

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

O.A. No 60 of 2006
[With MA No. 42 of 2006]

Date of order : 16th February 2012.

C O R A M

Hon'ble Mr. Naresh Gupta, Member [A]
Hon'ble Mrs. Urmita Datta (Sen), Member [J]

Muraree Kumar, S/o Shri Dineshwar Prasad Singh, r/o C/o Prabhat Press, Pethia Gachchi, District – Samastipur.

.....Applicant.

By Advocate : Shri G. Bose, Shri V. Jha and Shri Ajay Kumar

Vs.

1. The Union of India through the General Manager, N.F. Railway, Maligaon, Gauhati.
2. The General Manager, N.F. Railway, Maligaon, Gauhati.
3. The General Manager [Personnel], N.F. Railway, Maligaon, Gauhati.
4. The Assistant Personnel Officer [Test], N.F. Railway, Maligaon, Gauhati.
5. The Chairman, Railway Recruitment Board, Maligaon, Gauhati.

.....Respondents.

By Advocate : Shri N.K. Sinha

ORDER

Naresh Gupta, M [A] - This OA has been filed by one Murari Kumar seeking a direction to respondents to appoint him in the category of ASM or Guards or in any other category in the scale of pay of Rs. 4500-7000/- or in the alternative to consider his case and appoint him in a lower medical category. The case of the applicant is as follows:

2. The Railway Recruitment Board, Guwahati issued an Employment Notification [No. 1 of 2000] for filling up certain categories of posts in the N.F. Railway, including the post of Goods Guard which was mentioned under category No. 2. The applicant applied with reference to this notification and qualified in the recruitment examination and as such by call letter dated 16.11.2002 issued on behalf of the Chairman, RRB, Guwahati, he was directed to attend the office of the RRB, Guwahati for verification of original certificate and testimonials [Annexure A/1 of OA]. However, when he went to the office of RRB, Guwahati, he was informed that due to non-availability of adequate vacancies in the Goods Guard category in scale of Rs. 4500-7000/-, his appointment was not likely to materialise in near future. He was offered the

post of Assistant Station Master in the same scale i.e., Rs. 4500-7000/-. The APO/TEST on behalf of the General Manager [P], Maligaon, Guwahati issued a letter dated 20.05.2003 directing the applicant to appear in counselling and psychological test for appointment as ASM [Annexure A/2 of OA]. In the psychological test and medical test held on 26/27.06.2003, he is said to have been found suitable, and he was then directed by the GM[P] to report in his office on or before 21.07.2003 for training at the Zonal Training Centre /Alipore Duar Junction, scheduled to commence from 24.07.2003 for 118 working days [Annexure A/3 of OA]. However, the applicant received no communication regarding his appointment as trainee ASM or indicating why he was not being sent for training. He was told that some alternative job like Goods Guard, Reservation Clerk would be given to him in due course. The applicant, therefore, made a representation to the GM [P], N.F. Railway, respondent No. 3 on 03.04.2004 [Annexure A/4 of OA] stating that though he was selected for the post of Goods Guard in pursuance of the Employment Notice and passed in the psychological test meant for ASM, but was not selected as such, and therefore, he prayed for an alternative appointment in equivalent grade either as Goods Guard or Reservation Clerk etc. This representation was followed by a reminder dated 28.04.2004 [Annexure A/4-1 of OA].

3. It is contended that once the applicant was declared suitable in the tests, there could not have been any cause for not allowing him to join the training and assuming that the applicant was not declared medically fit in eye test for the category of ASM, he ought to have been considered for an alternative job in the lower medical category, the decision for which had been taken at the level of Railway Board dated 31.01.2005 and 02.02.2005 indicated in the letter dated 26.05.2005 issued from the GM [E], Church Gate to the DRM [E], Bombay Central Railway [Annexure A/5 of OA] [making it incumbent upon the Railway Officials to test for lower medical category also]. The applicant thereafter went on making representations to the respondent authorities [by registered post] on 10.07.2004 [Annexure A/6 of OA], 28.07.2005, 19.7.2005 [Annexure A/6-1], 27.11.2005 [Annexure A/6-2], 05.12.2005 and lastly on 12.12.2005.

