

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.125/09

WEDNESDAY, this the 3rd. day of March 2010

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

N.Manoharan,
S/o.K.Naryanan,
Junior Engineer Gr.I (OHE),
Southern Railway, Alappuzha.
Permanent Address : Vaishnavam,
Umbernadu, Kallumala P.O.,
Mavelikkara, Alleppey District.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India represented
by the Secretary to the Government of India,
Ministry of Railways, Rail Bhavan, New Delhi.
2. The General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.
3. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.
4. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
5. The Chief Electrical Engineer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.

...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 13th January 2010 the
Tribunal on 3rd... March 2010 delivered the following :-

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ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance is against the Annexure A-1 letter of the 4th respondent, namely, the Divisional Personnel Officer, Trivandrum dated 21.1.2009, by which his request for promotion as Section Engineer in the Traction Distribution Unit (TRD for short) of the Southern Railway, Trivandrum Division was rejected because the Chief Personnel Officer, Southern Railway, Madras has advised that, in terms of Railway Board's letter No.99/4/7/1/NR dated 30.5.2003, the medical classification for the said post is A-three for which he has already been found unfit.

2. The applicant was initially appointed as a Chargeman-B (now re-designated as Junior Engineer Gr.II) on 19.12.1986 in the TRD Unit of Central Railway, Bombay and promoted as Junior Engineer Gr.I in the year 1995. Thereafter, on 5.4.2004, he was transferred to Southern Railway on his request and posted in Palakkad Division on loss of seniority in the initial recruitment grade of Junior Engineer Gr.II. When he again became due for promotion to the post of Junior Engineer Gr.I., and a number of his juniors were promoted to the said post vide Annexure A-3 order dated 2.2.2006, the respondents informed him that he could not be promoted because he was medically unfit in A-three medical classification required for that post. Aggrieved by the aforesaid decision of the respondents, he approached this Tribunal vide O.A.448/06 with the contention that the requirement of A-three medical classification insisted upon by the respondents was ultra-vires of the statutory rules, but according to the respondents, as per IRMM



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Vol.I, the cadre of Electrical Traction Inspectorial Supervisory Staff are figuring in A-three category in which the post of Junior Engineer (TRS) has been included. However, vide Annexure A-2 order dated 26.4.2007 this Tribunal allowed the OA and its operative part is as under :-

"6. We heard Learned counsels Sri TCG Govindaswamy for the applicant and Ms P.K Nandini for the respondents.

7. The Learned counsel for the applicant contended vehemently that the requirement of A-3 medical classification insisted upon by the respondents is ultra vires the statutory rules in Annexures A-2 & A-4 and violative of the constitutional provisions and that the word Traction Supervisors in place of Traction Rolling stock is an invention on the part of the Palghat division authorities to justify their illegal action and further argued that the contention that under the term 'Traction supervisors', the supervisory staff of "Traction Rolling Stock" and "Traction Distribution" can be grouped is without substance and merit

8. The Learned counsel for the respondents strongly refuted the allegations and insinuations of the applicant and contended that the General Manager is competent to take such decisions and in the interest of safety it was decided to adopt the higher classification applicable to other cadres of Train Lighting and AC under Electrical supervisory staff. The counsel relied on Annexure R1 order as the basis for this decision,

9. Shorn of the heated arguments on both sides, the short question here is to determine what is the medical classification prescribed for the post of JE Gr. I to which the applicant has been denied promotion and whether the category of JE (TRS) appearing in the Board's orders in A-2 and A-4 carries within its fold people like the applicant. The respondents rely on Annexure R 1 a Railway Board circular dated 29.12.2000 regarding prescription of refresher courses for safety categories. The applicant has produced A-2 and A-4 orders and also copies of Employment notice dated 18.2.2006 issued by the RRB for the post of JE-II and a letter issued by the Head Quarters office Electrical branch to the Sr DEEs dated 20.3.2006 on Periodic medical examination and safety camp for electrical supervisors. A-2 and A-4 are the statutory orders of the Railway Board prescribing the classification of staff in the Railways for the purpose of medical categorization. The categories are provided under each of the classes/groups mentioned in Annexure A-4 of the IRMM Vol 1. Under medical classification A3 in that order, the category of JE(TRS) figures at Sno. 9 under the heading 'Electrical traction Inspectorial supervisory staff'. The posts of JEGrl & GrII figure under S. no 7 under B-3 classification under the heading 'Electrical Traction Maintenance Artisan Staff' in the same

