

Reserved
(On 16.08.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Dated: This the **23rd** day of **August** 2018

Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application Number. 330/01762 of 2010

Abhay Mishra, S/o Sri Virendra Kumar Mishra, R/o 111/335, Ashok Nagar, Kanpur.

.....Applicant

By Adv: Shri M.K. Updhayay

VE R S U S

1. General Manager, Western Railways, Churchgate, Mumbai.
2. Divisional Railway Manger (Establishment), Ratlam.
3. Chief Personnel Officer, Western Railways, Headquarter Office, Chaurchgate.
4. Railway Recruitment Board, Bhopal (Madhya Pradesh) through its Secretary.

.....Respondents

By Adv: Shri P.N Rai

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member (A)

The applicant appeared in the written examination in two stages in response to his application for the post of Traffic Apprentice to the advertisement by the Railway Recruitment Board, Bhopal and was successful. He was recommended for appointment to the post of Traffic Apprentice grade Rs. 5500-9000. Vide letter dated 4.7.2008 (Annexure A-5), he was asked to complete certain formalities like Medical Test. He was medically tested for A/2 on 6.8.2008 and was declared unfit, but was declared fit for B/2 medical test, after being asked by the respondents on 26.12.2008 to appear for B/2 medical test.

2. After his medical fitness for B/2 type, the applicant submitted an application dated 16.1.2009 (Annexure A-8) for alternative appointment, since for the post of Traffic Apprentice, A/2 type medical fitness was required as per the rules. Vide the letter dated 4.6.2009

(Annexure A-9), the applicant was refused to be given an alternative appointment. Being aggrieved, the applicant filed the OA No. 75/2010, which was allowed by this Tribunal and vide order dated 11.2.2010 (Annexure A-10), this Tribunal quashed the order dated 4.6.2009 and remitted the case to the respondents for passing fresh reasoned/speaking order.

3. Thereafter, the applicant made a fresh application dated 24.2.2010 to the respondents and again on 23.3.2010 and in response, the respondents have passed the order dated 9.4.2010 (Annexure A-1), which has been impugned in the present OA with prayer for following reliefs:-

- "I. To quash the order dated 9.4.2010 (Annexure-A-1) passed by respondent No. 4.***
- II. To direct respondent no. 4 to provide alternative appointment to the applicant as per his Medical category on the post of Commercial Apprentice.***
- III. To grant any other appropriate relief, order or direction to which the applicant be found entitled in the facts and circumstances of the case.***
- IV. To award costs in favour of the applicant."***

4. The applicant has projected the following main grounds for the OA:-

- The respondents issued a letter dated 26.12.2008 to undergo B/2 type medical test after the applicant was declared unfit for A/2 medical test required for Traffic Apprentice post.
- After he was declared fit for B/2 medical test, the applicant applied for alternative post vide letter dated 16.1.2009.
- As per the Railway Board letter dated 20.8.1999, provision for alternative appointment was available, when the applicant submitted the application dated 16.1.2009 for such alternative appointment.
- No reason has been furnished as to why the case of the applicant for alternative appointment was not considered as per the Railway Board letter dated 20.8.1999.

- The applicant has necessary educational qualification to be considered for alternative posts as per the rule.

5. The respondents no. 1 to 4 have filed their Counter Reply and two Supplementary Counter Reply, countering the OA. Contention of the respondents for the request for alternative appointment is that as per the Railway Board's instructions in the letter dated 20.8.1999, the competent authority has considered the case of the applicant for alternative appointment and rejected the request as informed by the letter dated 4.6.2009. The applicant challenged the letter dated 4.6.2009 in OA No. 75/2010 and as per the direction of this Tribunal, the respondents have passed the speaking order dated 9.04.2010 (Annexure A-1). It is further stated that the provision of alternative appointment has been withdrawn by the Railway Board vide letter dated 25.5.2009 and is clarified in Railway Board letter dated 28.7.2010 that since the delegated power to the General Manager for alternative appointment has been withdrawn by letter dated 25.5.2009, it cannot be considered even if the case pertains to a date prior to 25.5.2009. Copy of the letter dated 25.5.2009 and dated 28.7.2010 has been annexed to the Counter Reply of the respondent no. 1 to 4.

