

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT CAMP ; INDORE

Original Application No.95 of 2003

Jabalpur, this the 21st day of May, 2003

Hon'ble Mr. R.K. Upadhyaya - Administrative Member
Hon'ble Mr. A.K. Bhatnagar - Judicial Member

Smt. Nilam W/o Pradeep Kumar Sharma,
aged 30 years, T 75/C Railway Colony,
Neemuch, Neemuch M.P.

- APPLICANT

(By Advocate - Shri A.N. Bhatt)

Versus

Union of India & others represented

1. General Manager, Western Railway,
Churchgate, Mumbai.

2. Divisional Manager, Rail Divisional
Office, Do Batti, Ratlam MP

- RESPONDENTS

(By Advocate - Shri Y.I. Mehta, Sr. Advocate with
Shri H.Y. Mehta, Advocate)

ORDER

By R.K. Upadhyaya, Administrative Member-

The applicant has claimed the following reliefs-

- "(1) The showcause notice dated 28.1.03 issued for reply for termination may kindly be quashed.
- (2) The respondent No.2 may kindly be directed to refrain from issuing illegal order for removal, retrenchment or termination from services of the petitioner.
- (3) The respondent no.2 may be directed to continue the petitioner in service as per terms and conditions prevailing prior to issue of Show cause notice dated 28.1.03 with all consequential benefits.
- (4) Any other reliefs as deemed fit in the interest of the justice may kindly be granted.
- (5) The cost of the petition be awarded."

2. It is stated by the applicant that she is a handicapped person in deaf category. She was registered with Employment Exchange at Neemuch. The Divisional Railway Manager, Ratlam had issued a notification dated 10.5.2000 which was published in the newspaper of 20.5.2000. The applications were invited from handicapped candidates through Employment Exchange for Group-C and Group-D category posts. As per the notification, there were 7 posts in Group-C category reserved for the deaf category candidates. The

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notification further stated that the educational qualification of the candidates should be matriculation and they should be within the age of not less than 18 years and not more than 43 years as on 1.7.2000. Of course, this age limit was relaxable in the cases of certain reserved category. The applications were to be sent on a prescribed proforma through Employment Exchange. The applications were to be accompanied by a certificate from the District Medical Officer/Civil Surgeon regarding handicapped. The last date for sending the applications was 5.6.2000. The examination proposed for 'C' category post was on 24.6.2000. The claim of the applicant is that in response to this advertisement, she submitted all relevant educational as well Medical certificates along with the application. A copy of such application is filed as Annexure-A-3. As per this application, the applicant had stated that she had loss of about 70% in hearing impairment. The applicant was called to appear in the written test on 24.6.2000. On account of her performance in the written test followed by viva voce test, she was selected in a Group-C post against the handicapped quota. She was called in the office for further formalities and after due verification of the records, she was sent for medical fitness to the Chief Medical Superintendent, Railway Hospital, Ratlam. The claim of the applicant is that after thorough examination, the medical authorities issued medical certificate dated 1.12.2000 (Annexure-A-7) wherein the applicant was found "fit Bee one (BI) in physically handicapped quota of hearing loss (bilateral S.N. loss) about 70%". The applicant was issued appointment letter as Armature Winder in Diesel Shed, Ratlam in the scale of Rs.3050-4590 and the applicant joined her duties on 30.1.2000 and was still working. However, the respondents again sent a letter for special medical examination on 2.5.2001. The Chief Medical Superintendent, Ratlam by letter dated 3.5.2001

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(Annexure-A-8) returned the applicant to the Divisional Railway Manager(Estt.),Ratlam with a remark that the applicant along with others was issued the certificates under the handicapped quota.However, in view of the request of the DRM dated 2.5.2001 the relevant papers were re-examined under Indian Railway Medical Manual (for short 'IRMM') under Para 511(7)(ii). The Chief Medical Superintendent further asked the DRM to start proceedings under Para 522(2)(ii) of IRMM, if he wanted the re-medical of the candidates. After receipt of this letter dated 3.5.2001 (Annexure-A-8), the Railway authorities again sent the applicant to Jagjivan Ram Hospital,Western Railway,Mumbai for audiogram. The claim of the applicant is that the certificate dated 24.12.2001(Annexure-A-9) issued by Dr.L.H.Hiranandani ENT etc.Department has found that the loss of hearing capacity was 90.11% and 65.8%. This test report dated 24.12.2001(Annexure-A-9) was made at the instructions of the Jagjivan Ram Hospital,WR,Mumbai as per their request dated 20.12.2001(Annexure-A-9A). It is the case of the applicant that after these reports were collected by the respondents, a show cause notice dated 28.1.2003(Annexure-A-1) has now been issued in which it has been stated as under:-