4. The respondents in their written statement have stated at the out-set that the OA was barred by limitation, the application being filed after a lapse of two and half years. Although the applicant was selected for the post of Goods ^Guard by the RRB,

Guwahati vide letter No. RRB/G/Con/155 dated 20.12.2002 against category No. 2 of the Employment Notice No. 1 of 2000 due to man power planning scenario in the particular Zonal Railway, when redeployment of huge number of Sr. Asstt. Guards and Asstt. Guards had become inevitable in all the Divisions in the Zone and, at the same time there were a large number of vacancies in ASMs category, it was decided to conduct psychological test with the approval of G.M as a temporary measure from the selected Goods Guard, to help tide over the shortage in SM/ASM cadre and the same was approved by the Railway Board vide letter dated 10.11.2004. Accordingly, the applicant was advised to attend the psychological test along with other candidates and after being found suitable in the test, he was sent for medical examination for ASM category [A/2 medical category], but was found unfit in the A/2 medical category. Those who were found suitable in psychological test and fit in the medical category were directed to join ZRTI/APDJ for training as ASM, **but the candidates who were neither found suitable in the psychological test nor in medical category A/2 [prescribed medical category for both ASM and Goods Guard]** were not appointed in the Railway in terms of Railway Board's letter No. E [RRB]/2001/25/21 dated 04.09.2001. As the applicant though found suitable in the psychological test, was unfit in medical category of A/2, he was not directed to join ZRTI/APDJ for training of ASM and also not appointed as Goods Guard. To summarize, the applicant though formally selected for the post of Goods Guard, subsequently on administrative necessity he was subjected to psychological [Aptitude] Test for the post of ASM, but was found unfit in the medical category of A/2 and therefore, he could not be deputed for the training at ZRTI/APDJ. The medical category for Goods Guard for which he was selected is also A/2 and as such he was also not suitable for that category in terms of the Railway Board's letter No. E(RRB)/2001/25/21 dated 04.09.2001 [Annexure R/1 of W.S].

5. In the rejoinder filed to the written statement, the applicant while not disputing the factual position as set out in the written statement, has submitted that a petition was filed for condonation of delay vide MA No. 42 of 2006 but the respondents did not file any reply against the same, and therefore, at this stage, the respondents could not raise any plea in regard to limitation. The applicant had initially applied against the

post of Goods Guard which was not a safety category post and when he had qualified in the written test, he could have easily been appointed in the grade of Goods Guard. The applicant has cited the case of one Sanjay Kumar Singh who had applied against the notification issued by the Railway Recruitment Board, Bhopal for the post of ASM and was not found fit in the medical category for the said post but was declared fit in a lower medical category of C-1 and appointed in Clerical Cadre as Commercial Clerk in a lower scale and then sent for training [Admit Card issued by the RRB, Bhopal with regard to Sanjay Kumar Singh and Appointment Letter dated 05.04.2001 issued by DRM [P], Mumbai CST marked as Annexures A-7 & A-7¹ of rejoinder]. Again, the DRM[P], Central Railway, Bhusawal by his order dated 30.10.2001 appointed one Shri Ambuj Kumar as Mason Grade III in scale of Rs. 3050-4590/- [RSRP] though he was selected as Apprentice [P. Way] on scale of Rs. 4500-7000/-. He was so appointed as he was not found fit for in medical category of AMP [P. Way] but found fit in B-2 category, a lower medical category [Office order dated 30.10.2001 issued by the DRM [P] Bhusawal marked as Annexure A-8 of Rejoinder]. There are similarly other instances wherein alternative appointments in case of medically de-categorized /unfit candidates were made in pursuance of the orders of the Courts.

