

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 276 of 2006

Reserved on 6.1.2014

Pronounced on 9th January, 2014

**Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Mr. Shashi Prakash, Member-A**

Lallan Ram, aged about 57 years, S/o Sri Murat Ram, R/o 563/59 Chitragupta Nagar, Lucknow.

.....Applicant

By Advocate : Sri Hari Ram

Versus.

1. Union of India through the General Manager, Northern Railway, Baroda house, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.

.....Respondents.

By Advocate : Sri B.B. Tripathi

O R D E R

By Shashi Prakash, Member (A)

The present O.A. has been instituted for seeking direction to respondent no.1 for calling the applicant to appear in Viva Voce test after fixing a specific date and intimating the same to him 15 days in advance. The claim of the applicant is based upon his clearance in the written examination for promotion from Group 'C' to Group 'B' post held on 3.9.2005 and 1.10.2005.

2. In nutshell the facts of the case are that the applicant who was working as Chief Booking Supervisor and posted under administrative control of Divisional Railway Manager, Northern Railway, Lucknow, appeared in the examination conducted for promotion from Group 'C' to Group 'B' post of Assistant Commercial Manager (in short ACM), Northern Railway, against 70% vacancies for the year 2005-2007 in the Traffic Department. For this purpose, a notification had been issued by respondent no.1 on 20.7.2005. Under the scheme of selection/promotion envisaged in this notification, the eligible candidates had to pass written test and appear in Vive Voce, which was scheduled to be

held on different dates. The written test in pursuance of the above notification was held on 3.9.2005 and 1.10.2005. In the aforesaid written test, 19 candidates were declared successful against 12 vacancies for General category and 07 vacancies for Scheduled Caste category. Seven candidates belonging to Scheduled Caste category were declared successful under the posts amongst best failed candidates. Thereafter successful candidates were subjected to medical test before being called for Viva Voce. Under the directions issued by respondent no.2, candidates were directed to appear before Divisional Medical Officer, Northern Railway, Lucknow. It is averred in the O.A. that the medical examination was directed to be conducted under para 530 (a) of Indian Railway Medical Manual, Vol. I. (In short IRMM). Under the aforesaid medical examination, the applicant was declared medically fit for Group 'B' under para 530 (b) of IRMM vide certificate dated 24.12.2005 (Annexure-5). It is further stated in the O.A. that pursuant to the applicant being declared medically fit for Group 'B' post, the applicant should have been called for appearing in viva voce, which was scheduled to be held on 5.1.2006. However, the applicant was not called for viva voce and was prevented to appear for the same without assigning any reason. The list of successful candidates was published by the respondents on 10.1.2006 in which the name of the applicant did not find place. Despite repeated representations to various authorities and personal contacts, the applicant has not been furnished any satisfactory reply for the failure on the part of the respondents to call him for viva voce to which he was entitled after he had cleared both written and medical examinations. Aggrieved by this action of the respondents, the applicant has filed the present O.A.

3. In the Counter Reply filed by the respondents, they have contested the contentions made by the applicant. In the first place, it has been stated that the reason why the applicant was not allowed to appear in viva voce was due to the fact that six candidates were required to be promoted with reference to the O.A. pending before Ahmadabad Bench of this Tribunal wherein interim order was passed and six candidates were required to be called for viva voce. Out of these six candidates, two candidates belonged to Scheduled Caste/Scheduled Tribes category. On this

account, the vacancy of Scheduled Caste category was reduced from 07 to 05. As the applicant was placed at sl. No. 6, it was not possible for the respondents to consider the case of the applicant.

4. It has been further stated in the Counter Reply that the medical examination of the applicant was conducted under para 530 (b) of IRMM; whereas the post to which the applicant was being considered for promotion required medical examination under para 530 (a) of IRMM; which related to technical post(s). It is also pleaded by the respondents that when the applicant was subjected to medical examination under para 530 (a) of IRMM as was required, he was declared unfit and, therefore, ineligible for being called for viva voce. It is also stated that the fact of the applicant being declared unfit in the medical examination under para 530 (a) has been concealed by the applicant in his O.A. The respondents have admitted that undertaking of medical examination under para 530 (b) of IRMM by the Senior Medical Officer, Northern Railway, Lucknow was on account of a clerical mistake, which was later-on rectified by having another medical examination of the applicant under para 530 (a) of IRMM, which was the relevant medical examination for the category of the post in question. Lastly, it was stated that as the applicant did not qualify in the relevant medical examination needed for being called for viva voce, therefore, his claim for being called for viva voce is not tenable and O.A. is liable to be dismissed.

5. Sri Hari Ram, learned counsel for the applicant argued that it is plain from the proceedings that the applicant had passed written examination as well as found medically fit in medical examination for Group 'B' post and, therefore, there was no reason why he had not been called for viva voce. He argued that if the mistake relating to para (b) under which the medical examination of the applicant was to be conducted was due to fault of the respondents, the applicant should not be penalized on that account. Taking into account the totality of facts and circumstances as brought-out in the O.A, the applicant fully deserves to be called for viva voce and depriving him this opportunity is violative of relevant rules in the matter. Hence O.A. needs to be allowed.

