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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 296/99

Date of order: 05.09.2001

Devi Lal Meena S/o Shri Mangi Lalji, aged about 43 years,
R/o House No. 102-D Kamla Nehru Colony, Jodhpur (Rajasthan),
Presently Working on the Post of Chief Ticket Inspector at
Railway Station, Northern Railway, Jodhpur

...Applicant.

Versus

- (1) Union of India through General Manager (P), Northern
Railway, Baroda House, New Delhi.
- (2) Chief Commercial Manager, Northern Railway,
Baroda House, New Delhi.
- (3) Divisional Railway Manager,
Northern Railway, Jodhpur.

...Respondents

Mr. S.K. Malik, Counsel for the Applicant.

Mr. S.S. Vyas, Counsel for the Respondents.

CORAM:

Hon'ble Justice Mr. B.S. Raikote, Vice Chairman.

Hon'ble Mr. A.P. Nagrath, Administrative Member.

ORDER

(Per Hon'ble Mr. A.P. Nagrath, Member (A))

This application has been filed challenging the Medical
Certificate dated 22/27.09.1999 (Annexure A/1) by which the
applicant has been declared unfit for Group 'B' Technical Pos

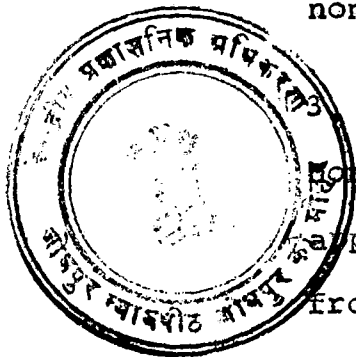
2. The case of the applicant, in brief, is that he belongs
to the Commercial Department of the Railways and he passed the



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written examination for the post of Assistant Commercial Manager, (in short, A.C.M.), which is a Group 'B' gazetted post of the Commercial Department. This selection was held against 30% Limited Departmental Competitive Examination quota and the result of the written examination was declared vide letter dated 21.09.1999. He was sent for medical examination for Group 'B' Technical post and has been declared unfit vide the impugned medical certificate. Consequently, he was not called to appear in the viva voce test. He is aggrieved with this action of the respondents on the ground that he belongs to a non-technical service and he appeared for gazetted Group 'B' vacancy of the Commercial Department which is a non-technical department. His contention is that he should have been examined for medical fitness as per standards required for a non-technical post and not for a Technical post.



The whole controversy in this case is whether correct norms were followed while determining physical fitness of the applicant under the relevant medical classification. We find from the notification dated 14.01.1999 related to this selection, where the eligibility conditions have been numerated, it has been stated that the staff who qualify in the written test shall have to pass prescribed medical test before being called for viva voce test (emphasis supplied). What comes on the anvil of judicial scrutiny in this case is as to what is the prescribed medical test as on the date of this selection for promotion from non-gazetted to gazetted Group 'B' post of the Commercial Department. Respondents have filed a copy of the policy in this regard as Annexure R/4. It appears that the classification of gazetted posts for the purpose of examining the visual acuity of the Railway Employees promoted from non-gazetted posts have been laid down in para 531 of the Indian Railway Medical Manual, 1981. The copy of letter

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dated 27.08.1997 is reproduced below:

MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. 97/H/5/3/

New Delhi dt. 27.8.97

The General Managers,
All Indian Railways,
including production units,
Director General RDSO,
Lucknow,
Principal,
Railway Staff College,
Vadodrs.

Sub: Medical examination of railway employees on promotion for
non-gazetted to gazetted posts.

...

Classification of gazetted posts for the purpose of examining
the visual acuity of the Railway employees promoted from non-
gazetted posts have been laid down in para 531 of the Indian
Railway Medical manual of 1981.



Ministry of Railways have decided to amend the sub-para (a)
and (b) of the ibid para as under:

- a) All posts in Mechanical, Electrical Civil and S&T Enginee-
ring and traffic (Transportation and commercial) department.
- b) All posts in other departments which are not corrected with
train working of use of trolley on open line.

The modified instructions will be embodied in the Indian
Railway Medical Manual under preparation for printing.