6. The applicant has questioned the approach adopted in the case pointing out that when RRB notifies the vacancies, it is as per the indents placed by different Departments showing respective vacancies and if these vacancies were to be filled up by the Administration by re-deployment or any other mode, the Railway Administration ought not to have notified such posts for being filled up through RRB or should have cancelled the notification. When the applicant was declared selected in the written test and found suitable in the psychological test, he legitimately expected that he would be appointed to the post of Assistant Goods Guard which is a lower category than the ASM grade. The applicant could be considered for any other alternative post in scale of Rs. 4500-7000/- or even a lower scale. As far as the letter dated 04.09.2001 issued on behalf of the Deputy Director, RRB Railway Board is concerned, it was confined to the post of Assistant Drivers and Assistant Station Master which are absolutely safety category post.

7. The applicant has further stated in the rejoinder that this Tribunal in its order dated 21.07.2008 in the case of Risikesh Tiwary vs. UOI & Ors had given a

direction to the respondents under similar circumstances to consider the applicant for any alternative appointment either in the same scale or in any other post. Further OA No. 83 of 2007 [Sunil Kumar vs. UOI] was also disposed of by this Tribunal by its order dated 26.03.2008 taking into consideration that the RRB, Muzaffarpur had itself given an alternative appointment to the applicant. It is therefore, contended that if the applicant is denied appointment to any other suitable post, it would amount to discrimination and be violative of Articles 14 and 16 of the Constitution of India.

8. Heard the learned counsels for the applicant and the respondents on 16.01.2012 and perused the entire record. The learned counsel for the applicant during the hearing of the case cited the decision in CWJC No. 11167 of 2004. Anil Kumar Srivastava vs. Union of India & Ors, on 15.03.2010 wherein the Hon'ble Patna High Court directed the authorities to offer alternative employment of the level of ASM to the petitioner on the ground that the provision for alternative employment to medically deficient persons could not be restricted to only S.Cs /S.Ts and had to be provided to all similarly placed candidates, irrespective of religion, race, caste, sex, descent, place of birth, residence, or any one of them, and that the benefit of alternative employment provided in circulars dated 23.11.1979 & 07.11.1985 had to be extended to all such candidates. [The Hon'ble High Court observed that "*the respondents authorities saw reasons and extended the benefit of alternative employment to all such candidates by its circular dated 20.08.1999 [Annexure A/6] but the same had been made prospective in nature*"]. Further, the Hon'ble High Court pointed out that two similarly circumstanced persons were given alternative employment by the Railways in similar circumstances, notwithstanding the rigours of the circulars dated 23.11.1979 and 07.11.1985 and the petitioner had been subjected to hostile discrimination.

9. The learned counsel for the applicant furnished a copy of the decision in Commissioner of Central Excise, Bolpur vs. M/s Ratan Melting & Wire Industries, reported in 2008 AIR SCW 7963, wherein the Hon'ble Supreme Court held that circulars issued by the Board are not binding as against law declared by the Hon'ble High Court and Supreme Court. He also furnished a copy of the circular of Railway RBE No. 150/2000 [dated 7.8.2000] in which it has been laid down that the power of G.Ms to consider request from candidates of non-technical categories also, who fail in prescribed

medical examination after empanelment by RRB, for their posting in alternative categories [subject to certain conditions] would also cover Gr. 'D' categories also, subject to a restriction that the alternative categories being offered is one for which the Railway Board's application had been obtained for filling up vacancies, and that these instructions would apply to all candidates both from reserved as well as non reserved communities and for all categories of recruitment to Group 'C' & 'D' posts, subject to restrictions for Group 'D' mentioned above, and other conditions mentioned in Board's letter of even number dated 20.08.1999 and the earlier instructions contained in letters of 07.11.1985 and 26.10.1962.

10. On the other hand, the learned counsel for the respondents submitted a copy of the circulars/ letters of the Railway Board setting out the policy on appointment of candidates empanelled by RRBs but failing in prescribed medical examination for that category, in alternative categories. It is necessary to outline the instructions contained in these letters to understand the changes in the policy over the years. The subject-matter of these is as follows:

(1) Letter dated 20.08.1999- General Managers authorised to consider requests for appointment in alternative category of candidates in non-technical categories also of those who fail in prescribed medical examination after empanelment by RRB, subject to fulfilment of certain conditions. [Earlier, they were authorised to consider requests from candidates empanelled by RRBs but failing in prescribed medical examination for appointment in alternative technical categories (only), and SC/ ST candidates in non-technical categories also, subject to certain conditions.]

