

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No. 53 of 2010

Order Reserved on 15.7.2015

Order Pronounced On 23/7/15

**HON'BLE MR. NAVNEET KUMAR, MEMBER(J)
HON'BLE MS. JAYATI CHANDRA, MEMBER(A)**

Harish Chandra Pal, aged about 36 years, s/o Late Shri Bhagirithi Pal, resident of -563/199, Chitragupta Nagar, Alambagh, Lucknow

Applicant

By Advocate Sri Praveen Kumar.

VERSUS

1. Union of India, through General Manager, South Eastern Railway, 11, Garden Reach Road, Kolkata.
2. The Chief Personnel Officer, South Eastern Railway, 11, Garden Reach Road, Kolkata.
3. The Divisional Railway Manager(P), SE Railway, Kharagpur.
4. The Assistant Personnel Officer, Railway Electrification, Charbagh, Lucknow.

Respondents

By Advocate Sri B. B. Tripathi.

ORDER

HON'BLE MR. NAVNEET KUMAR, MEMBER(J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- “1. To consider the case of the applicant for putting him in the pay scale Rs. 6500-10500/- for which he was originally appointed with all consequential benefits.
2. To direct the respondents to count the period when he applied for alternative job towards all service benefits like seniority, qualifying service etc. with all consequential benefits.
3. Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, also be passed.
4. Cost of the present case.”

2. In pursuance of advertisement, the applicant applied and he was selected on the post of Apprentice Signal Engineer in pay

scale Rs. 6500-10500/-. In the year 2004, he was called for verification of documents and was offered an appointment and thereafter directed to participate in the training prescribed for the said post. The applicant was declared fit in C-Two category in the medical examination and thereafter, the applicant requested for providing alternative appointment. He was also asked for further medical examination for alternative post. Despite this fact that he was selected on the post of Section Engineer in pay scale of Rs. 6500-10500/- was directed for posting on the post of Junior Clerk in grade Rs. 3050-4590 under the garb of unfitness in medical standard. Subsequently, in 2008, the applicant was sent on deputation in Lucknow in Railway Electrification. In 2009, he again represented and when nothing was heard, the present O.A. is preferred by the applicant.

3. On behalf of the respondents, detailed reply as well as the objections/supplementary counter reply is filed through which it is categorically indicated by the respondents that the applicant was medically unfit in A-three which is requisite criteria for the post of Apprentice Section Engineer (T.T. Org.), as such he was not allowed to participate in prescribed training as per rules. The learned counsel for the respondents has also taken a shelter of Railway Board's letter dated 26.10.1962 and has indicted that if a candidate selected for Technical category fails in the prescribed medical examination, he may be considered for alternative technical category provided he possess the requisite qualification and if there is a shortage in that category subject to being medically fit for that category. Since the applicant found fit in C-two medical classification, therefore, efforts were taken for obtaining approval from the then competent authority for extending alternative appointment to the applicant and

subsequently, approval of the General Manager was communicated for arranging posting of the applicant in the Division as Junior Clerk as there was no vacancy/post available in C-two classification other than Junior Clerk in scale of Rs. 3050-4590. Accordingly, the alternative appointment was extended to the applicant. The learned counsel for the respondents also relied upon a decision of the coordinate Bench of this Tribunal through their supplementary counter reply passed in O.A. No. 951 of 2008 connected with O.A. No. 952 of 2008 and has indicated that the identical matter has been adjudicated by the Calcutta Bench of the Tribunal and through which the Tribunal declined to interfere and dismissed the original application taking into account the Railway Board circular dated 20th August 1999. The contention of the applicant in regard to the similarly situated person is concerned, the respondents have categorically indicated that the office of the respondents does not have the records of A. K. Prajapati who was offered alternative appointment in pay scale of Rs. 5000-8000/. The learned counsel for the respondents has also indicated that there is no ambiguity in the offer of appointment in respect of the applicant, therefore, it does not require any interference by this Tribunal.

4. On behalf of the applicant, rejoinder is filed through which, the averments made in the O.A. are reiterated and the contents of the counter reply are denied.

5. Heard the learned counsel for the parties and perused the record.

6. In pursuance of notification issued by the RRB, Calcutta, the applicant applied for the post of Apprentice Section Engineer in pay scale of Rs. 6500-10500/. He was called for verification of the original documents and after the panel prepared by the RRB

Calcutta, offer of appointment letter was issued to the applicant vide letter dated 27.1.2006 with a stipulation that the applicant has been selected for undergoing training in the Engineering Department for a period of 12 months subject to passing the prescribed medical examination i.e. A-three and proof of testimonials. Subsequently, the respondents issued the medical memo for which medical memo was prepared to send the applicant to undergo training which is to be requisite training and appointment to the post for which he was selected. In the medical examination, the applicant was declared medical unfit in A-three medical examination which is requisite criteria for the post of Section Engineer (T.T. Organization) as such, he was not allowed to participate in the prescribed training as per rules.

7. The Railway Board circular dated 26.10.1962 provides as "**if a candidate selected for a technical category fails in the prescribed medical examination, he may be considered for an alternative technical category provided he possess the requisite qualification and there is a shortage in that category subject to the being medically fit for that category.**" In pursuance thereof, the applicant so advised for remedial examination for consideration on an alternative appointment if otherwise he comes fit on the lower medical classification.

8. It is also indicated by the respondents that the applicant found fit in C-two classification, therefore, the efforts are made to obtain the approval from the then competent authority for extending alternative appointment to the applicant and subsequently after obtaining vacancy position, the approval the then General Manager was communicated and the applicant was given an alternative appointment as Junior Clerk in

scale of Rs. 3050-4590. It is also indicated by the respondents that extension of alternative appointment in the same cadre and in the same scale to the medically unfit candidate is not binding/mandatory and the competent authority may consider alternative appointment in any category where vacancy is available at the material time and it is required to be filed in. The learned counsel for the applicant has submitted that since the applicant was selected in pay scale of Rs. 6500-10500 and he was not given the appointment on a lower scale. It is arbitrary action of the respondents as such, he has also submitted the representation to authorities.

9. The learned counsel for the respondents submits that after the applicant has accepted alternative appointment offered to him, he now turned around and asked for higher pay scale. Admittedly, the applicant was not selected in the pay scale of Rs. 6500-10500, as not being declare fit in A-three category he was re-examined and after re-medical examination he was found fit C-two category as such, he was given an appointment in the pay scale of Rs. 3050-4590 on the post junior clerk. It is also submitted by the respondents that as per the Railway Board circular dated 26.10.1962, he was given alternative appointment and the said privilege was withdrawn by the respondents in the year 2009 through RB No. 90/09 and it has been decided to dispense with the existing provision of alternative appointment which inter alia says that "**considering all the aspects, Board have decided to discontinue the policy of providing alternative appointment to the medically unfit empanelled candidates selected through RRBs/RRCs for any Group C or Group B posts.**" Though the applicant was selected as Apprentice Signal Engineer in the pay scale of Rs. 6500-10500,

but not being medically found fit in A-three category, was given alternative appointment on the post of Junior Clerk in the pay scale of Rs. 3050-4590 and the said provision subsequently withdrawn by the respondents through RB No. 90/2009 and the applicant has already joined as such, now the applicant cannot claim higher pay scale on which he was not appointed, as such, we are not inclined to interfere in the present O.A.

10. Accordingly, the OA is dismissed. No order as to costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)

VR. Agarwal
(Navneet Kumar)
Member (J)

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