6. In the Rejoinder and Supplementary Rejoinders in reply to the Counter Reply and Supplementary Counter Reply filed by the respondents, the applicant has reiterated the stand in the OA and has stated that his application for alternative appointment was sent to the authorities on 16.1.2009 after he was declared fit for B/2 type medical test as per the letter of the respondents for B/2 type medical test. It is stated that since his request dated 16.1.2009 was sent before the letter dated 25.5.2009 was issued by Railway Board withdrawing the provision of alternative appointment, hence, it should have been duly considered his case for alternative appointment as per the prevalent Railway Board letter dated 20.8.1999.

7. Heard learned counsels for the applicant and respondents on 13.8.2018, who reiterated the respective averments in the pleadings. Subsequently, the learned counsels were heard on the question of territorial jurisdiction of Allahabad Bench of this Tribunal to adjudicate the matter as the dispute pertains to RRB, Bhopal and Western

Railways and the headquarters of the respondents are outside the territorial jurisdiction of the Bench.

8. On the issue of jurisdiction, learned counsel for the applicant filed a copy of a Full Bench judgment of this Bench in the case of Shri Alok Kumar Singh and another vs. Union of India and another in OA No. 458/1990 (Full Bench Judgments [CAT] Vol. III page 7) in which it was held as under:-

“2. The point referred for consideration by this Full Bench is as follows:-

“Whether in the facts and circumstances of the case this Bench of the Tribunal has jurisdiction to entertain the petition of the Applicants (who want to offer their candidature for Civil Services Examination, 1990) on the ground that although the impugned order was passed by an authority located at Delhi but it affects their rights at the places they are residing?”

13. We are in respectful agreement with the view taken in the above two decisions of the Bombay and Calcutta High Courts and are further of the view that in the present case, as the order was communicated to the applicant within the State of Uttar Pradesh, a part of the cause of action had arisen within the jurisdiction of this Bench of the Tribunal.”

It was further held by the Full Bench that this Bench has the jurisdiction as the impugned order was communicated by post to the applicant residing within the jurisdiction of this Bench of the Tribunal. In the instant OA, the applicant is residing in Uttar Pradesh and had applied for a post of western railway, advertised by RRB, Bhopal.

9. Learned counsel for the respondents, on the other hand, cited a Division Bench judgment dated 16.5.2014 in the case of Vinay Kumar Chaurasia vs. Union of India in OA No. 763/2010 and vide order dated 16.5.2014, it was held in the Division Bench that Allahabad Bench will not have jurisdiction on the ground of residence in a similar case under the rule 6 of CAT (Procedure) Rules, 1987 for an applicant who is not in service. It is seen that in the decision of the Full Bench is that if the impugned order was communicated by post to the applicant residing within U.P. then this Bench will have jurisdiction and this decision was not placed before the Division Bench in OA No. 763/2010. Hence, following the Full Bench decision referred above, we are of the considered view that since in this OA also, the impugned order dated 9.4.2010 (Annexure A-1) rejecting the request of the applicant was communicated to the applicant in at his residence at Kanpur, this Bench will have jurisdiction under the rule 6.

10. Admittedly, the Railway Board has withdrawn its letter dated 20.8.1999, which allowed medically unfit candidates to be considered for alternative appointment and the power to consider for this was delegated to the General Managers. Vide letter dated 25.5.2009, the authority given to the General Managers to consider alternative appointment was withdrawn by the Railway Board.

11. The letter dated 20.8.1999 of the Railway Board (Annexure CA-II to the Counter Reply) stated as under:-

“2. Board have reviewed the policy, keeping in view high cost of recruitment and the need to adopt uniform policy for all candidates and for all categories of recruitment. It has consequently been decided the the General Managers shall henceforth have the authority to consider requests from candidates of non-technical categories also, who fail in prescribed medical examination after empanelment by RRB, for their appointment in Alternative category, subject to fulfilment of prescribed medical standard, educational qualification and other eligibility criteria for the same grade post in alternative category. The decision of the General Manager regarding availability and identification of vacancy in alternative grade, including other relevant factors required to be considered, shall be final.”

