

**Central Administrative Tribunal
Principal Bench**

OA No.1128/2015
MA No.3567/2014

Order reserved on: 15.11.2017
Order pronounced on: 21.11.2015

HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)

1. Suneel Kumar, aged 22 years
s/o Late Sh. Chote Lal,
presently working as Technician-III
under Training, Northern Railway, Muradabad
r/o Village Kalyanpur Patti, PO Kakrowa,
Tesh, Sadar, Distt. Rampur (UP)

... Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through the General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Muradabad Division,
Muradabad (UP).

... Respondents

(By Advocate: Shri Kripa Shankar Prasad)

O R D E R

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main relief:-

“(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 6.1.2014 by which the applicant has been

given appointment to the post of Technician-III (PB 5200-20000+GP 1900)) Annex. A/1) instead of appointing him to the post of Guard or any other posts of Grade pay of Rs.2800/-, declaring to the effect that the same is totally illegal, arbitrary and discriminatory and consequently, pass an order directing the respondents to appoint the applicant to the post of Guard or any other post of Grade Pay of Rs.2800/- as done in the cases of similarly situated persons, immediately with all the consequential benefits".

2. Factual matrix of this case is as under:-

2.1 The applicant's father Late Shri Chhote Lal was working as a Trackman (Gangman) in the Moradabad Division of the Northern Railway-Respondent department. He died in harness on 29.01.2012. The applicant applied for compassionate appointment. The respondent No.2, with the approval of respondent No.1, granted compassionate appointment to the applicant to the post of Assistant Station Master (ASM) in the grade pay of Rs.2800/- vide order dated 23.11.2012 after subjecting him to written examination of Group-C, which the applicant had cleared. He was subjected to Aptitude Test in which he was not found suitable for the post. Consequently, he was offered an alternate appointment on the post of Technician Grade-III carrying the grade pay of Rs.1900 in PB-I Rs.5200-20200 vide impugned Annexure A-1 order dated 06.01.2014.

2.2 The grievance of the applicant is that similarly circumstanced 09 persons have been granted compassionate appointment on the

post of Guard in the grade pay of Rs.2800/- who too had been initially offered appointment on the post of ASM and had failed in the aptitude test for the said post but the same has been denied to the applicant although he possesses the requisite educational qualification of graduate and he had cleared the medical test as well. The applicant approached respondent No.2 for redressal of his grievance and seeking alternate appointment on the post of Guard on 03.03.2014 but purportedly he was directed to first obey the orders of the competent authority and then only his case would be considered for the post of Guard or any other post carrying grade pay of Rs.2800/-. Accordingly, the applicant accepted the offer of appointment and underwent training for the post of Technician Grade-III in March, 2014. He, however, vide his Annexure A-2 representation dated 07.08.2014 represented to respondent No.1 for granting him appointment in the grade pay of Rs.2800/-. Since his representation has not been considered by the respondents, he has approached this Tribunal in the instant OA praying for the relief indicated in Para-1 (supra).

3. Pursuant to the notice issued, respondents filed their reply to which applicant filed a rejoinder. With the completion of the pleadings, the case was taken up for hearing the arguments of the learned counsel for the parties on 15.11.2017. The argument of Shri Yogesh Sharma, learned counsel for the applicant and that of

Shri Kripa Shankar Prasad, learned counsel for the respondents were heard.

4. Shri Yogesh Sharma, learned counsel for the applicant besides reiterating the averments made in the OA submitted that the only reason why the applicant has been denied appointment on the post of ASM with grade pay of Rs.2800/- is that he has been declared failed in the Psychological (Aptitude) test. He contended that if the applicant had failed in the Aptitude test for the post of ASM, in that case he could have been considered for an alternate post in the grade pay of Rs.2800/- like Guard where there was no requirement of any Psychological test. He further submitted that besides the applicant a number of candidates who were granted compassionate appointment to the post of ASM had also failed in the past as well as in the subsequent Psychological test for the post of ASM but they have been absorbed on the posts of Guard in the same grade pay of Rs.2800/-. The details of such persons have been mentioned at Paragraph 4.6 of the OA.