(2) Letter dated 07.08.2000 [RBE 150/2000] - Group D category will also be covered by the instructions in the above letter subject to the alternative category being one for which prior approval of the Board has been obtained for filling up vacancies and subject to other conditions indicated in the letter of 20.08.1999 and the earlier instructions contained in letters dated 07.11.1985 and 26.10.1962.

(3) Letter dated 04.09.2001- Candidates selected for the category of Assistant Driver/ ASM/ Motorman 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 and this fact would be mentioned in the employment notice so as to

discourage such candidates from applying. Further, the candidates for the categories of Assistant Drivers and ASMs would have to enclose a medical certificate from an eye specialist regarding vision in a prescribed proforma when they apply for these posts.

(4) Letter dated 31.05.2005- Candidates selected through RRBs, other than Diesel Assistants, Motormen and ASMs were eligible for alternative appointment in other equivalent grades in lower medical classification. After medical unfitness, the candidates would request for alternative appointment necessitating redirecting candidates for medical examination. In order to avoid delay, it was decided to issue medical memo to such candidates for medical examination showing the medical classification required for the post for which candidates were selected, and in event of their failing, the highest medical category for which the candidates were found fit.

(5) Letter dated 25.05.2009- Having regard to the fact that the provision of alternative appointment for which the genesis primarily lay in the high cost of recruitment, short panels and filling up of vacancies where there is acute shortage of staff, was being misused, and that a large number of candidates empanelled for the post of ASM/ Assistant Loco Pilot/ Motorman had been failing in the prescribed medical examination thereby resulting in short panels, the Railway Board had decided vide orders issued earlier in letter dated 04.09.2001 not to provide appointment in alternative posts to the medically failed empanelled candidates for these categories. Due to a large number of surplus/ medically decategorised staff awaiting re-deployment, it was not feasible to consider cases of alternative appointment to medically unfit RRB/ RRC empanelled candidates. Some candidates were taking this as a matter of right and misusing it for securing alternative appointment in non-technical popular categories posts where the level of competition was much tougher. Accordingly, the Railway Board had decided to discontinue the policy of providing alternative appointment to the medically failed empanelled candidates selected through RRBs/ RRCs for any Group C or D post.

(6) Letter dated 28.07.2010- Prior to the issue of the instructions in letter dated 25.05.2009, GMs of Zonal Railways were authorised to consider requests from such candidates for appointment in alternative category in same grade provided there was an acute shortage of staff in the alternative post. When the delegated powers ceased to exist with the issue of the above instructions [in letter dated 25.05.2009], it was immaterial

whether the case occurred before or after 25.05.2009 and, therefore, request for alternative appointment of medically unfit candidates should not be considered in any case.

11. The above letters indicate that the policy of alternative appointment had been in a state of flux resulting in uncertainty and doubt about the fate of the cases where the persons had been empanelled but could not be appointed in an alternative category prior to the change in policy due to the time taken in their seeking alternative appointment, redirecting them for medical examination in a different category, checking their eligibility and existence of vacancy for that category, and consequently litigation. In some cases, they were given alternative appointment by virtue of the orders of Courts.

12. The next question is whether the cases of those persons which had been taken up for processing prior to the date of effect of the revised policy [withdrawing alternative appointment] would not be affected by the change of policy. There is no ambiguity that the order of the Railway Board dated 04.09.2001/ 25.05.2009 has effect from the date of issue of the order. It could not have been otherwise as it would have led to the absurdity of annulling the alternative appointments made prior to the issue of the order [on the revised policy]. Normally cases pending as on the date of issue of the order of the Railway Board, if not finalised by that date, would be hit by the order. Any order of appointment at a point of time would be on the basis of the extant rules or instructions or policy. This is unlike the case where vacancies are notified for being filled up and it is specified that only those eligible as on a certain date would be considered and later there is a change in the qualifications etc. Further, in the case of alternative appointment, the appointment is not automatic as a result of some selection process. The General Managers have been authorised to only consider requests for alternative appointment in case of candidates found medically unfit after their empanelment by RRB. A candidate does not have any legal right to be appointed. He in terms of Article 16 of the Constitution of India has only a right to be considered therefore and this is required to be made in terms of the extant rules/ policy of the Government.

