

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 536 Of 1997

Present : Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member
Hon'ble Mr. M.K. Misra, Administrative Member

MR. BHABASINDHU MONDAL

Vs.

1. Union of India, Service through the General Manager, Metro Railway, Metro Rail Bhawan, 33/1, Chowringhee Road, Calcutta - 71.
2. Chairman, Railway Recruitment Board, M.M. Building, 4th Floor, 16, Strand Road, Calcutta - 1.
3. Assistant Personel Officer, Metro Railway, 33/1, Chowringhee Road, Calcutta - 1.
4. Senior Divisional Medical Officer (Eye), BRSH, Metro Railway, Metro Rail Bhawan, 33/1, Chowringhee Road, Calcutta - 1.

For the applicant : Mr. P.C. Das

For the respondents : Ms. K. Banerjee

Heard On: 13.12.2004.

Date of Order: 21.12.2004

ORDER

Mr. Mukesh Kumar Gupta, JM:

In this application, challenge has been made to impugned communication dated 17.10.96 rejecting the applicant's request for appointment to the post of Traffic Assistant, Metro Railway being found unfit in the required medical category. Direction is also sought to appoint him either in the post of Traffic Assistant or in the post of clerk or any alternative category as per medical fitness issued by the private medical doctor, with costs and consequential benefits.

2. The admitted facts of the case are that pursuant to employment notice No. RRB/ cal/ EN-2/ 995, the applicant applied for the post of Traffic Assistant and appeared in the examination wherein he was duly



selected besides passing the viva voce. On being selected, he was recommended to the General Manager, Metro Railway for appointment. An offer of appointment letter dated 20.9.96 was issued which was subject to usual condition for passing prescribed medical examination etc. The applicant appeared before the Medical Board and was examined by Senior Divisional Medical Officer/ I BRSB. After medical test, vide impugned communication dated 17.10.96, he was declared unfit for the prescribed medical category for the said post of Traffic Assistant. He submitted representation dated 2.12.96 stating that he was not properly examined by the concerned medical officer and therefore, re-test should be held. He had also approached some private doctors for medical fitness in category A-2 and Dr. B.C. Saha issued one such certificate. He submitted another representation dated 21.2.97 addressed to Chairman, Railway Board, Calcutta & requested to consider his claim for any job in the alternative category but the same did not yield any result. One Shri Akhilesh Kumar (SC) who was recruited for training Assistant Station Master, but could not found medically fit for the said post, was offered the post of Ticket Collector in the alternative category, which benefit was not extended to him by the Metro Railway Authority which is illegal, arbitrary and discriminatory besides violative of the principle of natural justice.

3. The respondents contested the applicant's prayer and stated that he was selected for the post of Traffic Assistant by the RRB, Calcutta, but failed to qualify the prescribed medical standard and therefore, there was no employer - employee relationship between the applicant and the respondents. The applicant's appeal for re-examination under para 523 (i) & (ii) of Medical Manual, dated 2.12.96 submitted along with certificate from private medical practitioner was considered by the Medical Superintendent on 6.12.97

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but the same find no favour for the reasons that (a) medical certificate produced by the applicant was not from the authorised medical practitioner and (b) the candidate should have produced certificate from Doctors of the Medical Board from Government institution etc. The said decision was conveyed to the applicant under communication dated 13.12.96 which fact was concealed by him & fabricated and false story was projected that he was not properly examined by the so called Divisional Medical Officer/ Medical Metro Railway. The management of the Eastern Railway is different from the Metro Railway and the action taken by the Eastern Railway cannot be treated as precedent and binding on Metro Railway administration, particularly when the latter is unique in Indian Railway and being underground system requires better safety precaution. In such circumstances, the person who did not qualify the required medical standard cannot be appointed, contended respondents. The applicant's contention that the medical test for the post of Traffic Assistant did not come under A1, A2 and A3 category and falls under B1, B2 and B3 category was also disputed. The Railway Board letter dated 12.8.87 (Annexure R-6) specifically provided that the medical qualification for the cadre of Traffic Assistant and other post of operation and maintenance of Metro Railway will be the same as for ASM of zonal Railways. There existed no post of Ticket Collector, Ticket Clerk etc. against which applicant could be given an alternate arrangement, as prayed for. The post of Traffic Assistant in the Metro Railway cannot be equated with the same nomenclature under other Railways.