6. Sri B.B. Tripathi, learned counsel for the respondents stated that there are two main reasons on the basis of which the applicant could not be called for viva voce despite having passed the written examination. In the first place, the number of vacancies for scheduled Caste candidates was reduced to 05 from 07 on account of compliance of interim order passed by Ahmadabad Bench of this Tribunal and since the applicant was placed at sl. No. 6, he could not be considered for viva voce. The second reason cited by him is that according to rules, the medical examination of the applicant was required to be undertaken under para 530 (a) of IRMM as the post pertained to the Commercial Department. In the medical examination undertaken under this para, the applicant was not found to be medically fit and, therefore, there was no question of his being considered to be called for viva voce. Accordingly, the applicant does not have any basis for obtaining the relief as sought by him in the instant O.A.

7. Heard the learned counsel for the parties and perused the pleadings on record.

8. The short question to be adjudicated in the present O.A. is whether as per rule applicable in this case the applicant was entitled for being called for viva voce subsequent to his passing of written examination. Without going into the question of availability of vacancies, we would like to examine the eligibility of the applicant for being called for viva voce on the basis of extant rules as laid down in IRMM in this regard. It would be relevant to refer to the provisions of 530 of IRMM, which relates to medical examination of railway employees on promotion from Non-gazetted to Gazetted post. The specific provision as applicable in this O.A. as contained in para 530, is reproduced below:-

“530. Classification of gazetted posts for the purpose :- For the purpose of examination of visual acuity of Railway employees promoted from non-gazetted to gazetted post, the gazetted posts should be divided into two categories as follows:-

(a) All posts in Mechanical, Electrical, Civil, and S&T Engg. And Traffic (Transportation and Commercial) Department.

(b) *All posts in other departments which are not connected with train working or use of trolley on open line."*

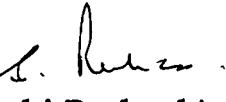
From the above, it is seen that the posts which are falling in the departments having technical nature of work have been placed in category 'a'. Amongst others, they include the Traffic department, which is inclusive of Transportation and Commercial department. The posts belonging to departments carrying out function of non-technical nature are mentioned in category 'b'. The promotion involved in this O.A. is to the post of Assistant **Commercial** Manager which squarely falls as per the above mentioned classification in category 'a'. Therefore, any person seeking promotion to the aforesaid post requires to be of medical standard as per the standard laid down under category 'a' post of para 530 of IRMM. In the present case, it is seen that though the applicant was found medically fit for the posts belonging in category 530 (b) of IRMM, he was, however, declared unfit for the posts mentioned in category 'a' of para 530 of IRMM. Once he did not meet the medical requirements for the post for which he was seeking promotion, he ceased to have any claim in this regard. The fact that the applicant was found medically fit for Group 'B' posts falling in category 'b' of para 530 of IRMM does not provide any basis to him for staking his claim to the post of ACM, which is a category 'a' post. It is conceded by the respondents themselves that conduct of wrong medical examination of applicant was due to a clerical mistake and realizing this mistake, they ordered a second medical examination as per requirement. A department has an inherent right to correct its mistake once it is detected. The applicant would have been eligible for the post only if the prescribed medical standard as laid down in para 530 (a) of IRMM was fulfilled by him. Once he found that he had been declared medically unfit for Group 'B' post falling in para 530 (a) of IRMM, it was upto him to have filed an appeal within the prescribed time against the findings of medical report declaring him unfit and seek necessary rectification in the matter. However, it seems that he did not avail this opportunity. It is settled preposition that if a particular medical standard is prescribed for eligibility to a particular post, unless this standard is met, a person does not have any claim to that post. In this regard it may be pertinent to

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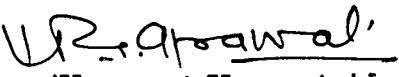
cite the view of the Apex Court in such matters. In the case of R. Prabha Devi Vs. Union of India & Others reported in (AIR) 1998 SC 902 the court has clearly laid down that a person must be eligible for promotion having regard to the qualification prescribed for the post. Similarly in the case of Chandigarh Administration Vs. K.K. Jerath reported in (1994) Supp. (3) SCC 582 it has been observed that it is the duty of the authority concerned to consider whether the applicant fulfills the requisite qualification for being considered for promotion.

9. For the foregoing reasons, the applicant is clearly not eligible for the post, in question, and, therefore, the respondents in not calling him viva voce have acted in accordance with rules laid down in the matter.

10. In view of the above facts and circumstances, we do not find any merit in the O.A. which is accordingly dismissed. No costs.


 (Shashi Prakash)
 Member-A

Girish/-


 (Navneet Kumar)
 Member-J