

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

OA.NO. 344/86

Shri A.K.Jain
C/o. Shri T.R.Talpade,
Advocate, High Court,
Narottam Niwas, Ground Floor,
308 Jawaji Dadaji Road,
Nana Chowk, Bombay 400 007.

Applicant

V/S.

1. Divisional Railway Manager,
Central Railway,
Bombay V.T.

2. The General Manager,
Central Railway, Bombay V.T.

Respondents

CORAM: Hon'ble Member (A) Shri Ajay Johri
Hon'ble Member (J) Shri M.B.Mujumdar

Appearances :

Mr.M.S.Ramamurthy
Advocate
for the applicant

Mr.R.K.Shetty
Advocate
for the Respondents

JUDGMENT

Dated: 29.7.1988

(PER: Ajay Johri, Member (A))

By this application received under Section 19 of the A.T.Act, the petitioner, A.K.Jain, has challenged an order dated 27.2.1986 issued by the DRM(P), Central Railway, Bombay refusing to take him back on duty or providing alternate employment.

2. The applicant's case is that after undergoing a due process of selection, he was recommended by the Railway Service Commission for appointment to the post of Apprentice IOW on the Central Railway. After undergoing medical examination, the applicant was directed to report to Asstt. Engineer, Byculla to undergo six months in training against an existing vacancy of IOW Grade III. The applicant worked for nearly four months. Thereafter a report was made to the Asstt.Engineer, Byculla

that the applicant was hard of hearing and as a result was not able to communicate with the staff. The applicant was called by the Chief Engineer and was directed to undergo another medical examination for which he was sent on 22.12.1983. He submitted himself to the examination and a certificate was issued on 27.2.1985 declaring him fit in B-I category. When he was declared fit and he reported for duty his certificate was not accepted by the respondents and since there was some delay in consideration of his fitness certificate, he was directed to go through the medical examination again for another fitness certificate but even after obtaining the same he was not taken on duty. Later the certificates issued by the hospital were ~~however~~^{3x} called back and a special medical examination was ordered. On being again referred to the hospital authorities, the Additional Chief Medical Officer did not agree to re-examine the applicant unless he has completed six years of service. By this letter the medical authorities were asked to re-assess the applicant's fitness for an alternative post of draftsman or clerk. ^{2x On a second reference} The Additional Chief Medical Officer conveyed his opinion finally on 2.1.1986 and declared the applicant unfit for even category C-I & C-II on the grounds that he had not completed six years of service and the applicant was advised by the respondents that he could neither be taken back on duty nor considered for alternate employment as a fresh entrant. The reliefs now sought by the applicant are that the respondents be directed to allow him to join as IOW Gr.III and to treat his service as continuous from 5.9.1983 and in any event a direction be issued to the respondents to provide alternate employment as draftsman or as a clerk or any other suitable capacity befitting his qualification and he should also be paid arrears of emoluments from 9.1.1984 i.e. the date he was sent for medical examination.

3. While opposing the application, the respondents have said that in the four months period during which the applicant had worked, reports were received that he was hard of hearing and as a result he was not able to communicate effectively with the staff. In December, 1983 when the applicant was interviewed by the Chief Engineer (P&D), he was directed to the medical authorities for a check-up but the applicant did not turn up to collect the memo. till 30th December, 1983. After collection of the memo, he remained absent from duty for reasons best known to him. He also failed to attend the special medical examination which he was directed to attend on 9.1.1984. As a matter of fact, he reported sick and remained absent upto 12.3.1985. Even after under going the medical examination, the applicant remained away from duty for about 14 days as he showed up in the office only upto 12.3.1985. Considering the type of post on which he was to be appointed and the fact that the fitness certificate had become outdated, he was again directed for special medical examination by the Additional Chief Medical Officer. His previous medical certificate was treated as cancelled and the Additional Chief Medical Officer after examining him advised that he has not found him fit even for C-I & C-II category. According to the respondents having been found not fit he could not be taken back on duty and could also not be given alternate employment on account of his service being only four months. They have further stated that the applicant was interviewed with a view to consider him for appointment against handicapped quota. The applicant had produced in February, 1986 a certificate from Aliyawarjung National Institute for hearing indicating that he has hearing loss of 80 d.b. He could however not be given employment against physically handicapped quota as the vacancies reserved for such persons had to be filled after

being notified to the special employment exchanges in terms of existing instructions, and also because the applicant did not fall in the category of deaf and dumb. He did not satisfy the definition of deaf given in the Ministry's letter of 8.1.1978 which lays down that only those persons having hearing loss of more than 90 d.b. in the better ear or total loss of hearing in both the ears are treated as deaf and since his loss was only 80 d.b. he could not be considered as physically handicapped.