13. The decision in order dated 15.03.2010 of the High Court in CWJC No.11167 of 2004 filed by one Anil Kumar Srivastava against the order of this Tribunal dated 06.11.2003 in OA No. 533 of 2003, cited by the learned counsel of the applicant was

with reference to the earlier orders of the Railway Board and does not refer to the order in letter dated 04.09.2001 of the Railway Board by which the scheme of alternative appointment was withdrawn for Goods Guard/ ASM or the order communicated in letter 25.05.2009 by which the scheme of alternative appointment was withdrawn in entirety, and is therefore not applicable to the instant case. In the case of Anil Kumar Srivastava, the advertisement was issued way back in 1992. Much water has flowed down the Nile since then.

14. In this regard, it may be worthwhile to refer to R.D. Bohet ... vs Lt. Governor of Delhi, Govt. of NCT ... [on 24 November, 2006], in which the Central Administrative Tribunal, Delhi stated as follows:

4. A Constitution Bench in Union of India v. Chajju Ram , ruled that a decision is an authority for what it decides but not what can be logically deduced therefrom. A literal difference in facts or additional facts may lead to a different conclusion.

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6. In Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and Ors. , the Apex Court while laying down an authority over precedent, observed as under:

59 A decision, as is well-known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well-settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. See Smt. Ram Rakhi v. Union of India and Ors., Delhi Administration (NCT of Delhi) v. Manoharlal, Haryana Financial Corporation and Anr. v. Jagdamba Oil Mills and Anr. And Dr. Nalini Mahajan etc. v. Director of Income Tax (Investigation) and Ors.

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8. Sometimes a decision rendered by a coordinate Bench though binding as per the doctrine of precedent is not to be relied upon being a decision sub silentio. The aforesaid has been ruled by the Apex Court in Divisional Controller, KSRTC v. Mahadeva Shetty and Anr. , with the following observations:

23. So far as Nagesha's case (supra) relied upon by the claimant is concerned, it is only to be noted that the decision does not indicate the basis for fixing of the quantum as a lump sum was fixed by the Court. The decision

ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Therefore, while applying the decision to a later case, the Court dealing with it should carefully try to ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decedent are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as measure of social justice. Precedents *sub silentio* and without argument are of no moment.

9. In *Deb Narayan Shyam and Ors. v. State of West Bengal and Ors.* 2005 (2) SLJ SC 264, as regards a decision being *sub silentio*, it is ruled that it has no authority in law with the following observations:

15. *Salmond on Jurisprudence* (12th Edition), Prof. P.J. Fitzgerald has explained the concept of *sub silentio* as under:

A decision passes *sub silentio*, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass *sub silentio*.

15. It is also necessary to dwell on whether the applicant would have had legitimate expectation of appointment as the case was taken up for consideration before the withdrawal of the policy of alternative appointment by the Railway Board.

16. On the doctrine of legitimate expectation, in *National Buildings Construction ... vs S. Raghunathan & Ors., S. P. Singh & ...* on 28 August, 1998, the Hon'ble Supreme Court stated as follows:

20. *Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service (1985) AC 374 laid down that doctrine of "legitimate Expectation" can be invoked if the decision which is challenged in the Court has some person aggrieved either (a) by altering rights or obligations of that person which are enforceable by or against him in private law; or (b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he had received assurance from the decision-maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that it should not be withdrawn.*

21. *The Indian scenario in the field of "Legitimate Expectation" is not different. In fact, this Court, in several of its decisions, has explained the doctrine in no uncertain terms.*

