjee, Id. counsel appearing for the applicant, has submitted that as per the rules of the Indian Railway Establishment Manual (old and new), the applicant although a new entrant after having been declared fit in C-II medical category, should have been given an alternative job like Peon, Canteen Boy, etc., in Group-D.

7. We have gone through the old Indian Railway Establishment Manual (2nd Edition) produced before us by Mr. Mukherjee. We have also gone through the provisions of old Rule No. 1016 and 1018. The rules contained in section (c) of the old Indian Railway Establishment Manual are in respect of the medical examination of candidates and Railway Servants (Non-gazetted including Class IV and Labourers). Rule 1018 of the old manual refers to C-I and C-II category concerning vision tests of the aforesaid employees. The point is whether the applicant being fit in C-II medical category was entitled to be appointed as a Peon or Canteen Boy, etc., for being medically unfit for the post of Khalasi in which he was provisionally appointed. Undisputedly, in order to hold the post of Khalasi, a person is to be declared fit in C-I medical category. The applicant was not declared fit. The provision of giving an alternative job has been made in Chapter XXVI of the old Manual. It appears from the aforesaid rules in the old manual that a railway servant who becomes medically unfit for the post held by him ^{not} on account of circumstances arising out of and in the course of his employment, the benefit of giving alternative employment is not obligatory. Similar rules are there in the new Indian Railway Establishment Manual, Vol. I (1989 Edition).

The relevant rules are to be found in Chapter XIII from Rule No.1301 onwards. From the above provisions it is also found that the benefit of alternative employment to a Railway servant who becomes medically unfit for the post held by him is to be given only when he becomes unfit on account of circumstances arising out of and in the course of his employment. But in the present case we find that the applicant was given a provisional appointment in the post of Khalasi subject to his being medically fit under C-I medical category. He was not found fit in that category. He was found fit under C-II medical category. The question is whether he should have been given an employment in the alternative post of Peon, Canteen Boy, etc., where medical fitness under C-II medical category was sufficient. There is nothing on record to show that at the material time when the panel of 1981 was subsisting, there were vacancies for those posts in Group-D. The applicant cannot have any grievance if subsequent appointments were given to other persons from a panel of 1985 in posts where their fitness in C-II medical category was declared. The ld.counsel for the applicant has drawn our attention to an illegible letter at annexure 'A/6' at page 35 of the application purported to have been issued on behalf of the Chief Personnel Officer to the Chief Works Manager, Eastern Railway, Liluah, dated 21st January, 1994. In that letter, some appointments made in 1985 were referred, but such correspondence does not throw any light in the present issue nor does it help the applicant in any way. We do not find any substance in the application and we are of the view there is no illegality or infirmity in the impugned speaking order passed by respondent no.3. We find no reason to interfere with the decision taken by the respondent authorities as per the impugned speaking order.

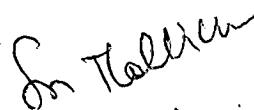
8. The application is dismissed. No order is passed as to costs.

9. However, in view of the facts and circumstances of the case, we leave it to the discretion of the respondent

authorities to consider the case of the applicant sympathetically for appointing him in any suitable vacancy for which he may be found otherwise fit and qualified. This is not to be treated as a direction.



(S. Dasgupta)
Administrative Member



(S.N. Mallick)
Vice-Chairman