

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD.

ORIGINAL APPLICATION NO. 847-OF-1994

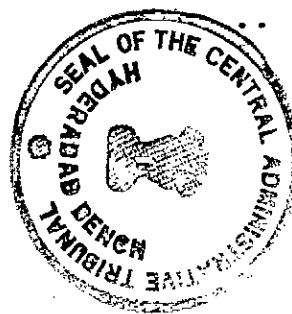
DATE OF ORDER: - 2nd April, - 1997

BETWEEN:

K.KOTAIAH

.. APPLICANT

AND



1. Union of India represented by
the Chairman, Railway Board,
New Delhi,
2. The General Manager,
South Central Railway,
Secunderabad,
3. The Chief Personnel Officer,
S.C.Railway, Secunderabad,
4. The Chief Admve. Officer/Constructionm,
S.C.Railway, Secunderabad,
5. The Chief Medical Officer,
S.C.Railway, Secunderabad.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.G.V.SUBBA RAO

COUNSEL FOR THE RESPONDENTS: Mr.V.BHIMANNA, ADDL.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

ORDER

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.G.V.Subba Rao, learned counsel for the
applicant and Mr.V.Bhimanna, learned standing counsel for
the respondents.

2. Notification No.P/GAZ/607/Engg/91 dated 5.9.91
(Annexure R-1 to the reply) was issued for formation of

Instead of sending him for remedical examination, the respondents did not take any action in that connection. Hence non empanelment of the applicant for reexamination as per his request is irregular.

5. No other contention has been raised in this connection.

6. A reply has been filed in this OA. The facts of this case are not disputed. The respondents only state that sending the applicant for medical examination earlier to viva-voce is in accordance with the Board's order and hence the question of calling him for viva-voce when he failed in the medical examination does not arise.

7. The point for consideration in this OA is whether the applicant has been put to disadvantage or the case of the applicant for empanelment to the Group-B service is prejudiced by sending him for medical examination earlier to viva-voce test. Presuming that the applicant was sent for medical examination after the viva-voce test ^{was} ~~is~~ over and ^{was} ~~is~~ empanelled, the applicant cannot hope to be posted as AEN as he was not found medically fit. Hence sending him for medical examination earlier to viva-voce in our opinion, no way prejudices the case of the applicant. Hence we do not consider this contention ^{for} giving any direction in regard to his empanelment.

8. The applicant submits that in a number of cases some of the IOW/PWIs who ^{were} ~~are~~ medically unfit were appointed in those posts in Group-B which does not involve open line

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in respect of PWIs/IOWs who were found unfit in ~~a technical~~ ^{medical} examination and found fit in CI and absorbed as AENs as the case of the applicant is also similar to their cases.

4. The main contentions of the applicant in this case are as follows:-

(i) The notification calling for volunteers for formation of Group-B panel was issued on 5.9.91. As per the rules on that date, the candidates who passed in the written examination are to be interviewed and those who passed in the written examination and viva-voce and empanelled for the post of AEN are only ^{to} be sent for medical examination. There was no rule at that time to send candidates who passed in the written examination for medical test before appearing for the viva-voce. Such a procedure was issued by the Board's letter dated 31.10.91 (Page 15 of the OA) after issue of the notification dated 5.9.91. Hence the applicant should have been sent for medical examination only after his empanelment as per the practice in vogue at the time of issue of the notification. Sending him for medical examination before viva-voce in terms of the letter dated 31.10.91 is irregular and hence rejection of his request for empanelment is not correct.

(ii) The applicant has got opportunity to ask for re-medical examination if he fails in the medical examination once. The unfit certificate was given by the Senior Medical Superintendent, Lalaguda by the certificate dated 20.7.92. The applicant next day itself had applied for remedical examination by his application dated 22.7.92.

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cannot attend due to some personal or health reasons, the respondents should give him opportunity within a reasonable period to undergo the remedical examination. Such an opportunity was not extended to the applicant in this OA. Hence we feel that even now he should be sent for remedical examination. If on the basis of the remedical examination he is found medically fit for regular empanelment for the Group-B service as AEN in the Engineering Branch, then he should be asked to attend viva-voce test. In case he qualifies in the viva-voce test and comes within the number to be empanelled as per the notification, then his name should be interpolated at the appropriate place in the empanelled list which was issued vide memo No.P.Gaz/607/Engg/91 dated 25.9.92 (Page 23 of the OA).

9. Time for compliance is four months from the date of receipt of a copy of this order.

9. With the above directions, the OA is disposed of. No order as to costs.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

[Signature]

न्यायालय अधिकारी
COURT OFFICER

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ
HYDERABAD BENCH

केस संख्या	847/94
CASE NUMBER	847/94
निर्णय का तारीख	2-4-97
Date of Judgement	2-4-97
प्रति तय्यार किया गया दिन	22-4-97
Copy Made Ready on	22-4-97
अनुभाग अधिकारी (न्य बिक)	
Section Officer (J)	

works. The applicant further submits that he could have also been considered for promotion to AEN Group-B against those posts which do not require movement in the open line. He has quoted some of the examples in this connection. The respondents in their reply in Para 11 have given the details in this connection. If such a contention is agreed to, then there must be enough number of posts for accommodating such medically unfit candidates in the posts other than the open line posts. The applicant has not stated whether any posts were available for him to be posted at the relevant time. The applicant submits that the post in the drawing office can be fitted. But the posts in the drawing office being limited, it cannot be stated that the posts were available at that time when the applicant was medically decategorised if he ^{was} is empanelled. Be that as it may, we feel that the case of the applicant was not considered satisfactorily when he asked for remedical examination. The respondents in Para 8 of the reply states that the applicant was asked to attend the remedical examination but he did not attend on the pretext that he was not keeping good health. When an employee is not in good health, he cannot be forced to undergo medical test. The respondents could have easily stipulated a period by which time he should undergo the re-medical examination as prayed for by him in his representation dated 22.7.92. But for unknown reasons the respondents failed to take any action on his request for remedical examination even though in the first instance he has not attended the remedical examination. Such lapse on the part of the respondents cannot be accepted as normal one. An employee has a right for remedical examination. If he

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