

OA.No.170/00205/2017/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00205/2017

DATED THIS THE 28th DAY OF NOVEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V.SANKAR, MEMBER (A)

Manjunatha Rao, M.
 S/o. Sri.Mahadeva Rao
 Aged about 30 years
 residing Rathnapuri (vill+PO)
 Hunsur (Taluk)
 Mysore (District)
 Karnataka-571189.

....Applicant

(By Advocate Sri.Izzhar Ahmed)

Vs.

1. Deputy Chief Personnel Officer(Recruitment)
 Railway Recruitment Cell
 South Western Railway
 Divisional Office Compound
 Hubli-580 020.
2. Chief Personnel Officer
 (Personnel Department)
 South Western Railway
 Gadag Road
 Hubli-20.
3. Union of India
 through the General Manager
 South Western Railway
 Gadag Road
 Hubli-20.

...Respondents

(By Advocate Sri N.Amaresh)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

- a) *Set aside the para-3 is concerned of the impugned order vide No.SWR/RRC/5654/ME/02-2013 (Gen)/16-17 dated 25.11.2016 (Annexure-A08) as illegal*

and without following the prescribed procedures of the Railway Board's orders 18.07.2005 (Annexure:A-10), 29.09.2005 (Annexure:A-11), 12.03.2007 (Annexure: A-12), 17.06.2008 (Annexure: A-13), 08.12.2011 (Annexure: A-14) and against the principles of natural justice.

b) Direct the respondents to consider the case of the applicant for the appointment to Group-D posts vide employment Notification NO.01/2013 dated 28.09.2013 under fit in medical classification of C-I and C-II vide medical certificate No.013386 dated 19.10.2016 (Para-2 of Annexure: A-08) in the interest of justice and equity.

2. The applicant's case is that in response to the Employment Notification No.02/2013 dtd.28.09.2013(Annexure-A1) of South Western Railway for filling up the vacancies in Gr.D, he had applied for appointment for Gr.D post and appeared against UR vacancies. The selection is based on written examination, Physical Efficiency Test(PET), records verification and medical examination and then final select list. He was issued with admit card dtd.16.11.2014(Annexure-A2) for written examination and was qualified in the same as he got more than 40% qualifying marks and was panelled in merit. He qualified in Physical Efficiency Test on 24.04.2015(Annexure-A3) and found suitable in the records verification dtd.21.07.2015(Annexure-A4). But he found unfit temporarily for 3 months in medical examination dtd.22.07.2015(Annexure-A5) and finally found fit in medical standard of C-I and C-II dtd.19.10.2016. On 25.11.2016(Annexure-A8), the 1st respondent has issued impugned order stating that 'no vacancies are available in the medical classification C-I and C-II and hence his candidature for empanelment was dropped and no further correspondence will be entertained in the matter'.
3. The applicant submits that in the Employment Notification, there are 47 vacancies under UR in the categories at Sl.Nos.6,10,11,12,14 & 15 in the Employment Notification dtd.28.09.2013 and 78 vacancies of UR in the

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medical classification of A-II at SI.No.13 which, according to the applicant, is a typographical mistake as instead of mentioning C-II, the respondent No.1 mentioned it as A-II at SI.No.13. According to Rule-510, Section-B, Chapter-V of Indian Railway Medical Manual(IRMM)-I, 2000(Annexure-A9), the posts classified under A-II have requisite qualification of Graduation whereas for the posts in category-13 i.e. Porter/Hamal/Sweeper(non-safety category) which are classified under C-I and C-II, the prescribed qualification is 10th standard only. Therefore, the medical classification of A-II should be called as the classification of C-II and the vacancy position on the hands of respondent No.1 is accordingly 125(47+78) for UR. The Employment Notification dtd.28.09.2013 is based on the Railway Board's guidelines No.RBE-121/2005 dtd.18.07.2005(Annexure-A10) regarding recruitment of Gr-D from open market. According to para-7.11 of the above guidelines, the currency of panel shall be for a period of two years from the date of publication. The General Manager may extend the life of the panel by one year in case of administrative exigencies. Therefore, para-3 of the impugned order while rejecting the claim of the applicant is totally against the guidelines prescribed by the Railway Board. According to Para-5.1 of the Railway Board's order dtd.29.09.2005(Annexure-A11), 'in case a candidate gives only some of the options and if as per his merit there is no vacancy available to accommodate him/her in the Division/Workshop/Production Units of his/her choice, then it will be the discretion of the administration to allot him/her against any of the available vacancies. No change of options, once exercised, shall be permitted at any stage'. Therefore, the word 'Administration' is not for the respondent No.1 but for respondents No.2 & 3. According to the recruitment process, after completion of written examination, PET, records verification and medical examination, the Cadre Controlling Authority will issue the offer of