4. We have heard the learned counsels for both the sides. The contentions raised by the learned counsel for the applicant were that he should be considered for appointment against the handicapped quota for deaf persons and also that having ~~once~~ qualified for appointment and having been declared medically fit, the respondents could not now deny him the appointment which he had already joined. In any case if they consider that he is not fit for the job of IOW on account of the handicap, he should have been considered against the physically handicapped quota. On behalf of the respondents submission was made that the applicant had sought appointment by hiding his medical deficiency and now it has been finally determined that he is not fit for appointment as IOW and he has not done the minimum period of service after which a person could be considered for alternate employment so the applicant has no case.

5. We have considered the submissions made at the bar and also perused the results of the recommendations made by the Medical Board who examined the applicant in response to the direction given by the Tribunal on 17.3.1988. The Medical Board's recommendations are that the applicant can listen with right ear only at a distance of 8 ft., as compared to the requirement of 20 ft. and his audiometry shows the hearing loss of the better ear of 70-80 d.b. So he is not a fit person for railway

services in any category as per Indian Railway Medical Manual.

6. The recommendations of the medical board are specific and they apply to a person who is a candidate and wants to join railway service as a normal person. The medical board has not commented on the fact whether the applicant is also suitable for ^{being 31} giving any alternate employment under the handicapped quota. Our attention has been drawn to the Circular letter of 8.9.1986 which was produced by the learned counsel for the respondents in regard to the filling up of vacancy reserved for physically handicapped person in Group C & D service of the railways. This Circular permits direct recruitment in identified categories to the extent of the reservations allowed for handicapped persons and we understand that there are also definite instructions from the Government in regard to the procedure to be adopted for filling up the vacancies reserved for handicapped persons. The question before us is whether the applicant's case can be considered for absorption against physically handicapped quota without his case having been sponsored by the special employment exchanges meant for the physically handicapped. As far as the question of his being taken back as apprentice IDW after the discovery of his deafness which he had even at the time of initial medical examination is concerned, we feel that the applicant has no case. He had deliberately not disclosed his handicap at the time of the medical examination ^{31 and now} he cannot take shelter behind the fact of a wrong assessment and a wrong fitness certificate issued by the doctor who examined him initially. As a matter of fact, it was a serious lapse on the part of the doctor and we have no doubt the respondents must have

taken suitable action to avoid recurrence of cases of such nature which lead to unnecessary litigation of this type. Also he has done only four months' apprenticeship. The rules which have been framed by the railway as averred by the respondents also do not entitle him to be considered for an alternate job on the grounds of medical decategorization. As a matter of fact his initial appointment was abinitio wrongly done as he was not medically fit for the job and got his appointment incorrectly. However, the fact remains that the applicant is a diploma holder and except for his deafness he possesses the required qualification and therefore the talent that he possesses should not be lost on account of his handicap. We, therefore, feel that his case deserves to be considered against the reservation available for handicapped persons.

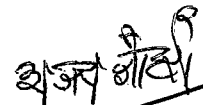
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7. There are definite rules in regard to recruitment of physically handicapped persons, it will be necessary that the applicant gets his case sponsored by the concerned special employment exchange after registering himself as a physically handicapped person, if he so qualifies, and if his application is sponsored the respondents would consider him for appointment against the vacancies reserved for deaf preferably in the civil engineering department where the list of posts reserved for deaf are tracer, Asstt. Draftsman and Design Assistant. We also understand that the respondents have given some intimation to the applicant on this aspect.

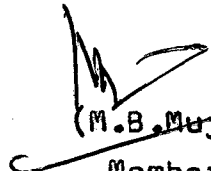
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8. As far as the vacancies against handicapped quota are concerned, the Government of India has issued various directions pointing out the necessity of making good these quotas. The 1986 circular also wanted the various departments to give details of the vacancies etc. We therefore, have no doubt that the respondents would have worked out the position in regard to the vacancies reserved for the handicapped in the nominated categories of various departments as given in the annexure to the 1986 circular. We, therefore further direct that if the applicant fulfills the requirements of the reserved quota for handicapped persons & vacancies exist at present he will be considered by the respondents against a suitable post within a period of 3 months of issue of these orders. If there are no vacancies available he will be liable to be considered immediately on the occurrence of a suitable vacancy.

9. We reject the prayers made by the applicant for being considered for appointment as IOW Gr.III and for considering him in continuous employment. He is medically unfit for the job and he sought his initial appointment by not disclosing the fact of his handicap. The appointment thus being abinitio void does not give him any benefit.

10. The application is disposed of on the above terms with no order as to costs.


(Ajay Johri)
Member (A)


(M.B. Mujumdar)
Member (J)