4. We heard learned counsel for the parties at length and perused pleadings.

5. Shri P.C. Das, learned counsel appearing for the applicant strenuously contended that as Eastern Railway vide communication dated

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22.1.97 (Annexure 'H') offered the post of TR Ticket Collector in the pay scale of 950 - 1500, to a candidate who was selected for the post of Train Assistant Station Master in the pay scale of Rs.1200 - 2040 and had failed to pass medical examination in A2 category, which benefit was not extended to the applicant. It was, therefore, urged that the applicant was entitled to similar treatment as granted to Akhilesh Kumar. It was further contended that there exist orders passed by the Railway Board on the subject of alternative appointment to the medically unfit direct recruit candidates belonging to SC/ ST and one such instruction and circular is RBE 3/ 83 dated 4.1.1985, which was reiterated in RBE 302/ 1985 dated 7.11.85 and further reiterated by the Railway Board on 20.8.99 and 4.9.2001. On perusal of the aforesaid RBes, we find that the Railway Board letter dated 4.9.2001 in para 4 specifically stated that: "candidates selected for the category of Assistant Driver/ ASM/ Motor Man will also not be eligible for any alternative appointment if they fail in the final medical examination conducted by the Railway before appointment, for any reason". No doubt, earlier, there was a provision to appoint those selected candidates for the post of ASM but declared medically unfit for alternative post for such other categories for which they were found medically fit against the shortfall if any with the approval of the General Manager, but the said policy as noticed hereinabove have been drastically changed in the year 2001. Shri P.C. Das, learned counsel for the applicant strongly relied upon the order and judgement dated 24.11.2003 of this Bench in OA No.1206/ 2002 & series of cases, Gautam Basu & others Vs. Union of India & others wherein in para 11 the Railway authorities were directed to take up appropriate steps for filling up the vacant post in B1 category first out of surplus staff and thereafter if any post was left out then to consider those candidates who could not qualify in appropriate manner



in the categories prescribed under the rules. It would be desirable at this stage to notice the said para, which reads as under:-

"11. We, however, feel that the Railway authorities should take appropriate steps for filling up vacant posts in B1 category first out of surplus staff, if any, since they deserve first preference and in the event any other posts in that category are left out after filling up the available vacancies from out of surplus staff, then the case of the applicants can be considered for appointment in B1 category posts. It may be expressly stated here that the applicants did not have any legal right to be appointed since they could not qualify in the appropriate medical category prescribed under the rules for appointment as Trainee Asst. Driver for which they applied and were empanelled and/ or recommended."

(emphasis supplied)

6. On bestowing our careful consideration to the contentions raised, the pleadings of the case and the circulars cited as well as the judgement noticed hereinabove, we are of the considered view that the judgements cited as noticed hereinabove are not applicable in the facts and circumstances of the case, particularly when we find that the applicant has no legal & indefeasible right of appointment & further that mere nomenclature of Traffic Assistant in the Metro Railway cannot be treated as at par with the Traffic Assistant of the other zonal Railways as the duties and responsibilities in Metro Railway are much onerous in comparison to the functioning of other zonal Railways.

In our considered view, it is not the mere nomenclature but host of other factors like duties, responsibilities, etc. which determine equation of post. Similarly, we have strong reservation to accept that what has been done by the Eastern Railway in appointing Akhilesh Kumar who was initially selected for Assistant Station Master and being found unfit for the prescribed medical category, later on appointed to the post of TR Ticket Collector, to extend to the applicant as suggested, particularly when the management of the

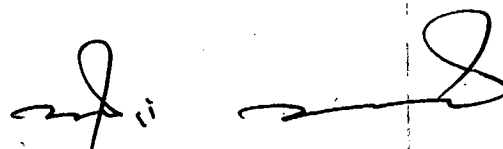


Eastern Railway is different from the Metro Railway as noticed by us. The policy of appointing the candidates, who were not found suitable for the prescribed medical examination for the alternative category has been changed by the Railway Board itself in the year 2001: As such, the contentions raised by the applicant is without any substance and has no merit. We are also of the view that the appointment of Shri Akhilesh Kumar cannot be treated as precedent for appointment with Metro Railway.

7. In view of the discussion made hereinabove, the application is found to be bereft of any merit and the same is dismissed. No costs.



M.K. Misra)
Member (A)



(Mukesh Kumar Gupta)
Member (J)

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