"On 20.12.2001 Medical Board was held in J.R. Hospital assess your extent of physical handicap-ness required under recruitment rule for deaf category, as candidate having loss more than 90 decibel in better ear(profound impairment) of total loss of hearing in both ears are only eligibility criteria for appointment under deaf category. Medical Board round that the "employee's hearing loss in better ear was 65 db to 75 db while there should be loss of 90 db in better ear, hence you will not come under handicapped quota. Therefore you are not eligible for appointment against handicapped quota of deaf category at the time of recruitment,you misrepresented about your deafness to the Railway administration and got appointment under handicapped quota".

The respondents had given seven days time for sending a reply to the aforesaid show cause notice and it further stated that if no reply was received, it will be presumed that the applicant had nothing to say and her services will be terminated on the ground that the appointment was

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secured by producing a fake certificate.

2.1 The learned counsel of the applicant stated that in spite of the fact that the applicant has duly complied with the requirements of the respondents, they are bent upon in getting rid of the applicant by issuing the impugned notice of termination of service. In this connection, he invited attention to the decision of Hon'ble Supreme Court in the case of Jaswant Singh and others Vs. State of M.P. and others, 2002 SCC(L&S)1128 wherein it has been held that cancellation of appointment without giving proper hearing was bad in law. He also referred to the decision of Hon'ble Rajasthan High Court (Jaipur Bench) in the case of Shri Harun Mohammad Shaikh Vs. The District Estb. Commt. Zila Parishad, Udaipur, 2001(5) Western Law Cases 69, wherein it has been held that appointment of handicapped persons could not be cancelled without making full enquiries from the person who issued the certificate, on very hyper-technicalities. The learned counsel also invited attention to the decision of Hon'ble Delhi High Court in the case of Union of India & ors Vs. K.P. Singh, 2003(2) Service Cases Today 18 wherein the Delhi High Court has discussed the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the Disabilities Act') and it has been held that persons having minimum degree of disability of 40% were eligible for appointment and it has been further held that only such persons who are having less than 40% disability could be said to be not eligible under handicapped quota. According to the learned counsel the applicant has requisite certificates not only from the private practitioners but also from the Railway hospital who have certified that the applicant was eligible for being appointed in the handicapped quota. The learned counsel stated that the advertisement did not prescribe any percentage of disability. Therefore, now insisting on disability of more than 90 db as per the provisions of IRMM was not justified. It was, therefore, urged

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that the show cause notice being void ab-initio should be quashed and the appointment of the applicant be declared to be having been properly made. It was further prayed that the respondents should be restrained from taking any steps for terminating her services.

3. In their reply, the respondents have stated that the O.A. filed on 19.2.2003 against the notice issued deserves to be dismissed as premature. The respondents have admitted that the applicant was selected and recruited for 3 years training as Apprentice Armature Winder, on the strength of her deafness to the extent of 70 db, which she joined on 30.1.2001. During currency of training some complaints were received about her actual disability, as such she was re-examined and special medical examination was conducted in Jagjivan Ram Hospital, Western Railway, Mumbai on 20.12.2001. The applicant was found at 65 to 70 db disability. According to the respondents, the requirement, as per Para 511 Item 7(ii) of the IRMM, is the loss of 90 db for appointment against handicapped quota. Therefore, the impugned show cause notice was issued. The respondents have taken an alternative plea also stating that the applicant had executed a bond as an Apprentice for three years and her services were governed by the terms of the bond. The learned counsel fairly stated that even though the advertisement for recruitment of handicapped persons did not strictly specify the extent of disability of a deaf candidate, but the requirement should be interpreted in the context of provisions in the IRMM which prescribes disability of 90 db and above in the better ear. Admittedly, the applicant does not have the required degree of disability. Therefore, her initial recruitment was irregular as the applicant was ineligible for appointment in the category of disabled candidate. The provisions contained in Para 511(7)(ii)(b) of IRMM (copy placed on record as Annexure-R-6) are as follows:-

The deaf: The deaf are those in whom the sense of hearing is non-functional for ordinary purposes
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of life. The do not hear, understand sounds at all events with amplified speech. The cases included in this category will be those having hearing loss more than 90 decibels in the better ear (profound impairment) or total loss of hearing in both ears".

