

(72) (5)

C. A. T. Bench, JAIPUR

Date of Order *Copy of order U.O. 2. up Sun (K. Shrivastava)* Orders RP No.2/93 in O.A. 197/88

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Mr. J. K. Kaushik - counsel for petitioner
Mr. S. S. Hussan - counsel for respondents.

Heard the learned counsel for the parties.
We do not find any mistake apparent on the
face of the record. The Review Petition is
dismissed.

81-
(B. N. Dhoundiyal)
Member (A)

81-
(D. L. Mehta)
Vice Chairman.

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Adhikari 17-3-93
Section Officer (Judicial)
Central Administrative Tribunal
Jaipur Bench, JAIPUR



(6) (30)
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR B.
A.T. JAIPUR.

Date of decision: May 10, 1989.

O.A. No. 197/88

SHRI SUNIL KUMAR SHARMA

... Applicant.

Mr. M.R. Galla

... Advocate for
the applicant.

VERSUS

UNION OF INDIA & OTHERS.

... Respondents.

Mr. R.N. Mathur

... Advocate for
the respondents.

CORAM:

The Hon. Mr. E.S. Sekhon, Vice Chairman.

The Hon. Mr. G.C. Singhvi, Admn. Member.

B.S. SEKHON.

Aggrieved by order No. E 898/1-Handicapped dated March 18, 1988^{pc-33} by the Chief Works Manager, Western Railway, Kota (Ann.A.6), the applicant submitted a representation dated April 4, 1988 (copy Ann.A.7) without any fruitful result. The applicant has now filed the instant Application.

2. Pithily put, the applicant's name was sponsored by the Employment Exchange for the post of clerk to be filled by a physically handicapped person, on 20.1.87. The applicant made the grade in the written test held as well as in the viva voce held on March 11, 1988.

Besides, he produced the certificate Ann.A.1 from the Orthopaedic Department to support the factum of his being physically handicapped. As per letter dated March 12, 1988 (Ann.A.2) sent by the office of respondent No. 2, the applicant was asked to produce a medical certificate duly signed by Orthopaedic Surgeon. In compliance with Ann.A.2 the applicant obtained another certificate from the Junior Orthopaedic Surgeon, M.D.S. Hospital, Kota on March 14, 1988 and produced the same along



(7) / (31) (37)

with the forwarding letter dated March 15, 1988.

Copies of the forwarding letter and the medical certificate are Annex.A.3 and A.4 respectively.

The applicant was, however, directed by letter dated March 17, 1988 (Ann.A.5) to appear before respondent No.3 on March 18, 1988 for further medical check up.

The applicant states to have appeared before respondent No.3 who along with another D.M.O. Shri R.S. Meena examined him and recorded their opinion on the selection sheet to the effect that the applicant was physically handicapped as there was a deformity in the right forearm, rotation was not possible and that he was fit to discharge the duty of clerk. ~~Stating that~~ Another letter of March 18, 1988 was served upon the applicant requiring him to appear again at 5 P.M. for medical check up in the chamber of respondent No. 3 (Ann.A.6). In compliance there with, the applicant went to the chamber of respondent No.3 wherefrom he was taken to the office of Medical Superintendent and was then asked to leave without any medical check up.

According to the applicant, he apprehends that he ^{is} being denied the right of fair consideration by excluding him with a view to favouring one Shri Khurram Burel Khan who had not even appeared for the viva voce. With the above observations, the applicant seeks a direction to the respondents to consider and appoint him as a clerk in the grade of Rs. 950-1500 (RP) with all the consequential benefits.