5. Shri Kripa Shankar Prasad, on the other hand, argued that the applicant had already joined the post of Technician Grade-III on 25.03.2014 and hence in terms of the Railway Board's Circular dated 07.08.2009, his request for change of category cannot be considered.

6. Replying to the arguments of learned counsel for the respondents, Shri Yogesh Sharma, learned counsel for the applicant submitted that the applicant is also having educational qualification of graduate and fulfils all the eligibility criteria for the post of Guard like the 09 persons whose names mentioned at Paragraph-4.6 of the OA. He could also have been considered for the post of Guard carrying the same grade pay of Rs.2800/- as has been done to these 09 persons. Since it has not been done by the respondents, the interest of the applicant has been seriously prejudiced.

7. I have considered the rival contentions of the parties and have also perused the pleadings. Admittedly, the respondents had considered the case of the applicant for Group-C for which he was subjected to written examination which he had cleared. It is also not in dispute that he was allotted ASM post carrying grade pay of Rs.2800/-. The only reason why he has been denied the said post is that he had failed in the Aptitude test for the post of ASM albeit he had cleared the medical test. It is also not in dispute that several other persons, who too had failed in the Aptitude test for the post of ASM have granted alternate post of Guard carrying the same grade pay of Rs.2800/-. The only reason indicated by the respondents in denying the consideration of the applicant for the post of Guard is that he had already joined the post of Technician Grade-III and hence in terms of the Railway Board's Circular dated

07.08.2009, he cannot be considered for appointment to the post of Guard.

8. I have perused Circular dated 07.08.2009, which is extracted below:-

“Attention is invited to para IX of Board’s letter No.E(NG)III/78/RC-1II dated 7.4.83 and para XII (b) of letter No.E(NG)II/90/RC-I/1.17 dated 12.12.1990 enumerating the provision with regard to change of category of a person, for appointment on compassionate ground.

On a reference from East Central Railway seeking clarification whether DRM could change the allotted category for compassionate appointment before the candidate undergoes the stages of acceptance of offer of appointment, medical test and training etc. It was conveyed to them that it is well within the competence of the DRM/CWM in their respective domains to make changes in the allotted category for compassionate appointment before the candidate undergoes preceding appointment formalities subject to candidate’s suitability to the posts.

The matter has been further examined in the Board’s office and it is clarified that in case of Compassionate Ground appointment, category allotted to a candidate could be considered for change only before a candidate accepts the offer of appointment and goes for medical examination. Once the candidate accepts the offer of appointment and goes for medical examination then change of category should be done either on account of medical unfitness or by an authority higher than the one who has decided the category of allotment”.

9. This Circular appears to be discriminatory. On his failure in the Aptitude test for the post of ASM, the applicant was offered an alternative post of Technician Grade-III in the grade pay of Rs.1900/- vide impugned Annexure A-1 order. He had no option

except to accept the offer as it was offered to him as Hobson's choice. Even the application of coercion alleged by the applicant for making him to accept the offer cannot be ruled out. To take shelter under the Circular dated 07.08.2009 in denying the post of Guard in the grade pay of Rs.2800/- to the applicant is undoubtedly illegal on the post of the respondents particularly when similar persons whose names are mentioned at Para 4.6 of the OA have been granted alternate post of Guard in the grade pay of Rs.2800/- after they too had failed, like the applicant, in the Aptitude test for the post of ASM. In this view of the matter, I am of the opinion that the applicant has been discriminated against and the principles of equality enshrined in Articles 14 & 16 of the Constitution of India have been violated by the respondents.

10. In the conspectus of the discussions in the foregoing paras, this OA is allowed with a direction to the respondents to appoint applicant on the post of Guard in the grade pay of Rs.2800/- w.e.f. 06.01.2014, i.e., from the date of issuance of the Annexure A-1 appointment letter to the applicant. This shall be done within a period of three months from the date of certified copy of this order. It is, however, clarified that the applicant shall not be eligible for any arrears of pay.

11. Consequently, MA No. 3567/2014 also stands disposed of. No costs.

(K.N. Shrivastava)
Member (A)

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