It is, therefore, urged that the present application should be dismissed mainly on the ground of being premature but also on merits.

4. We have heard the learned counsel of both the parties and have perused the material available on record carefully.

5. The undisputed fact is that the applicant has hearing impairment of more than 60 db but less than 90 db in the better ear. The issue for consideration is whether such a person could be considered to be a person physically handicapped with hearing impairment. As per provisions contained in the Disabilities Act, disability means-

- (i) ...
- (ii)...
- (iii)...
- (iv) hearing impairment
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and 'hearing impairment' has been defined as "hearing impairment means loss of sixty decibels or more in the better ear (sic) in the conversational range of frequencies". As has been pointed out by the learned counsel of the respondents, the requirement of physically handicapped candidates with hearing impairment has been stated to be loss of more than 90 db in the better ear as per IRMM. Now, it is for consideration as to whether the applicant should be held to be initially ineligible for employment in the Railways in spite of the fact that no such stipulation was there in the advertisement and in spite of the fact that the Chief Medical Superintendent of the respondents having certified that the applicant was "fit for one (BI) in physically handicapped quota of hearing loss (bilateral S.N. loss) about 70%". It is also undisputed that the certificate so issued by the Chief Medical Superintendent, WR Ratlam has not yet been cancelled in spite of the fact that a reference to that effect was made by the DRM. In our

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considered view the applicant who has undergone the process of selection and has been declared medically suitable for being appointed under handicapped quota should not be asked to file a reply to the impugned show cause notice Annexure-A-1. If the advertisement had given a stipulation that candidates with hearing impairment of more than 90 db were to apply, perhaps the applicant could not have given her application or the respondents themselves might not have entertained her candidature. The preface note to the IRMM states that "this manual is meant for the guidance of the staff of all departments dealing with medical and health subjects". If the IRMM rules were to be followed by the members of the staff of all departments dealing with medical and health subjects, the medical certificate issued by the Chief Medical Superintendent, WR Ratlam should not have been issued as the applicant was not having disability of more than 90db in the better ear. However, as observed earlier, this certificate has not yet been cancelled. The fact that the applicant holds disability of more than 60 db in better ear is undisputed. Therefore, the only way to interpret the facts of this case is that the applicant's case should be governed by general principles of interpretation. The Railway having not notified the extent or disability while advertising the posts to be filled in, they are bound to be governed by the general rules. In that case, the provisions contained in the Disabilities Act will govern and not the provisions contained in the IRMM. In view of the fact that the applicant's case is governed by the provisions of the Disabilities Act, the applicant has to be treated as a candidate having required disability. Therefore, the steps now being taken by the respondents are liable to be quashed. In this view of the matter, the impugned show cause notice issued by the respondents on 28.1.2003(Annexure-A-1) being misconceived is liable to be

CRS Ratlam

quashed. In other words, the applicant's services cannot be terminated on the assumed ineligibility of being a person with lower degree of handicapped than that prescribed in the IRMM.

6. In view of our decision as indicated hereinbefore we need not discuss the case law cited by the learned counsel of the applicant.

7. In the result, the Original Application is allowed. The impugned notice dated 28.1.2003 (Annexure-A-1) is hereby quashed and set aside. In the facts and circumstances of the case, the parties are directed to bear their own costs.

A.K.
(A.K. Bhatnagar)
Judicial Member

(R.K. Upadhyaya)
(R.K. Upadhyaya)
Administrative Member

rkv.

पुस्तक सं. नो./वर्ग.....जबलपुर, दि.....

(1) ...के काउंसल

(2) ...के काउंसल

(3) ...के काउंसल

(4) ...के काउंसल

सबसे कम आय के कार्यवाही हेतु

(R.K. Upadhyaya)
उप रजिस्ट्रार

28/1/03

*Issued
28/1/03*

AN Bhatnagar, Adm
R.K. Upadhyaya, Adm