

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA 32/94 : Date of order 21.11.94 W

Anand Sajnani : Applicant

V/s

Union of India & Another : Respondents.

Mr. C.B. Sharma : Brief holder for Mr. R.N. Mathur
Counsel for the applicant.

Mr. M. Rafiq : Counsel for the respondents.

Hon'ble Mr. Justice D.L. Mehta, Vice Chairman.

Hon'ble Mr. B.N. Dhoundiyal, Member (Administrative)

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE CHAIRMAN.

Heard the learned counsel for the parties. The applicant was holding the post of ASM. On being found medically unfit for the post, his case was considered for alternative employment and vide Annexure A-3 the post of Reservation Supervisor in the grade of Rs. 1400-2300 was offered to him on 9.1.92. His consent for this post was accepted. After training he was duly appointed on this post. Later the Unions raised the objection that the alternative appointment given in B-2 category to the applicant should be changed as the avenues of promotion of their members are likely to be adversely affected.

2. After considering the representation of the Unions the respondents decided that the applicant should be offered three other alternative posts namely Cash Witness, Commercial Clerk and Ticket Collector, which all fall within B-2 medical category. The applicant submitted that he is ready to accept only the post of Ticket Collector. This change of appointment was accepted by the Divisional Railway Manager and he recommended to the higher authorities that the applicant should be absorbed on the post of Ticket Collector. However, the Headquarter declined on the ground that it will also effect other persons so the applicant be offered the post of Cash Witness.

3. Respondents' offer has not been accepted by the applicant

and the applicant's case is that either he should be allowed to continue on the post of Reservation Supervisor B-2, Medical Category, on which he was appointed by way of alternative appointment earlier and for which he has already undergone training. In case he is not continued on this post, he should only be appointed on the post of Ticket Collector as agreed upon by him and recommended by the DRM. The learned counsel for the respondents has invited our attention to para 4.5 of the reply and submitted that the least alternative employment has been offered to the applicant and the earlier alternative appointment given was unacceptable to the Unions i.e. the post of ESRC belongs to a very small cadre and the people working in that cadre and the trade unions objected the same.

4. We have heard the learned counsel for the parties. The respondents have the right to offer alternative appointment on medical grounds and once they have rightly exercised the power and offered the applicant an appointment on the post of Reservation Supervisor, they are not justified in changing the same only on the ground that the Unions have raised objections on the ground of adverse effect on the prospects of promotion of their members. Admittedly, the applicant is medically fit for the post of Reservation Supervisor and he had rightly been offered the post. He has undergone the training for a period of about four months for the post and has gathered work experience. Now on the basis of the approach of the Unions, the applicant cannot be asked to quit this post. The doctrine of estoppel will also apply against the respondents.

5. However, taking into consideration that difficulties faced by the respondents and the non cooperative attitude of the Unions, the applicant accepted the alternative appointment as a Ticket Collector to solve the dispute. He also submitted that

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for the post of Ticket Collector, no additional training is required. Of course this post would give him additional benefit of running allowance which will compensate him. In such circumstances the DRM accepted the offer and recommended the same to the Headquarter. The Headquarter declined to accept the recommendation of the DRM. Now there remain only two alternatives before the respondents i.e. either to adjust him on the post of Ticket Collector or allow him to continue on the post of Reservation Supervisor.

6. In the facts and circumstances, we are of the view that once alternative appointment has been offered after decategorisation on medical grounds and the person has joined it, the respondents have no right to ask the person, who has joined after training, to change him to another post without his consent.

7. In the result, we direct that the applicant should be allowed to continue on the post of Reservation Supervisor and he should not be asked to join any other post unless agreed by him. Any other arrangement can be made only with the consent of the applicant. The OA stands disposed of accordingly with no order as to costs.

B. N. D. -
(B.N. DHUNDIYAL)
MEMBER(A)

D. L. Mehta
(D.L. MEHTA)
VICE-CHAIRMAN