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order. The said Annexure A-4 has been replaced by the authority of Railway board's Lr no 99/H/7/I/NR dated 30.5.2003 produced as (Annexure A2). The relevant entries here are at Item 8 under the heading -Electrical traction inspectorial supervisory staff Serial no 1 being Junior Engineer (TRS) under medical classification of A3 and it is the same as in Annexure A-4 order and there is no change. For the corresponding entries for B 1 classification under the heading 'Electrical Traction Maintenance Staff under item 7 the entry reads thus :

7. All Electrical maintenance/artisan staff unless specified in other categories.

10. The above provision can only mean that all electrical maintenance staff continue to be categorized under B 1 medical classification unless otherwise specified under other categories. In the earlier order various categories like JE, Wireman, Khalasis were separately listed but in the revised order they have been covered under an omnibus category. There is no other change and we do not find any support in these documents for the plea of the respondents that the order dated 30.5.2003 has placed the category of Junior Engineers under a higher medical classification. The posts of Junior Engineer(TRS) were in the higher category even in the earlier A4 orders incorporated in IRMM Vol 1.

11. That brings us to the dispute regarding the expansion of the letters TRS. The respondents contend that the letter 'S' stands for supervisors whereas the applicant states that TRS means "Traction Rolling Stock which is an entirely different cadre having separate identity. The respondents though they dispute the claim have not produced any documentary proof like seniority lists, recruitment rules etc. for the post of JE (TRS). If JEs like the applicant were within the definition of Junior Engineer (TRS) they should have been evaluated under the A-3 medical classification from inception. In fact para II of the promotion order at A 1 itself describes the promoted post as JE/Gr.IITRD unit. That the respondents have only applied this A3 classification to the present promotions is evident from the averments in the OA and the Employment notice and the copy of the letter filed by the applicant is more specific in this regard and prove that even in March 2006, the respondents considered this category to be falling under B 1 classification only.

12. The respondents have stated in para 1 of the letter dated 20.3.2006 referred to above as follows:-

"As per IRMM open line Electrical supervisors connected with Loco/EMU operation/running maintenance and OHE/PSI maintenance fall under A3 category. Other Electrical supervisors i.e sheds,car sheds, TRD supervisors in RC& TPC, supervisors of Trainlighting and Air conditioning fall under B-1 category. Also they have to attend safety camp along with refresher course."



13. In fact the respondents are in their additional reply shifting to a reliance on the Annexure R 1 order dated 19.12.2000 on the subject matter of prescription of duration of refresher courses for safety categories. The argument of the respondents is that the posts of JE (Train Lighting) and JE AC coaches are shown required to undergo refresher courses for safety and they are shown as under A3 medical classification, and so JEs like the applicant are also to be classified as falling under medical classification A-3. This is indeed a strange interpretation and cannot be accepted as it amounts to twisting facts and mis- application of orders relating to one subject in a totally different context. It is settled law that when there are clear statutory instructions on the subject, they have to be read in their plain meaning. Clarification or explanations given by the authorities in a different context cannot be superimposed to give a different meaning. When such interpretations deprive the existing incumbents of their valuable rights for promotion, they are all the more reprehensible and have to be declared as illegal. It is clear from the subsequent reference made by the respondents to the Railway board for a clarification that the respondents are themselves not sure about the correctness of their action.

