

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

**Original Application No.230/2008
With
Misc. Application No.121/2008**

Date of decision: 29.4.2011

**Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.
Hon'ble Mr. Sudhir Kumar Administrative Member.**

Rajeev Sharma S/o Late Shri Hari Krishan Sharma, aged about 45 years, R/o Hari Niwas, Near Ram Mandir, Industrial Area, Rani Bazar, Bikaner Rajasthan.

(Presently working as Sr. Goods Guard in the office of Station Superintendent, North West Railway, DRM, Bikaner, Rajasthan.

: Applicant.
Rep. By Mr. Kuldeep Mathur : Counsel for the applicant.

Versus

1. The Union of India through the General Manager, North West Railway, Jaipur (Rajasthan).
2. Divisional Railway Manager, North West Railway, Bikaner.
3. Senior Divisional Personnel Officer, North West Railway, Bikaner.

: Respondents.

Rep. By Mr. Salil Trivedi : Counsel for respondents.

ORDER

Per Mr. Justice S.M.M. Alam, Judicial Member.

Grant
Perused the Misc. Application No.121/2008 for condonation of delay. The grounds mentioned in the application for condoning the delay in filing of the Original Application No.230/2008 appears to be genuine as such this Misc. Application is allowed and the delay in filing the O.A. No.230/2008 is hereby condoned.

2. Applicant Rajeev Sharma, who is presently working as Sr. Goods Guard in the office of Station Superintendent, North West

Railway, DRM, Bikaner, Rajasthan, has preferred this O.A seeking following reliefs:

- "(i) That record of the case may kindly be called for.
- (ii) That the order dated 10.05.2007, Annexure-A/1, may kindly be quashed and set aside.
- (iii) That respondents may be directed to add the name of the applicant in the panel for Passenger Guard in pay scale of Rs.5000-8000.
- (iv) Any other relief, which this Hon'ble Tribunal deem fit and proper in favour of the applicant may be granted. The Original Application may kindly be allowed with costs and all circumstantial benefits may be granted in favour of the applicant.
- (v) Costs of this application be ordered to be awarded in favour of the applicant."

3. The grievance of the applicant is that the respondents conducted process of selection for promotion to the post of Guard Passenger on two dates i.e. on 12.11.2005 and 19.11.2005 and in the said process of selection the applicant alongwith other candidates participated. The result of the written examination was published on 07.04.2006 and the applicant was declared successful alongwith several other candidates vide Annexure-A/2. Thereafter, the respondent department for the purpose of constituting a panel of Guard Passenger issued a list dated 19.04.2006 (Annexure-A/3) mentioning the names of 31 candidates but the name of the applicant was not included in the said list. Later on, the applicant came to know that in the merit list he stood at Sl. No.32. Further case of the applicant is that one Darshan Kumar Kamara, whose name appeared at Sl. No.27 of the Panel (Annexure-A/3), was wrongly included in the panel as he was declared unfit by the respondent department for the post of Guard Passenger due to medical reasons vide order dated 27.09.2006 (Annexure-A/4), so the applicant being at Sl. No.32 of the merit list should have been

selected for the post of Guard Passenger, if the name of Darshan Kumar Kamara was not wrongly included in the panel. It is stated that the applicant filed representations on 27.10.2006 (Annexure-A/5) and 28.03.2007 (Annexure-A/6) before the authority praying therein to include his name in the panel of Guard Passenger on the vacant place of Shri Darshan Kumar Kamara, but the respondent vide letter dated 10.05.2007 (Annexure-A/1) rejected his prayer, which gave rise to the cause of action for filing this O.A.

4. On filing of the O.A, notices were issued to the respondents and in response to the notices the respondents appeared before this Tribunal through lawyer and filed a reply to the O.A. As per the reply, their case is that the process for selection on the post of Guard Passenger was started on two dates i.e. on 12.11.2005 and 19.11.2005 and till that date the said Darshan Kumar Kamara, whose name appeared at Sl. No.27 of the Panel, was not declared unfit for the said post and even on the date on which the panel was issued he was not declared unfit and, therefore, the name of Shri Darshan Kumar Kamara was rightly included in the panel of successful candidates, who were selected for the post of Guard Passenger and so there is no infirmity in the panel (Annexure-A/3) prepared by the respondent department. It is contended that although the said Darshan Kumar Kamara was later on (on 27.09.2006) declared unfit for the post of Guard Passenger but that order was issued much after the publication of the panel and so the said order cannot affect the validity of the panel, which was issued on 19.04.2006. On the above grounds, the respondents

have prayed for dismissing the original application filed by the applicant.