You are, therefore, requested to modify the existing instru-
ctions as detailed above.

Sd/- Dr. A.P. Arora
Executive Director/Health
Railway Board.

It appears from this letter that there has been an
amendment in the classification as a result of this circular
dated 27.08.1997. The gazetted posts falling in classificatio
(a) including all posts in Mechanical, Electrical, Civil and
S&T Engineering and Traffic (Transportation and Commercial)

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department. Obviously, the Commercial Department for the purpose of medical examination has been clubbed with various other departments where the standards of medical examination are different from the departments falling in classification(b).

4. Learned counsel for the applicant vehemently argued that by very nature of duties Commercial Department cannot be declared as a Technical Department and it was not correct on the part of respondents to subject the applicant to medical examination as per standards applicable to Group 'B' gazetted posts of Technical departments. The learned counsel relied upon 1996 (32) ATC 43 SC Nand Kumar Narayanrao Ghodmare Vs. State of Maharashtra and Ors. and 1993 (2) SOC 411 National Federation of the Blind Vs. Union Public Service Commission and Ors. These cases are quite distinguishable on facts and have no relevance in regard to the controversy before us.



5. In the case of Nand Kumar Narayanrao Ghodmare Vs. State of Maharashtra and Ors. there was a combined recruitment for various categories and for one category, the applicant was not found fit. In the light of the facts of the case, Hon'ble the Supreme Court held and the applicant should be examined for medical fitness as per standard prescribed for any of the posts for which the combined recruitment examination was conducted.

6. In the other cases of the National Federation of the Blind Vs. U.P.S.C. the Apex Court directed U.P.S.C. to permit the visually handicapped to appear and write the Central Services examination in braille-script.

7. The grievance of the applicant before us is that he has not been subjected to correct medical standards & that respondents be directed to conduct examination of the applicant

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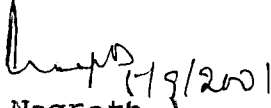
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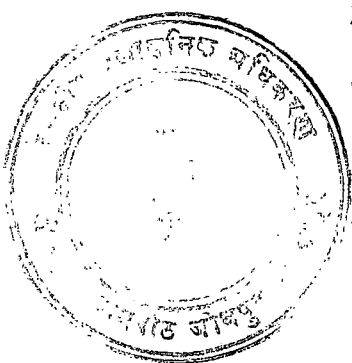
for Group 'B' non-technical post. The learned counsel for the applicant also placed reliance on the decision of Bombay Bench of CAT in O.A. 697/87 decided on 18.03.1991 in support of his contention. We find from this judgement, the department had already promoted the applicant to Group 'B' post on ad hoc basis and had continued four years. In view of the circumstances of that case, the Tribunal held that if the applicant has continued for a number of years such a promotion has to be maintained, moreso, when the applicant will not claim further promotion to Group 'A' post. The cases relied upon by the learned counsel are of no help to the applicant's case.

8. What is required to be determined is as to what is the prescribed medical examination. As we have stated supra, the medical examination has been prescribed by the Ministry of Railways in their letter dated 27.08.1997 and it is clear that gazetted posts in Commercial Department fall under classification (a) of para 531 of the Indian Railway Medical Manual. Learned Counsel for the respondents also drew our attention to Railway Board's dated 16.06.1997 (Annexure R/5), wherein a similar case has been dealt with and the rationale behind the medical classification has been provided. It has been clearly stated that in the case of promotion to Group 'B' posts in Mechanical (Workshop) Department and Traffic (Commercial) Department, the candidates should be medically examined under para 531 (a) and those found not fit accordingly should not be called for viva voce. In view of such a clear rule position, we do not find any merit in the case of the applicant and this O.A. is liable to be rejected.


9. We, therefore, dismiss this O.A. as having no merits. No order as to costs.


(A.P. Nagrath)
Adm. Member


(Justice B.S. Raikote)
Vice Chairman.




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27/12/51

Ref


S. Kozalib
Adv

12/9/01

Part II and III destroyed
in my presence on 28-5-07
Under the supervision of
Section officer as per
order dated 23-1-31-02


Section officer (Record)