14. We have been informed that the respondents have decided to promote the applicant pending the receipt of the classification. Let it be done immediately. We order so. In addition they shall also give the applicant an option of being inducted into the Trivandrum divisional cadre of Junior Engineers on par with those who are included in Annexure A-5. We also make it clear that any clarification to be issued by the Railway board has to be in terms of the orders at Annexures A-2 & A-4 and Annexure R-1 cannot be the basis for any decision regarding applicability of medical classification to various categories of Railway employees in the absence of any amendments having been made to the A2 order dated 30.5.2003 which we note has been issued subsequent to the Annex R 1 order dated 19.12.2000. OA is allowed accordingly. No costs."

3. The Annexure A-2 referred to in the aforesaid order is the same as the Railway Board's letter No. 99/H/7/1NR dated 30.5.2003 referred to in Annexure A-1 order dated 21.1.2009 in this OA. By the said letter dated 30.5.2003 which has been annexed with this OA as Annexure A-4, the Railway Board has replaced the existing Annexure-IV to para 510 of Indian Railway Medical Manual, 2000. By the revised Annexure-IV to said para wherein it has been stated that the posts of Section Engineer Grade-I and



Grade-II fall under the category of "All Staff authorized to work Trolley's on open line" carry the medical category of "A-three". However, "all Electrical Traction Maintenance/Artisan Staff unless specified in other categories", require only B-one medical categorization. Annexure A-5 in the present OA is the extract of the un-amended version of Annexure-IV of para 510 of the Indian Railway Medical Manual Volume-I (3rd edition-2000 corrected upto 30.9.1999), according to which, while "Electrical Traction Inspectorial Supervisory Staff" come under A-three medical classification, "Electrical Traction Maintenance Artisan Staff" come under the B-one category.

4. After the aforesaid order of the Tribunal in OA 448 of 2006 the respondents have issued the Office Order No.J/TRD.23/07 dated 23.5.2007 promoting the applicant as Junior Engineer Gr.I/TRD in Palghat Division. Further, vide Memorandum No.P(S) 535/VII/TRD/JEI/Vol.I dated 6.9.2007, he was transferred to Trivandrum Division. Vide Annexure A-6 Office Order No.J/TRD 23/07 dated 25.9.2007 he was informed that his promotion as well as the transfer were subject to the clarification regarding medical classification for the Supervising Staff of TRD Wing to be received from Railway Board and if the Board clarify that the Supervisory Staff are to be classified under A-three medical classification, then his promotion as well as his transfer to Trivandrum Division will be rescinded. Side by side, the respondents have also made a reference to the Railway Board for a clarification in this regard.

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5. The next promotion of the applicant in the channel of promotion was to the post of Section Engineer (TRD) in the scale of pay of Rs.6500-10500. In order to fill up 15 vacancies of the said posts (5 SC, 2 ST and 8 UR), the respondents have issued the Annexure A-7 notification dated 21.2.2008 alerting those who fall within the zone of consideration. In the said Annexure A-7 notification, the applicant's name was at Sl.No.30. He qualified in the examination with 87.5% marks as against the minimum qualifying marks of only 60% and the result of the examination was published by the Annexure A-8 letter dated 16.5.2008. His name appears at Sl.No.13 in the said letter. Thereafter, he and other qualified persons were sent to the mandatory training for 24 days from 16.6.2008 to 12.7.2008 at the Training College at Avadi. After having successfully completed his training, he was relieved to report back to his headquarters. Thereafter, he was promoted as Section Officer (TRD) with the approval of the General Manager vide Office Order dated 1.9.2008 (Annexure A-11) which contained a stipulation that the Controlling Officer/Supervisory Officials concerned should ensure that the employees are found fit for promotion in the appropriate Medical Classification for the post to which they are posted. When the applicant was not relieved from his present post of Junior Engineer Gr.I to join the post of Section Engineer to which he has been promoted, he submitted the Annexure A-12 representation dated 30.10.2008 requesting the respondents to issue the necessary orders to effect his promotion with effect from 1.9.2008, without compelling him to go for another medical examination as he was already holding the responsibility of SE/OHE/ALLP. It was in response to the said letter that