3. The respondents have resisted the Application. The defence, as set forth in the counter, is that the applicant was examined by the Railway Doctor, but the deformity by which he is suffering does not find

- 3 - (35) (36)

place in the list of deformities enumerated in the relevant rules and as such the applicant cannot be termed as 'handicapped' for the purpose of employment in the Railways. The certificates produced by the applicant are stated to have been issued by the medical experts in the Rajasthan State Services and the same do not avail the applicant as he was examined in accordance with the standard prescribed by the Rajasthan Employment of Physically Handicapped Rules, 1976 which are not applicable for employment in the Railways. The rules applicable for employment in the Railways against handicapped quota are stated to be contained in circular No. MD-216/0 dated July 18, 1979 and the deformity of the applicant is not covered by any of the categories specified in the aforesaid circular. Another plea raised by the respondents is that the applicant has approached the Tribunal without availing himself of the opportunity of alternative remedy.

4. In pursuance to the request for interim relief, an interim order directing the respondents to keep one post of clerk in the grade of Rs. 950-1500 vacant was issued. The same has been extended from time to time.

5. We have heard arguments addressed at the Bar and have also considered the pleadings and the documents on record.

6. During the course of arguments, the learned counsel for the applicant stressed that after the applicant has produced the certificate dated March 14, 1988 (Ann. A. 4) which has been duly signed by the Orthopaedic Surgeon and he has been subjected to medical examination on March 18, 1988, there was no

Justification whatsoever for directing the applicant to appear before respondent No.3. According to the learned counsel, the foregoing establishes that the respondents wanted to exclude the applicant and appoint a lesser meritorious person against the quota for physically handicapped persons. Reliance was also placed by the learned counsel on the certificate Ann.A.1.

7. The learned counsel for the respondents assailed the certificates, Anns.A.1 and A.4 on the grounds that the same having been issued under rule 7 of the Rajasthan Employment of the Physically Handicapped Rules, 1976 would not avail the applicant and that so far as the appointment of physically handicapped persons in the Railways is concerned, the matter is regulated by circular dated July 18, 1979 (Ann.R.1).

8. The contention of the learned counsel for the respondents that the instructions contained in Ann.R.1 would regulate the appointment of physically handicapped persons in respect of appointment to the Railways is well founded. In view thereof, the crucial issue which is so to say the mat issue in this case is as to whether the deformity from which the applicant suffers is covered by any one or more of the deformities specified in Ann.R.1. The deformity as listed at S.No.(iv) refers to malformation of the hands. In the certificate Ann.A. 1 the following physical impairment has been certified:-

'Deformity of Rt. forearm (rotation not possible)'.

Physical impairment specified in Ann.A.4 is

'Malunited (Rt) Forearm'.

9. Physical impairment/deformities set out in

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Annex A.1 and A.4 can be aptly said to be malformation of the right hand and are thus covered by category (iv). The respondents have neither produced the records pertaining to the medical examination of the applicant conducted by respondent No.3 nor have produced any other material to show that the applicant is not suffering from the physical impairment/deformity set out in Annex A.1 and A.4.

10. In view of the foregoing, it can be safely stated that the applicant is suffering from the deformity referred at S.No.(iv) of the categories listed in Ann.R.1 and is thus a physically handicapped person for the purpose of employment against the physically handicapped quota in the Railways. That being so, the applicant's claim is well founded.

11. Adverting to the plea ^{about} of applicant having approached the Tribunal without availing himself of the alternative remedy, it may be mentioned that the use of the expression 'ordinarily' in section 20(1) of the Administrative Tribunals Act, 1985 shows that the aforesaid sub-section does not place an absolute embargo against the admission of an application where the applicant has not availed of the alternative remedy in question. The Application in this case has already been admitted and the applicant is a physically handicapped unemployed person. It would not be just and fair to now oust the applicant on the aforesaid ^{plea} ground, which is hereby repelled.

12. Consequently, the respondents are directed to appoint the applicant as a clerk in the grade of Rs.950-1500 against the physically handicapped quota. The respondents shall comply with the

33 - 6 - 11
aforesaid directions within a period of one month
from today.

13. The Application is disposed of accordingly.
No order as to costs.

Sd/-

(G.C. Singhal)

Admin. Member.

Sd/-

(B.S. Sekhon)

Vice Chairman.

11-5-89.

Section Officer (Judicial)
Central Administrative Tribunal
Jaipur Bench, JAIPUR.