

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

**Original Application No.95 of 2012**

**Reserved on : 04.10.2018**

**Order pronounced on : 05. 10.2018**

Between:

Kaza Tirupataiah, S/o. K. Ankamma Rao,  
Aged 38 years, R/o. Peda Kakani Post,  
Guntur District – 522509.

... Applicant

And

1. The General Manager,  
Railway Recruitment Board, Secunderabad.
2. The Chief Personnel Officer,  
South Central Railway, Rail Nilayan,  
Secunderabad.
3. The Assistant Secretary,  
Railway Recruitment Board, Secunderabad.

... Respondents

Counsel for the Applicant	...	Mr. P. Venkata Rama Sarma
Counsel for the Respondents	...	Mrs. A.P. Lakshmi, SC for Railways

***CORAM:***

<b><i>Hon'ble Mr. B.V. Sudhakar</i></b>	<b><i>...</i></b>	<b><i>Member (Admn.)</i></b>
<b><i>Hon'ble Mr. Swarup Kumar Mishra</i></b>	<b><i>...</i></b>	<b><i>Member (Judl.)</i></b>

***ORDER***

***{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}***

The OA is filed against the inaction of the respondents in not issuing appointment orders in furtherance of the offer of appointment letter dt 14.7.2009 issued by the respondents.

2. Brief facts of the case are that the applicant, a Post Graduate, on applying for the post of Trackman vide notification No 1/2003 and having cleared the written exam was issued offer of Appointment vide lr dt 14.7.2009 by the Asst. Divisional Engineer, Nalgonda subject to being found fit medically. Accordingly

the applicant after due examination medically was found fit for B-2 category. Thereafter since the applicant did not receive any further communication he represented on several occasions but of no avail. Hence this O.A.

3. The contention of the applicant is that after being offered the appointment and on clearing the medical in B-2 category, yet not giving him appointment is illegal. Others who appeared along with him were given appointment which is discriminative. The applicant also prayed that he may be provided with alternative appointment in any suitable post of equivalent grade.

4. The respondents confirm that the applicant was found fit for B-2 medical category whereas the standard fixed is B-1 and hence he was not given appointment. Further the policy of providing alternative appointment was withdrawn by the respondents vide Ir No.99/E (RRB)/25/12 dt 25.5.2009. Hence there is no scope for engaging the applicant in the respondents' organization.

5. Heard the learned counsel and perused the documents on record.

6. The learned counsel for the applicant contends that the applicant is eligible and the rules on the subject favour the applicant. Hence appointment should be issued. The ld. counsel for the respondents opposes the same on grounds that the applicant was medically unfit for the post he applied for and that there are no provisions to provide alternative employment at the moment.

7. A perusal of the medical certificate dt 19.8.09 indicates that the applicant was examined for A-2 category (Annexure –III) and found fit for B-2 though he was supposed to be examined for B-1 category which is the required standard for the post of trackman. A lapse on part of the respondents. The serial circular 243/1999 dt 20.8.99 has a provision for providing alternative appointment in a post for which the applicant is medically fit. In the present case the applicant is

fit for B-2 medical category. The objection of the respondents on grounds that the Railway Board circular vide RBE No. 90 dt 25.5.2009 has dispensed with providing alternate appointment, would not hold good with retrospective effect as per Honorable Supreme Court observation in ***Punjab State Electricity Board and anr v Narata Singh and anr*** reported in CA No. 2384 of 2007 dt 23.2.2010 wherein it was held that orders/circulars issued shall not have retrospective effect. Even the RBE no 90 is effective only from the date of issue ie 25.5.2009. The notification was issued in 2003 and hence the sl Circular 243/1999 dt 20.8.99 is applicable to the present case, which permits offer of alternate appointment to candidates who qualify to a lower medical category than the prescribed standard for the post notified. Objective of this circular was to reduce the cost of multiple recruitments. Hence the action of the respondents in not appointing the applicant is against rule cited and arbitrary. There is inordinate delay on behalf of the respondents in not acting on a genuine case as per the rules framed by the respondents themselves. In all fairness the applicant should not suffer for the slackness of the respondents in acting on the issue. As per Honorable Supreme Court observation in **T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544** “*Action in respect of matters covered by rules should be regulated by rules*” and in **Seigal’s case (1992) (1) supp 1 SCC 304** the Hon’ble Supreme Court has held that “*Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.*”

8. The O.A thus succeeds on grounds of violation of rules and based on citations of the Honorable Supreme Court cite above. The O.A, for reasons expounded, has to be necessarily allowed and is accordingly allowed.

9. The respondents are therefore directed to consider the following:
- 1) Appointing the applicant, who is a post graduate, from the date of medical certificate dt 19.8.2009 wherein he was found fit for B-2 medical category, in an alternative post which prescribes B-2 medical category standard as the eligibility criteria.
  - 2) Fixing notional seniority from the date of appointment.
  - 3) No back wages need to be paid.
  - 4) Time frame allowed to implement this order is three months from the date of issue of this order.
10. In the circumstances, there shall be no order to costs.

**(SWARUP KUMAR MISHRA)**  
**MEMBER (JUDL.)**

**(B.V. SUDHAKAR)**  
**MEMBER (ADMN.)**

Dated, the 5<sup>th</sup> day of October, 2018

*evr*