

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 16 day of September, 2009

ORIGINAL APPLICATION No.63/2006

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMINISTRATIVE)

Prem Singh Meena
s/o Shri Phool Singh Meena
r/o Village and Post Boni,
Tehsil Todabheem, District Karauli (Raj.)

.. Applicant

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India through General Manager, North Western
Western Railway, Jaipur
2. Divisional Railway Manager, North-Western Railway, Jaipur

... Respondents

(By Advocate: Shri N.C.Goyal)

ORDER

Per M.L.Chauhan, M(J)

The applicant has filed this OA thereby praying for the
following reliefs:-

- i) That by an appropriate order or direction the impugned order dated 3.10.2005 (Annexure-A/1) may kindly be quashed and set-aside.
- ii) That by an appropriate order or direction the respondents be directed to appoint the applicant on any alternative posts in Group-C with all consequential benefits including seniority and promotion w.e.f. the date the similarly situated person in the same panel have been appointed.
- iii) Any other appropriate order or direction which this Hon'ble Tribunal thinks just and proper may also be given.

2. Admitted facts between the parties are that the applicant was selected by the Railway Recruitment Board, Ajmer for the post of Diesel Assistant in the pay scale of Rs. 3050-4590. Pursuant to such selection, the Headquarter office, Western Railway, Mumbai allotted the applicant Jaipur Division for his appointment. Accordingly, vide letter dated 13.5.2002 (Ann.A/4), the applicant was given offer of appointment subject to passing of medical test by the Railway Doctor. The applicant was sent to the Chief Medical Superintendent, Jaipur for medical examination under category A-I which was the requirement for this post before sending the applicant for training. The Chief Medical Superintendent, vide its medical certificate No. 426170 dated 7.6.2002 declared the applicant unfit for A-I medical category. Thereafter the applicant submitted application dated 18.6.2002 to appoint him on alternative post. Vide impugned order Ann.A/1 the applicant was informed that as per Railway Board letter No.E(RRB) 2001/25/21 dated 4.10.2001 the official selected for the post of Diesel Assistant/Assistant Station Mater and Motorman, if they failed in the final medical examination by the Railway before the appointment,

they are not entitled for the alternative appointment. It is this order which is under challenged before this Tribunal.

The applicant has pleaded that three employees who were similarly situated were given appointment on the alternative post but the applicant has been denied appointment on any post in Group-C category. According to the applicant, denial of appointment despite his selection is arbitrary.

3. The respondents have file reply. The facts as stated above, have not been disputed. However, the specific stand taken by the respondents is that the applicant was unfit in A-I category, as such, he could not be given appointment on the post of Diesel Assistant. Further, it is stated that in terms of Railway Board letter dated 4.10.2001, the applicant who has been selected for the post of Diesel Assistant if failed in final medical examination by the Railway then he was not entitled for the alternative appointment. It is further stated that the applicant was again medically examined by the Senior Divisional Divisional Medical Officer, Jaipur but he was declared fit only in B-II and below with glass for DV. whereas for appointment on the post of Diesel Assistant the applicant must have passed A-I medical category. The respondents have stated that in case three employees were given appointment against the rules, the applicant cannot compel the respondents to give appointment against the rules. The respondents have also placed reliance upon the Railway Board letter dated 20.8.99 which stipulates that alternative appointment is to be given in the same grade possessing the specified medical standard and educational

qualification. But according to this standard, in absence of availability of the post in the same category, applicant is not entitled to be given appointment on the alternative post. It is further stated that in terms of Railway Board letter No.92-E/SCT/1/25/6 dated 18.8.1992, the appointment on the alternative post can be considered only during the course of currency of panel. The period for the panel of the direct recruitment quota is one year and on the approval of the General Manager this period can further be extended for one year. Thus, according to the respondents, the applicant is not entitled for any relief.

4. The applicant has also filed rejoinder thereby reiterating the submissions made in the OA.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. From the facts as stated above, it is not in dispute that the applicant though selected by the Railway Recruitment Board, Ajmer was given offer of appointment but he could not join the post in view of the fact that he has not passed the prescribed medical category i.e. A-I. The applicant when examined subsequently by the Railway Doctor was found fit for B-II medical category. According to the respondents, alternative appointment can be given in the same grade and that too within the validity of the panel and there was no post available in the same grade against which the applicant could have been given alternative post. Thus, in view of the stand taken by the respondents, we are of the view that no direction can be given to the respondents to give

alternative post to the applicant solely on the ground that some persons similarly situated have been given alternative appointment by the respondents. Further, the applicant has not shown any rule which stipulates that respondents are bound to give alternative appointment especially when the applicant is not in-service candidate who has been medically decategorised. In that eventuality, the respondents as a matter of policy may adjust the person concerned in the alternative post and if the alternative post is not available, in the lower post thereby protecting pay of such person. Here, the applicant has faced selection process as a direct candidate from open market and he was selected against the post of Diesel Assistant, but could not be appointed for want of prescribed medical standards. Under these circumstances, such a candidate does not have any legal right to be appointed against another post which post has not been advertised and no step has been taken by the department for the purpose of making recruitment against that post and for that selection requirement under the recruitment rules may be different than that of Diesel Assistant. At this stage, we wish to emphasize that the Apex Court in the case of Secretary, State of Karnataka vs. Uma Devi (3), 2006 SCC (L&S) 753, has categorically held that all appointments to any post under State can only be made after proper advertisement inviting applications from eligible candidates and holding selection by a body of experts and no appointment can be made without issuing advertisement in the prescribed manner. The Apex Court further held that State is bound to comply with the constitutional

requirements as adumbrated in Articles 14 and 16 thereof. When the recruitment rules are made, the employer would be bound to comply with the same. It was further held that any appointment in violation of such rules would render such appointment as nullity and no recruitment should be permitted through back door. The ratio as laid down by the Apex Court in the case of Uma Devi (supra) was also followed by the Apex Court in the case of National Fertilizers Ltd. and Others vs. Somvir Singh, 2006 SCC (L&S) 1152 whereby the Apex Court held that where the recruitment rules have not been followed, the selection committee not having been constituted as per requirement, in such cases such person has no legal right to continue in service. The fact that they have been working for long time is no ground for regular service. If the matter is viewed in the light of the law as laid down by the Supreme Court, as stated above, what the applicant has prayed in this case is that he may be given alternative appointment in Group-C category, notwithstanding, the fact that the post has neither been advertised nor application has been invited from the eligible candidates. Further, the Selection Committee has not been constituted. According to us, such course is not permissible. As already stated above, it is not a case of such nature where the applicant is railway servant who has been medically decategorised/ found fit for a particular post, which circumstances in a given case may be sufficient for giving alternative post to such an employee against any other post in terms of the policy, but such a policy cannot be

made applicable to a candidate who has been selected against a particular post from open market category.

7. In view of what has been stated, we find no merit in this OA, which is accordingly, dismissed with no order as to costs.

8. In view of the order passed in the OA, no order is required to be passed in MA No.133/2009, which shall stand disposed of accordingly.



(B.L.KHATRI)

Admv. Member

R/



(M.L.CHAUHAN)

Judl.Member