

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 01st day of August, 2008

ORIGINAL APPLICATION NO.129/2005

CORAM :

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.B.L.KHATRI, ADMINISITRATIVE MEMBER

Lakhan Lal son of Shri Mohar Singh, aged about 40 years, Water Boy (MNAC), resident of Village Singhada, Tehsil Bayana, District Bharatpur.

... Applicant

(By Advocate : Shri Amar Deep, proxy counsel for
Shri Dinesh Yadav)

Versus

1. Union of India through
The General Manager,
West Central Railway,
Jabalpur.
2. Divisional Railway Manager,
West Central Railway,
Kota.
3. Station Master,
Railway Junction,
Bayana, District Bharatpur.
4. Station Superintendent,
Railway Station Shyamgarh,
District Kota.

... Respondents

(By Advocate : Ms. Dilshad Khan, proxy counsel for
Shri S.S. Hassan)

ORDER (ORAL)

PER HON'BLE MR.B.L.KHATRI

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In this OA filed under Section-19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order dated 28.8.2003 (Ann.A/1), passed by respondent No.2.

2. Brief facts of the case are that the applicant was initially appointed on the post of Water Boy (MNAC) during summer w.e.f. 8.6.81 and since then he was regularly working on the said post till his transfer on 26.5.98 to Railway Station Shyamgarh and thereafter the applicant was working at Railway Station Shyamgarh. Vide Office Order dated 24.8.98 (Ann.A/2), the DRM (Estt) Kota sent a letter to all the Station Masters/Station Superintendents asking them to send the persons whose name appear in the list enclosed alongwith the said letter working as Water Boy (MANC) prior to 14.7.81 for the purpose of screening for absorption. In reference to the said letter, name of the applicant was sent to the office of DRM (Estt) Kota by the Station Superintendent Shyamgarh vide letter dated 17.11.98 (Ann.A/3). Thereafter, the applicant appeared for screening test and a list was published by the DRM (Estt) Kota on 17.3.99 (Ann.A/4), wherein name of the applicant appeared at S.No.39 and S.No.74 of the consolidated list and the applicant was found suitable for appointment. It was submitted on behalf of the applicant that inspite of screening/selection of the applicant, he has not been appointed by the respondents even after lapse of more than a year. It was also submitted that the applicant is a 40% handicapped with Locomotor disability and a

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certificate to this effect has been issued by the authorised doctor (Ann.A/5). The Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 provides for reservation and appointment of not less than 3% of vacancies from persons or class of persons with disability. In spite of the provision in the Act of 1995, no steps have been taken by the respondents to appoint the applicant, whereas other persons who stand lower in the list have been given appointment by the respondents. Action of the respondents for not appointing the applicant and appointing the persons junior to him is discriminatory. The applicant has come to know that the persons junior to him, whose name appear below him in the list dated 17.3.99, have been given appointment but he has not been appointed till date.

3. That in the earlier OA filed by the applicant i.e. OA 77/2001, this Bench of the Tribunal vide order dated 1.7.2003 (Ann.A/6) had directed the respondents to decide the representation of the applicant within a period of two months. Vide order dated 28.8.2003 (Ann.A/1), respondent No.2 has rejected the said representation. Therefore, the applicant has prayed that the order dated 28.8.2003 (Ann.A/1), passed by respondent No.2, may be quashed and the respondents may be directed to give appointment to the applicant on the post of Water Boy against the quota of handicapped persons.

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4. The respondents have contested the OA and filed their reply. In the reply, the respondents have submitted that the applicant was engaged as a part-time Water Boy during the summer season w.e.f. 1.8.81 and not as MNAC. It is, however, denied that the applicant was regularly working on the said post upto 26.5.98. Name of the applicant was sent for screening under OBC category and after screening his name was recommended by the Engineering Department for the post of Gangman. For the post of Gangman, a candidate requires to pass medical examination in B-1 Category, wherein the applicant was not found fit vide medical certificates No.433850 dated 07.08.1999, therefore, appointment could not be given to the him on the post of Gangman. Subsequently, the applicant was examined for C-1 category to provide him alternative job, wherein also he was declared unfit vide medical certificate No.369457 dated 30.06.2001. It was also submitted that under Para 2007 4(a)&(b) of IREM and Railway Board's letter No. E(NG)II/71/CL/84 dated 01.08.1973, circulated under Headquarter's letter dated 06.12.1973, at the time of first appointment, if a screened candidate is not found fit under the concerned medical category, alternative job can be given, provided that such a candidate must have completed six years of continuous or broken service subject to fitness of medical category for alternative job. However, since the applicant did not fulfill that condition also, he was not held eligible for being given any alternative job.

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5. As regards appointment against handicapped quota, it was submitted that applications were invited from the open market through advertisement published in the Rozgar Samachar and other newspapers, therefore, under the handicapped quota, appointment cannot be given without completing the formalities i.e. without inviting applications from the open market. Hence, for grant of appointment under handicapped quota, the applicant should apply and qualify the selection as and when notified, subject to fulfillment of other service conditions for appointment. Thus, there is neither any discrimination nor arbitrariness in the action of the respondents. There is also no violation of any provision of Article 14, 16 and 21 of the Constitution of India, as alleged by the applicant.


6. We have heard the rival submissions and perused the record. After having perused the record, we find that appointment on the post of Gangman could be given only to those junior persons who were found eligible and declared fit under B-1 Medical category. Since the applicant did not pass the requisite medical category required for giving appointment on the post of Gangman as also for grant of alternative job, he was not granted such appointment. It was rightly pleaded by learned counsel for the respondents that name of the applicant cannot be considered against the quota for handicapped persons as recruitment is to be made from the open market as per the instructions of the Railway Board after

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publicity through Rozgar Samachar and other newspapers.

7. In view of the above, we are of the opinion that this OA is bereft of merit and the same is dismissed accordingly with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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