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the respondents have issued the impugned Annexure A-1 order dated 21.1.2009 to the applicant stating that his promotion as Section Engineer in the TRD Unit cannot be allowed in terms of Railway Board's letter No.99/4/7/1/NR dated 30.5.2003 (Annexure A-4), according to which, the medical classification of Section Engineers Gr. I and II is A-three for which he has already been declared unfit. The applicant submitted that the said Annexure A-1 order is totally arbitrary, discriminatory and illegal because in the employment notifications issued by the Railways (Annexure A-13 series) inviting applications for appointment to the post of Section Engineer (Electrical) it has been clearly stated that the medical classification for appointment to the said post is B-one and not A-three as contended by the respondents. The applicant has also submitted that in the whole of Indian Railways excepting in Southern Railway, the Junior Engineers/Section Engineers belonging to the Traction Distribution Unit are required to fulfil only in B-one medical classification. That was the position in Southern Railway also until the controversy was raised for the first time when his promotion to the post of Junior Engineer Gr.I fell due, which was resolved by this Tribunal. The applicant has also submitted that in the Traction Distribution Unit, there are three Wings, namely, (a) OHE (Overhead Equipment) (b) PSI (Power Supply Installation) and (c) TPC & RC (Traction Power Control & Remote Control). For all the above three different units, a common cadre of Junior Engineers/Section Engineers was being maintained with a common seniority, free mobility and inter-changeability. The applicant has, therefore, prayed in this OA to call for the records leading to Annexure A-1 and quash the same. He has also sought a



direction to the respondents to promote him as Section Engineer (TRD)/ Trivandrum Central and direct further to grant all consequential benefits including arrears thereof from the date from which his juniors in Annexure A-10 were promoted as Section Engineers.

6. The respondents in their reply submitted that when the applicant became due for promotion as Junior Engineer Gr.I he was sent for medical examination and was found unfit in A-three medical classification, the classification required for Supervisors as per Annexure A-4. As such he was not considered for promotion as Junior Engineer Gr.I as per Annexure A-3 order. However, pursuant to the order of this Tribunal dated 26.4.2007 in O.A.448/06 (supra), he was promoted on provisional basis as Junior Engineer Gr.I in the Traction Distribution Unit, Palakkad Division vide Office Order dated 23.5.2007 subject to the clarification regarding medical classification for the supervisory staff of TRD Wing to be received from Railway Board. If the Board clarify that the supervisory staff of TRD Wing are classified under A-three medical classification, then the promotion of the applicant as Junior Engineer Gr.I as well as the transfer to Trivandrum Division would be rescinded. They have also submitted that the post of Junior Engineer Gr.I was controlled by Headquarters till 1.8.2006. As regards the posts of Section Engineers Gr.I and II who are authorised to work on Trolleys on open line are concerned, they have stated that as per Annexure A-4 letter of the Railway Board No.99/H/7/INR dated 30.5.2003, the medical classification is A-three and the applicant has already been declared unfit for the said classification. Therefore, he has not been



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relieved from his present post of Junior Engineer Gr.I to carry out the promotion. They have also submitted that the matter was referred to the Chief Personnel Officer, Headquarters, Chennai for granting him promotion provisionally as Section Engineer subject to the outcome of the decision as in the case of his promotion as Junior Engineer Gr.I. The Headquarters, after considering the issue at length and after obtaining the approval of CEE, advised that the post of SE/TRD requires A-three medical classification in view of item 4 (10) in the Annexure A-IV to para 510 of IRMM (Annexure A-4) since SE/TRD has to undertake routine Trolley Inspections in accordance with para 20323 of ACTM which reads as under :-

20323 Trolley Inspection of OHE

Inspection of OHE by push trolley is essential except in sections where use of trolley is prohibited. The object of such inspection is to enable supervisors and officers in-charge of OHE maintenance to observe closely the OHE under their charge and should be carried out during day time. The depot-in-charge (TFO or ATFO) should inspect his entire section once a month. CTFO/AEE(TrD) should inspect their respective sections once in 3/6 months respectively by push-trolley or motor-trolley as convenient. Sr.DEE/DEE(TrD) also should cover his entire section at least once a year by push-trolley or motor-trolley.