appointment to the successful candidates on the final list prepared by respondent No.1. If the candidates filed unwillingness to join the said post, the Cadre Controlling Authority will forward the list of unwillingness candidates to the respondent No.1 and the respondent No.1 will forward to the respondent No.2 for cancellation of the offer of appointment. The applicant found fit in medical classification C-I & C-II against 125 UR vacancies in the final select list dtd.19.10.2016 prepared by the respondent No.1. According to para-5.1 of Railway Board's order dtd.29.09.2005, respondent No.1 has not delegated to issue the impugned order after finalising the select panel i.e. all 04 stages of examination and therefore, the impugned order is not approved either by 2nd respondent or by 3rd respondent. According to modified guidelines vide RBE No.37/2007 dtd.12.3.2007(Annexure-A12) the respondent No.1 is not delegated to use the word 'dropped' in the impugned order after final select list. The respondent No.1 in the impugned order had stated 'no correspondence' which means the candidates have no rights to approach the higher authority against the irregularity of the respondent No.1. The applicant contended that the respondent No.3 has delegated the powers to the respondent No.1 for conducting examination only and not to pass any order on behalf of the Cadre Controlling Authority. He being a servant of the Railways cannot act as Master and cannot stop anybody who is aggrieved by the selection. According to para-4(ii) of RBE No.73/2008 dtd.17.6.2008(Annexure-A13), it is not stated by the respondent No.1 in the impugned order that when 47 UR candidates were appointed/recruited to Gr-D posts in South Western Railway. It is admitted that the applicant was medically fit in the medical class C-I and C-II dtd.19.10.2016 and the empanelment of the applicant was dropped vide dtd.25.11.2016 i.e. within 36 days only. It is also not stated in the impugned order that how many offer of

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appointments in UR vacancies were cancelled by the respondent No.2 on unwillingness. It is also not possible in practical sense that the Cadre Controlling Authority has issued offer of appointment to all 125 candidates and all have joined before the impugned order i.e. within 36 days. Further the Railway Board issued clarification vide RBE No.164/2011 dtd.18.12.2011(Annexure-A14) of the para-2 of the earlier order dtd.18.07.2005(Annexure-A10) regarding periodicity of recruitment to erstwhile Gr-D posts, as per which the entire selection was prescribed for six months or maximum 18 months only but the entire selection was completed from 28.9.2013(issue of notification) to 19.10.2016(declaration of final panel) i.e. 3 years and 1 month. When the applicant filed application under RTI dtd.07.04.2017(Annexure-A15) for seeking information/documents relating to the impugned action of respondent No.1, the respondent No.1 has rejected the same without any speaking order. Accordingly, he has violated the Articles-14, 16, 21, 309 & 311(2) of the Constitution and ignored the guidelines of the Railway Board's orders for the recruitment of Gr.D. Hence, the applicant has filed the present OA seeking the relief as prayed for.

4. The respondents have filed their reply statement wherein they submit that the Railway Recruitment Cell, Hubli had published a notification calling applications from eligible candidates for filling up of vacancies in various Gr.D categories vide Employment Notice dtd.28.9.2013(Annexure-R1). It is a fact that the applicant is one of the candidates applied for Gr.D posts and he was subjected for written examination held on 16.11.2014. It is not true that he was listed in the provisional select list whereas he was kept in the withheld provisional select list, he was not considered for placing him on select panel since he was found unfit temporarily for 3 months in medical examination vide medical certificate dtd.22.7.2015(Annexure-R2) and finally found fit for CEE-

ONE and CEE-TWO with hearing aid below medical classification vide medical certificate dtd.19.10.2016(Annexure-R3).

5. The respondents further submit that the allotment of posts for the candidates who have qualified in the written examination and PET will be done based on merit position in the written exam, option exercised and fitness in the medical classification. The applicant belongs to UR community and his merit position is 480 in the overall written exam. As there were no vacancies in the posts with CEE-ONE and below medical classification to accommodate the applicant as per his merit position, his candidature has been dropped and communicated vide Dy.Chief Personnel Officer(Rectt.), SW Rly., Hubli letter dtd.25/28.11.2016(Annexure-R4). They further submitted that in the employment notification dtd.28.9.2013, there are 47 vacancies in the UR categories at Sl.Nos. 6,10,11,12,14 & 15 with requirement of C-I classification and 78 vacancies of UR in the medical classification A-II at Sl.No.13. The medical classification mentioned in the Employment notice dtd.28.9.2013 from Sl.No.1 to 15 has been done as per the IRMM-I-2000 Chapter-V of Medical Manual. The detailed categories of Railway Posts under each of the classes/group are mentioned in para 510 of Annexure-IV(Annexure-R5). Thus it is clarified that there is no typographical error in notifying the vacancies with medical classification against each category of post notified. As per the procedure adopted for allotting posts to the candidates by the Railway Recruitment Cell, it is mentioned that the candidates are not considered for allotting of posts only based on medical fitness but taking into consideration the other aspects i.e. the merit, option expressed by the candidates and medical fitness together.