5. On behalf of the applicant Shri Kuldeep Mathur appeared in the case whereas on behalf of respondents Shri Salil Trivedi appeared and argued the case.

6. Shri Kuldeep Mathur while arguing on behalf of the applicant drew our attention towards the statement made at para 7 of the additional affidavit filed on behalf of the applicant, in which the applicant has stated that prior to declaration of panel for the post of Guard Passenger by the respondents on 19.04.2006, Shri Darshan Kumar Kamara suffered from Cardiac problem and firstly he was treated at Railway Medical Hospital, Hissar, from where he was referred to Central Hospital, Northern Railway, New Delhi and the doctors of Central Hospital, Northern Railway, New Delhi referred him to Delhi Heart and Lung Institute for Coronary Angiography on 13.03.2006 and thereafter on 14.03.2006 the Coronary Angiography was done. The learned advocate submitted that the above fact establishes that before the publication of the panel, the said Darshan Kumar Kamara was medically unfit for the job as he was suffering from heart ailments for which he underwent for Coronary Angiography on 14.03.2006 i.e. prior to publication of the panel. He submitted that if the respondents would have considered this fact, they would have not included the name of Shri Darshan Kumar Kamara in the panel and naturally the name of the applicant could have included in the list of panel

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among the 31 successful candidates. The contention of the applicant's lawyer is that the applicant has a very good case in his favour for inclusion of his name in the panel as still one post remained vacant after de-categorization of Shri Darshan Kumar Kamara. In support of his arguments, the learned advocate of the applicant has placed reliance upon the decision of High Court of Judicature of Rajasthan at Jodhpur given in the case of **Durga Singh Rathore vs. State of Rajasthan & Ors.**, bearing S.B. Civil Writ Petition No.4956/2005 (photocopy placed on record).

7. Shri Salil Trivedi appearing for the respondents argued that admittedly on the date on which the process of selection for promotion to the post of Guard Passenger was started, the said Darshan Kumar Kamara was not medically unfit and there is nothing on record to show that before that dates i.e. 12.11.2005 and 19.11.2005, the said Darshan Kumar Kamara was suffering from any heart ailment. He further submitted that it is also admitted case that the said Darshan Kumar Kamara was medically de-categorized for the said post vide order dated 27.09.2006 but prior to that the panel was published on 19.04.2006, so before declaring a candidate namely Darshan Kumar Kamara unfit for the job, the name of the applicant could have not been excluded from the provisional panel of Guard Passenger Grade Rs.5000-8000.

8. We are of the view that the submission of the learned advocate of the applicant cannot be accepted in view of the fact that the selection procedure for selection on the post of Guard

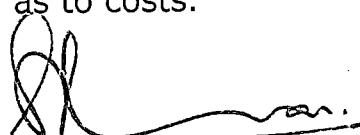
Passenger was started much before the date when it was detected that Shri Darshan Kumar Kamara was suffering from heart disease. We are further of the view that the name of Darshan Kumar Kamara could not have been struck down from the panel of successful candidates as till the date of publication of the panel i.e. 19.04.2006, Shri Darshan Kumar Kamara was not declared unfit for the post. Thus, we are of the view that declaration of Darshan Kumar Kamara being unfit for the job on a later date does not give any legal right to the applicant for inclusion of his name in the panel in place of Shri Darshan Kumar Kamara.

9. It has been submitted by the learned advocate of the applicant after declaration of Darshan Kumar Kamara unfit for the job, one post of Guard Passenger remained vacant to be filled up and since the applicant's name was at Sl. No.32 among the successful candidates and so after removal of the name of Darshan Kumar Kamara from the panel, the applicant will come within the 31 candidates and so a direction should be given to the respondents for including the name of applicant in the panel. We feel ourselves not competent to issue any specific direction in this regard except that we direct the applicant to file a representation before the competent authority for inclusion of his name in the panel in place of Shri Darshan Kumar Kamara and the respondents after considering the representation of the applicant may pass a reasoned order on the representation of the applicant. But we would like to make it clear that any adverse order on the

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representation of the applicant will not give any legal right to the applicant for filing fresh O.A.

10. In the result, we do not find any merit in this O.A. and with above observations and directions this O.A. stands dismissed. No order as to costs.



[Sudhir Kumar]
Administrative Member



[Justice S.M.M. Alam]
Judicial Member

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