The above letter was withdrawn by the Railway Board vide letter dated 25.5.2009, communicated by letter dated 3.6.2009 (Annexure-I to the Counter reply), stating as under:-

- "1. The matter regarding provision of alternative appointment in the same grade to candidates selected for Group "C" and Group "D" posts by RRBs who fail in the prescribed medical examination has been engaging the attention of the Board for quite some time. In terms of Boars's letters under reference, General Managers of the Zonal Railways/PUs are presently authorized to consider requests from such candidates for appointment in alternative categories provided there is an acute shortage of staff in the alternative posts of the same grade and on fulfillment by the candidate of the prescribed medical standard, educational qualifications and other eligibility criteria prescribed for the post. This provision is not to be taken as a matter of right by the candidates.***
- 2. The genesis of the provisions for considering alternative appointment primarily lies in the High cost of recruitment, short panels and filling up of vacancies where there is acute shortage of staff. However, the experience of the Railways over the years indicates that this provisions is being misused. A large number of candidates empanelled for the post of ASM/Assistant Loco Pilot/Motorman had bee falling in the prescribed medical examination thereby resulting in short panels. Board had, therefore, decided not to provide appointment in alternative posts to the medically failed empanelled candidates for these categories. These orders were issued in 2001 vide reference No. 3 above.***
- 3. Some of the Railways have brought to the notice of the Board that due to large number of surplus/medically decategorized staff waiting re-deployment, it is not feasible to consider cases of alternative appointment to medically***

unfit RRB/RRC empanelled candidates. Moreover, some candidates take this provision as matter of right and misused it for securing alternative appointment in Non Technical Popular Categories posts where the level of competition is much tougher. This matter was also discussed in the conference of Chief Personnel Officers held in Board's office on 01.05.2009 wherein the general consensus was that the policy of providing alternative appointment to the medically failed empanelled candidates both for Group "C" and Group "D" posts should be dispensed with."

12. In this OA, the said letter dated 25.5.2009 is not under challenge in this OA. The argument of the applicant's counsel that the applicant's request for alternative employment was submitted on 16.1.2009, when the letter dated 25.5.2009 was not issued, hence, his case should be considered as per the earlier letter dated 20.8.1999. We are unable to accept this argument in view of another letter dated 28.7.2010 (Annexure-III to the Counter Reply). In which the following instructions were issued by the Railway Board:-

"The discretionary powers earlier delegated to General Managers of all Zonal Railway/Production Units for considering such cases for providing alternative appointment in same grade to medically unfit empanelled candidates have been ceased to exist with immediate effect from the date of issue of Boards Circular No.99/E(RRB)/25/12 dated 25.05.2009 (RBE No.90/RRCB No.01/2009).

*Prior to issue of Board's instructions dated 25.5.2009, General Managers of Zonal Railways were authorized to consider requests from such candidates for appointment in alternative category in same grade provided there is acute shortage of staff in the alternative post. When the delegated powers ceased to exist with the issue of Boards instructions *ibid*, it is immaterial whether case occurred before 25.05.2009 or after 25.05.2009. Therefore, in the above scenario, request for alternative appointment of medically unfit candidates should not be considered in any case. meaning thereby that the delegated powers which were given to the General Manager were taken away by the Railway Board irrespective of the fact whether the case related prior to 25.5.2009 or after 25.5.2009.*

....."

In view of the clarification of the Railway Board dated 28.7.2010, there is no power of General Manager to consider the request for alternate appointment to the applicant on the ground that his request for alternative appointment was sent prior to issue of the letter dated 25.5.2009.

13. The learned counsel for the respondents has submitted copy of two judgments in support of his case. In the case of Mr. Sanjaybhai Amrutbhai Prajapati vs. Union of India & Others in OA No. 38/2010 decided by Ahmedabad Bench of this Tribunal, the request of the

candidate for alternative appointment was for the period prior to 25.5.2009. After following the judgments of other coordinate Benches of this Tribunal, it was held in the OA No. 38/2010 as under:-

“9. Having considered the matter, we note that in view of the judgment of the Jodhpur Bench of the Tribunal, applicant would not be entitled to any relief even on the ground that his case related to a date prior to the discontinuation of the policy of the Railway Board on 25.5.2009.”

In another case of Niraj Prakash vs. Union of India & others in OA No. 803/2010 decided by Mumbai Bench of the Tribunal, the OA was dismissed in view of the changed policy of the Railway Board.

14. In the facts and circumstances as discussed above and in view of the changed policy of the Railway Board as discussed in paragraph 11 and 12 above, the OA lacks merit. Hence, it is dismissed. No order as to costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

/pc/