22. *In Navjyoti Coop. Group Housing Society and others vs. Union of India and others, (1992) 4 SCC 477, the decision of the House of Lords in Council of Civil service Unions v. Minister for the Civil Service (supra) was followed and that decision was summarised in the following words:- "It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons."*

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25. *In Union of India and others vs. Hindustan Development Corporation and others, (1993) 3 SCC 499, the meaning of word "Legitimate Expectation" was again considered. Quoting from the case of Attorney General for New South Wales*

v. *Quin*, (1990) 64 Aust LJR 327, the following lines:- "To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the Courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law." the Court observed as under:-

"If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is "not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits", particularly when the element of speculation and uncertainty is inherent in that very concept."

7. In *Dr. (Mrs.) Chanchal Goyal vs State Of Rajasthan* [Appeal (civil) 7744 of 1997] on 18 February, 2003, the Hon'ble Supreme Court stated as follows:

"The principle of a substantive legitimate expectation, that is, expectation of favourable decision of one kind or another, has been accepted as part of the English Law in several cases. (*De Smith, Administrative Law*, 5th Ed.) (Para 13.030), (*See also Wade, Administrative Laws*, 7th Ed.) (pp. 418-419). Even so, it has been held under English law that the decision maker's freedom to

change the policy in public interest, cannot be fettered by the application of the principle of substantive legitimate expectation.

Observations in earlier cases project a more inflexible rule than is in vogue presently. This Court considered the question elaborately in Union of India and Ors. vs. Hindustan Development Corporation and Ors. (1993 (3) SCC 499). It was then observed that legitimate expectation was not the same thing as anticipation. It was also different from a mere wish to desire or hope; nor was it a claim or demand based on a right. A mere disappointment would not given rise to legal consequence. The position was indicated as follows:

"The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Such expectation should be justifiably legitimate and protectable."

17. It is clear that in the instant case, the doctrine of legitimate expectation cannot be invoked by the applicant to seek the relief sought in the OA.

18. However, this case has peculiar features. The applicant had applied for the post of Goods Guard in response to an employment notification of 2000 and qualified in the recruitment examination but due to manpower scenario in the particular Zone as indicated in para 4 above, he was considered for ASM category but was found medically unfit in A/2 category which was incidentally the prescribed medical category for both ASM and Goods Guard. He was told, according to him, that some alternative job like Goods Guard or Reservation Clerk would be given to him in due course. He made accordingly a representation to the GM[P], NF Railway, on 03.04.2004 [Annexure A/4 of OA] seeking alternative appointment in equivalent grade either as Goods Guard or Reservation Clerk and thereafter preferred several representations to the authorities but without avail. Further, there was a communication dated 26.05.2005 from the GM[E], Church Gate to the DRM, Bombay Central Railway [Annexure A/5 of OA] referring purportedly to some decision taken at the level of Railway Board dated 31.01.2005 and 02.02.2005 making it incumbent upon the Railway officials to test for lower medical category. The applicant has cited some cases in the OA and the rejoinder to WS of persons who were provided alternative appointment and it would amount to discrimination if the applicant's case is

not considered on the same lines if he was similarly placed.

19. In view of the position set out in paras 17 and 18 above, the respondents are directed to re-examine the case of the applicant for alternative appointment in the light of the above observations taking into account all the representations preferred by him earlier and treating this OA with its Annexures as an additional representation unhindered by the withdrawal of the scheme of alternative appointment for Goods Guard / ASM by letter dated 04.09.2001 or the scheme in its entirety by letter dated 25.05.2009, but subject ^{to} obviously ~~to~~ his eligibility and existence of vacancy/ vacancies in the alternative category and pass orders within a period of four months from the date of receipt/ production of this order. Inasmuch as the OA has been considered on merits, the question of limitation for which MA bearing No. 42 of 2006 was filed has become inconsequential. With this the OA stands disposed of along with the MA. No order as to costs.

Urmita Datta (Sen)
[Urmita Datta (Sen)] M [J]

Nareh Gupta
[Naresh Gupta] M [A]

/cbs/