2. Apart from trolley inspection as above, officers and senior subordinates shall travel by the cabs of locomotives and EMU trains as often as possible but atleast once a month to observe the general condition of OHE and to get a first-hand knowledge of operating conditions.

7. In the rejoinder filed by the applicant, the applicant has submitted that the medical classification required for the post of Section Engineer (TRD) is regulated strictly in accordance with Annexure A-4 order dated 30.5.2003 issued in amendment to para 510 of the Indian Railway Medical



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Manual 2000. According to the said Annexure A-4 order, all electrical traction maintenance/artisan staff unless specified in other categories the medical classification required is only B-one and not A-three. The applicant has further submitted that he does not belong to either the "Electrical Traction Inspectoral/Supervisory Staff" or "All staff authorised to work on trolleys on open line". Accordingly, it can never be said that he who has been proposed for promotion to the post of Section Engineer (TRD) belongs to the category under Annexure A-4 at Sl.No.10 under clause 4 below category A-three or at Sl.No.8 under the same category. Unless and until Section Engineer (TRD) was specifically brought under A-three classification, the respondents have no right, authority or jurisdiction to bring him under the classification of A-three for promotion to the post of Section Engineer (TRD). In the Annexure R-3 produced by the respondents nowhere it is indicated that the Section Engineer (TRD) has to carry out inspection of Trolleys in open line. He has also produced the Annexure A-14 notification published in Employment Notice No.RRB/CDG/EN-01/2009 dated 31.1.2009 inviting applications for the post of Section Engineer (Electrical) and Section Engineer (Electrical) TRD wherein the medical classification prescribed is B-one only. He has, therefore, submitted that the respondents are deliberately disobeying the Annexure A-2 order of this Tribunal by making false statement to defeat his legitimate claim and they are committing fraud on their employees similarly placed.

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8. We have heard counsel for both the parties. From the submissions made by the respondents themselves, it is clear that the ultimate authority to decide about the medical categorisation of different types of staff in the Indian Railways rest with the Railway Board. In the revised para 510 of the Indian Railway Medical Manual, 2000, different categories of staff including Section Engineer Gr.I/Gr.II are required to have category A-three medical classification. However, "all electrical traction maintenance/artisan staff unless specified in other categories" as mentioned in Annexure-IV to para 510 of IRMM, 2000 (Annexure A-4 of the OA) requires only B-one medical categorisation. When the applicant's turn for promotion as JE Gr.I (TRD) came, the respondents have raised similar objections. However, the respondents themselves decided to promote him as JE Gr.I pending receipt of clarification from the Railway Board. In the present case also, the applicant has already been promoted as Section Engineer in the scale of Rs.6500-10500 along with four other Junior Engineers Grade I. He was not relieved from his present post of Junior Engineer Gr.I to take up the promoted post of Section Engineer only because of the same dispute regarding his medical classification. Till the dispute is resolved by the Railway Board, the respondents themselves have proposed to grant him provisional promotion as Section Engineer as they have done in his case when his turn for promotion to the post JE Gr.I. However, the said proposal was not accepted by the Headquarters of the Southern Railway only because the SE/TRD has to undertake routine trolley inspections.

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9. In the above facts and circumstances of the case, we direct the respondents to treat the applicant as provisionally promoted as Section Engineer TRD/Trivandrum with effect from 1.9.2008 ie. from the date from which his juniors in Annexure A-10 letter dated 12.7.2008 have been appointed on promotion vide Annexure A-11 Office Order dated 1.9.2008 subject to the clarification in this regard to be received from the Railway Board and grant all consequential benefits except arrears of pay and allowances. He shall be relieved of his duties from the present post of JE Gr.I forthwith and he shall be permitted to assume the charge of Section Engineer TRD. However, the applicant shall not be authorised to work on trolleys on open line till the Railway Board's clarification about the medical categorization of the post of Section Engineer (TRD) is received.

10. With the aforesaid directions, this OA is disposed of. There shall be no order as to costs.

(Dated this 3rd day of March 2010)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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