

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:396/2001
DATED THE 3RD DAY OF JULY, 2002.

**CORAM:HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT, VICE CHAIRMAN
HON'BLE SHRI B.N.BAHADUR, MEMBER(A)**

Hemant Kumar
Residing at
313, Geeta Enclave,
Krishna Nagar,
Mathura, UP
281 004.

... Applicant

By Advocate Shri G.S.Walia

v/s.

1. Union of India through
General Manager,
Central Railway,
Headquarters Office,
Mumbai CST,
Mumbai - 400 001.

2. Chief Personnel Officer,
Central Railway,
Headquarters Office,
Mumbai CST,
Mumbai - 400 001.

... Respondents

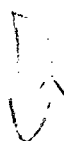
By Advocate Shri R.R.Shetty

(ORAL)(ORDER)

Per Shri B.N.Bahadur, Member(A)

The Applicant in this case comes up to the Tribunal seeking direction/orders to Respondent to absorb him in an alternative category since, although he had passed the selection for post of Traffic Apprentice, he has been declared medically unfit for this post. It is the case of the applicant that under Railway Board's orders he has to be considered and absorbed in an alternative post or category. Stating the facts of his case, the applicant has averred that he appeared at the selection process for the aforesaid post, fulfilled all conditions and after a written test and viva voce was declared successful and his name





included in the list of successful candidates for appointment as Traffic Apprentice. He however could not make it to medical fitness required for such post, having been declared unfit for A2 medical category after medical examination. The applicant refers to the Railway Board's order at Annexure A-4 and A-7 and states that, on this basis, he has a case for alternative employment, which the Railways were bound to provide. Some grounds are taken in this regard in this OA which, amongst others, were argued by Applicant's Learned Counsel, Shri G.S.Walia, and shall be discussed ahead.

2. The Respondents have filed a written statement admitting the basic facts of the Applicant case up to the point of medical examination, where he could not attain A2 category. The claim of the Applicant vis-a-vis the circulars is resisted by the respondents, stating that these are powers delegated to General Managers and can have only prospective effect whereas the case of the Applicant is one of selection of 1995 advertisement and declaration of medical status on 24/7/1997. The Respondents state that the matter also suffers from delay and laches, with reference to the same date 24/7/1997 and that no statutory appeal lies, as per rules, in such cases. The written statement also provides parawise replies. An additional statement has also been filed on behalf of respondents, in view of the order made by this Bench on 3/2/2001, directing the Respondents to take a decision on merits of the case within four months and bringing the facts thereafter before the Tribunal, through a written statement. (This order is made without prejudice to the claims made through this OA.)



3. The Learned Counsel for the Applicant, Shri G.S.Walia argued the case at some length pointing out first that soon after declaration of the medical result, the Applicant had applied for medical re-examination and that this was not considered. Another point made by Learned Counsel for Applicant related to the stand of prospective effect of circulars taken in reply statement of Respondents. He argued that well as the circulars may have come on 20/8/99 and 7/8/2000, the first circular came when his request for medical re-examination was pending. The argument was that once the new rule position has come when such an application is pending it could not have been said that it suffers from seeking retrospective effect. It was also argued that no reasons for rejection of his representation are assigned in the short letter made on 9/2/2001 (impugned order).

4. Arguing the case on behalf of Respondents, Learned Counsel Shri R.R.Shetty sought to depend on the stand taken that the circular would enable General Managers to exercise such powers and that it certainly cannot be sought to provide retrospective effect or a right to the applicant. He drew our attention to the additional written statement where a point is made that in view of specific directions of the Tribunal, the matter was re-considered on merits and a decision has been taken by the Respondents that they shall be unable to grant alternative appointment to the Applicant as the same is not within the frame work of the Rules of the Railway Board's circular. 60 other persons were involved, whose case were similar and where alternative appointment was not provided. It is argued that the case is devoid of merits.

Rs

5. We have considered the arguments made by the Learned Counsel on both sides and have carefully gone through the impugned order and specially the circular depended upon by both sides viz. circular dated 20/8/99 (Annexure A-4) and circular dated 7/8/2000 (Annexure A-7). It is seen that a policy decision has been taken through the letter at Annexure A-4 and General Managers are authorised to consider request from candidates empanelled for particular posts from Railway Recruitment Board, but failing in prescribed medical examination for appointment, for alternative categories of posts. The order made extends orders to non technical posts; earlier such instructions existed only for technical categories. There is some substance in the argument taken by the Respondents that if at all the benefit of such circular can be claimed it can only be with prospective effect. The decision declaring applicant medically unfit relates to the date of 24/7/1997 and this circular is dated 20/8/1999. It is a well settled principle that all such instructions envisaging change in policy concessions take prospective effect. In this regard one of the points made on behalf of the Applicant was that when the circular came to be issued, the applicant's request for a fresh medical examination was still pending. This is a point that will not help the Applicant's case as no provision has been shown for a right for medical re-examination. Hence this point cannot be considered.

6. The Learned Counsel for Respondents reiterated the stand taken in para-9 of the written statement quoting the requirements in para-523 of the IREM which stipulates as under:-

- 1) Ordinarily, there is no right of appeal from the findings of an examining medical authority, but if Government are satisfied on the ...5.

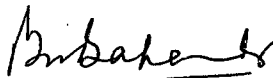
bs
1, 1

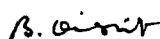
evidence produced before them by the candidate concerned of the possibility of an error of judgement in the decision of the examining medical authority. It will be open to them to allow re-examination. Such evidence should be submitted within one months of the date of the communication in which the decision of the first medical authority is communicated to the candidate, otherwise, ordinarily, no request for an appeal for a second medical examination will be considered.

2) If any medical certificate is produced by a candidate as evidence about the possibility of an error of judgement in the decision of the first medical authority, the certificate will not be taken into consideration unless it contains a note by the medical Practitioner concerned to the effect that it has been given in full knowledge of the fact that the candidate has already been rejected as unfit for service by the medical authority appointed by the Government in this behalf."

The application made by the Applicant did not contain any such information. Although the Learned Counsel for the Applicant did make a point that if the Railway authorities wanted them, they could have asked him to produce evidence. It must also be recalled that there is no ground taken in the application regarding discrimination or any other similarly situated person appointed in the Non-Technical category or any malafide etc.

In the circumstances, we do not see any reason to interfere in the matter. Hence the OA is dismissed. No orders as to costs.


(B.N. BAHADUR)¹¹
MEMBER(A)


(BIRENDRA DIKSHIT)
VICE CHAIRMAN