

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA.**

O.A. No. 428 of 2005

Date of order : 08.08.2006

**C O R A M**

Hon'ble Shri Justice P.K. Sinha, Vice-Chairman  
Hon'ble Shri S.N.P.N. Sinha, Member ( A )

Pushpendra Kumar Singh, S/o Late Udit Narayan Singh,  
resident of village – Prasando, P.O.Prasando, District –  
Munger.

....Applicant

By Advocate : Shri Krishna Prasad.

Vs.

1. The Union of India through the General Manager, North East Frontier Railway, Maligaon, Guwahati.
2. The General Manager ( P ), North East Frontier Railway, Maligaon, Guwahati.
3. The Divisional Railway Manager ( P ), N. F. Railway, Alipurduwar Jnction.

....Respondents

By Advocate : Shri Mukund Jee

**O R D E R (Oral)**

By Justice P.K. Sinha, V.C.:-

Heard learned counsel for both the sides.

2. Certain facts are not in controversy :- ( i ) In June, 2001, employment notice was issued by the railway for the post of Diesel Assistant Driver ( DAD in short) to which the

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applicant applied, ( ii ) the applicant claims that on 20.3.2004 he was provisionally empanelled for recruitment to the post of DAD, ( iii ) however, on 16.4.2004 the applicant was found unfit in A-1 category which was the prescribed standard medical category for appointment to the post of DAD. However, it is admitted that he was found fit in A-3 medical category, and since then the applicant has been awaiting his appointment to a post with A-3 medical category on account of certain circulars of the railways , as mentioned in Annexure A/5, reiterated in Annexure A/6. Annexure A/1 is also pointed out, which is a letter issued by DRM ( P ) , addressed to the General Manager ( P ) , N.F. Railway, Maligaon, mentioning cases of certain candidates who were not found fit in medical A-1 category but found fit in A-3 category, also recommending their appointment to certain posts in which medical requirement was that of A-3 category. In that context, the DRM ( P ) of N. F. Railway, Alipurdwar Junction recommended the case of the applicant for the post of Gate-man/Track-man in Engineering Department.

3. The grievance of the applicant is that he has not

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received any appointment letter for any post in medical A-3 category, which should have been issued to him by virtue of Annexure A/5.

4. However, while accepting that the applicant was so selected for the post of DAD and was not found medically fit for that post but was found fit in medical A-3 category, the respondents, in their written statement, have relied upon Annexure R-1, a circular issued by the Railway Board dated 04.09.2001, which also states that the Railway Board had decided that the candidates selected for the category of Assistant Driver/ASM/Motorman would 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.

5. The argument of the learned counsel for the applicant has been that this very Annexure R-1 also states that the Railway Board had also decided that for the categories as aforesaid, including that of the Assistant Driver, the candidates would be asked to enclose a medical certificate from an eye specialist regarding vision in a

prescribed proforma when they apply for these posts. It is also pointed out <sup>that</sup> in para 5 of that circular it is stated that the fact that candidates who fail in the medical examination for these categories would not be eligible for any alternative appointment in the railway should be mentioned clearly in the employment notice so as to discourage those candidates, who did not fulfill medical requirements, from applying. The learned counsel for the applicant submits that in the employment notice no such condition was given. The learned counsel for the respondents admits, on being asked, that the employment notice to which the applicant <sup>had</sup> applied had been published on 9.6.2001. Obviously, if this order ( in Annexure R-1) was issued on 4.9.2001, that instruction was not expected to be incorporated in the advertisement that was issued on 9.6.2001. Moreover,, that instruction in Annexure R-1 was only a precautionary step so that the candidates who did not conform to the medical standard would refrain from applying. Such precautionary measure, if not mentioned in the employment notice, which was issued prior to the issuance of circular in Annexure R-1, would not nullify the

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decision taken in Annexure R-1.

6. In so far as dependency of the applicant on Annexure A/5 is concerned, that provides for appointment of the candidate who was not found medically fit for the post for which he had applied. The General Managers were authorised to consider the request of the candidates of non-technical categories also for appointment in alternative category, subject to fulfillment of prescribed medical standard and other eligibility criteria. Through Annexure A/6, the circular dated 20.8.1999 has been reiterated. Annexure A/6 is dated 16.10.2000. Annexure A/7 dated 23.4.2004 is also pointed out, which again reiterates the previous circulars in this regard.

7. From perusal of these circulars it is manifest that these pertain to the posts in general in the railways to which applications have been invited for direct recruitment from the eligible candidates. They do not make any exception for any particular post. But the order of the Railway Board at Annexure R-1 is specific about three posts i.e., of Assistant Driver ( to which the applicant had applied), ASM and Motor-

*End*

-Man.


8. Now coming to Annexure A/1, it will appear that recommendation was made by a railway authority for alternative appointment to certain lower post, which was issued on 11.5.2004, but that recommendation is contrary to, and in contravention of, the circular of the Railway Board at Annexure R-1. An ignorant or negligent railway authority if makes a particular recommendation contrary to the order of the Railway Board, that cannot nullify the circular issued in that regard by the Railway Board. Annexure R-1 makes out an exception to the Circulars at Annexure A/5 to A/7, which exception would override the general order, and would be enforceable.

9. In view of Annexure R-1, we do not find that the prayer of the applicant can be allowed.

10. The OA stands dismissed. No order as to the costs.

  
[ S.N.P.N. Sinha ] M [ A ]

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[ P.K. Sinha ] V.C.