

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1125/2015

Reserved on : 10.05.2018.

Pronounced on : 15.05.2018.

Hon'ble Mr. Raj Vir Sharma, Member (J)

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. Ganesh Kumar, 24 years
S/o Late Sh. Sunder Lal,
Presently working as Technician-III
Under Training, Northern Railway,
Muradabad,
R/o Village Majhola Fatehpur, Tesh.
Ganaur, Distt. Sambal(UP).

.... Applicant

(through Sh. Yogesh Sharma, Advocate)

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

(through Sh. Indra Bhushan Prasad for Sh. Kripa Shankar Prasad,
Advocate)

O R D E R

Ms. Praveen Mahajan, Member (A)

Briefly stated, the facts of the current O.A. are that the father of the applicant was working as a Mate in Northern Railway, Moradabad Division, Muradabad. He died in harness on 16.06.2012. It is submitted that the applicant was called to appear in the test

conducted by the respondents for appointment to the post of Assistant Station Master (ASM) on compassionate grounds, which he qualified. Respondent No.2, with the approval of respondent No.1 vide order dated 10.04.2013 decided to appoint the applicant to the post of ASM in the pay band of Rs. 5200+20200+GP 2800/-. The applicant was sent for medical examination and was declared fit. However, subsequently, he did not qualify the Psychological test. It is submitted by the applicant that as per the laid down procedure, if one is declared failed in Psychological test, he should be considered for alternative post of the same grade pay. Names of some of the similarly situated persons have been given in para 4.6 of the O.A, who failed in Psychological test for the post of ASM, but have been absorbed in the post of Guard in the same grade pay of Rs.2800/-.

2. The applicant submits that he fulfilled all the eligibility criteria laid down for the post of Guard, and there are sufficient number of posts vacant in the said grade. However, the respondents by pick and choose policy have decided to appoint him to the post of Technician Grade-III in the grade pay of Rs.1900/- vide the impugned order dated 18.02.2014. Vide order dated 26.03.2014, the applicant was sent for three years training for the post of Technician. In the order, it was stated that during this training period, he will get only stipend in the grade pay of Rs.1800/- instead of Rs.1900/-. He attended the training under protest and made number of

representations to the higher authorities i.e. General Manager, Railway Board etc. against the illegal, arbitrary and discriminatory action of respondent No.2. Having received no reply to the same, the applicant has filed the current O.A. seeking the following relief:-

- “(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 18.2.2014 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.
- (ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation.”

3. The respondents in their reply, state that after the death of the applicant's father, the widow of the deceased employee requested for a job for her son (applicant in the OA). On the basis of his qualification, his case was considered for Group-C and he was called for the written exam. After qualifying the same, the post of ASM in Grade Pay of Rs. 2800/- was allotted to him. The applicant passed the medical exam for the post of ASM but he was not found suitable in Aptitude test. Ultimately, the applicant was offered the post of Tech-III/C&W in the grade pay of Rs.1900/-, which he joined. Subsequently, the applicant applied for change of post but since he

had already joined Tech-III/C&W category, so his application for change of post was rejected.

3.1 It is further stated in the counter that the persons mentioned by the applicant were allotted other posts in the same Grade Pay because they had not joined any other post. Since the applicant has joined the post of Tech-III/C&W, hence it was/is not possible to change his category.

4. We have gone through the facts of the case and considered the rival contentions.

4.1 The basic facts of the case are not in dispute. The only reason why the applicant has been denied the post which he applied for and qualified, is because he failed in the Aptitude Test prescribed for the post of ASM. It is not denied by the respondents that similarly placed persons, who had also failed in the said Psychological/Aptitude Test have been appointed by considering them for an alternative post (in the same grade pay), where there was no need to qualify the said Psychological Test. Apparently, this has been done in the past also. The applicant has named some of the similarly situated persons, who have been absorbed to the post of Guard in the same Grade Pay of Rs.2800/- despite having failed in the Psychological Test of ASM.

5. In view of the aforementioned facts, we have no hesitation in concluding that the treatment meted out to the applicant is discriminatory. The respondents themselves have admitted that the only impediment in way of the applicant being appointed to the post of Guard etc. was his failure to qualify the Aptitude Test. Merely because the applicant was needy and joined the post of Tech-III/C&W in the Grade Pay of Rs.1900/-, which was offered to him, he cannot be denied the higher post for which he was, eligible. More so, when others like him have been granted similar benefit.

6. Accordingly, the impugned order dated 18.02.2014 is quashed and set aside. The respondents are directed to consider the applicant for appointment to the post of Guard or to any other post in the Grade Pay of Rs. 2800/- for which he is eligible, as per law and as done in the case of other similarly situated person. It is, however, made clear that such appointment will only have prospective effect. The O.A. is accordingly allowed. No costs.

(Praveen Mahajan)
Member (A)

(Raj Vir Sharma)
Member (J)

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