6. The respondents further submit that the candidates belong to UR securing

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40% and above marks will be called for the next process of selection i.e. PET at the ratio of 1:2 community wise from among the qualified candidates in the written examination against the notified vacancies in terms of Railway Board's letter dtd.10.12.2014(Annexure-R6). Accordingly, those who are qualified in PET will be called for document verification followed by medical examination at the ratio of 1:1 for final consideration for appointment based on their merit in the written examination/medical fitness and option exercised for a particular post notified in the notification. The applicant was temporarily made unfit for 3 months vide medical certificate dtd.23.7.2015 and thereafter he was directed for completion of medical examination on 28.9.2016 vide office letter dtd.28.09.2016(Annexure-R7). Accordingly, the applicant was examined by the medical board at Railway Hospital, Mysore on 29.9.2016 at two different level after surgery of tympanoplasty as he was suffering from Chronic Suppurative Otitis Media(COSM) in left ear and as per the medical memo the medical board unanimously considered that the applicant is unfit for Class A-II but fit for Class C-I & C-II with hearing aid. The recommendations of the Medical Board vide proceedings dtd.13.10.2016(Annexure-R9) were accepted by the Chairman and accepting authority i.e. Chief Medical Surgeon, Mysore. There is no provision for appeal against the decision of the medical board in terms of instructions issued by Railway Board letter dtd.5.6.2014(Annexure-R10). Further, on receipt of the medical certificate, his case was examined in the light of his merit position i.e. 480 in overall merit list and the cut off marks of C-I allotted in UR category is 361 and Railway Recruitment Cell, SW Rly. had not notified any C-II post. Since there are no posts existed for accommodating him in C-I categories as per his merit, the same was communicated to him and stated that his candidature has been dropped.

7. The respondents submit that as per para 510 of Indian Railway Medical

Manual, the list of categories to be examined under A-II categories wherein it is clearly mentioned that all categories connected with train operation duties are to be medically examined in A-II categories. Hence, there is no typographical error as averred by the applicant. Thus 78 vacancies notified for Hamal/Porter/Sweeper in Operating Department needs the higher medical classification of A-II. The averments of the applicant quoting Railway Board's guidelines under RBE No.121/2005 dtd.18.7.2005 are not in terms with true spirit of the instructions mentioned therein. The said instructions are modified from time to time. And the averments that the word 'administration' is not for respondent No.1 but for respondent No.2 & 3 is also not correct as the Chairman, Railway Recruitment Cell(Dy.CPO/Rectt.) is the independent in charge of Railway Recruitment Cell for all the purposes of recruitment done by Railway Recruitment Cell. The powers are delegated to Dy.CPO(Rectt.) SW Rly, Hubli as 'administration' by General Manager(Annexure-R11). The Railway Recruitment Cell will issue only a part/provisional panel till such time all the candidates are made available as per the requirement of notification. The averment of the applicant that respondent No.1 has not delegated to use the word 'dropped' after final select panel is a false statement having no awareness of establishment matters. It is stated that the final panel will be declared once the full requirement of indents as notified in the notification are issued. It is further submitted that the final panel against Employment Notification No.02/2013 is yet to be published in anticipation of various aspects, such as, awaiting for medical reports, investigations etc. The first part-panel was published on 08.09.2016. The currency of the panel commence from the date of issuing the final panel. The panel currency is two years. As per the instructions contained in Railway Board's letter dtd.10.01.2014(Annexure-R12), no replacement panels are to be given

against non-joining of selected candidates and the Railway Recruitment cell have to be provided with papers as per the requirement submitted by the Divisions/Units. Hence, the candidates who are acquiring highest merit in the written examination and fit in the relevant medical classification will be given preferences for allotment of post over the candidates with lower merit order. The Railway Recruitment Cell being a recruitment agency will only supply the list of selected candidates. It is for the Units/Divisions to decide when the candidates should report for duties to the particular posts allotted. The Chairman, Railway Recruitment Cell is the sole authority for allotment of posts as per the requirement and the sole in charge with the powers delegated by the General Manager for recruitment of Gr.D categories in Railways.

8. The respondents further clarify that a candidate will be placed on select list only on completing all the formalities i.e qualifying in written examination, Physical Efficiency Test(PET), document verification and medical examination. Mere passing the written examination does not entitle a candidate to have a claim for appointment on Railways against the notification wherein it is clearly mentioned that only those selected candidates who are confirming to the medical standards laid down in the IRMM and other extant provisions as the case may be will only be eligible for appointment. As per the Railway Board's letter dtd.5.6.2014, once the committee's decision, as accepted by the respective CMO/MD/CMS/ACMS in charge of the Unit/Division/Sub-division, will be final and no appeal will be entertained against the decision. Hence, 'no correspondence' implies that no further provision of appeal against the finding of Medical Board. As such the applicant is not deprived of principles of natural justice. The applicant's case was declared unfit for the higher medical classification by a duly constituted medical board with medical classification of C-I & C-II with hearing aid. It is further clarified that the applicant's merit is 480

and the last candidate merit order who has been posted against the C-I category post is 361. Since all the candidates with higher merit were allotted to the posts earmarked for C-I medical classification based on their merit/medical fitness and option exercised by them, no post was available for him to accommodate in C-I medical classification as per his merit and no post is notified in the notification against C-II medical classification. Hence, his candidature is 'dropped'.

9. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that vide impugned order dtd.25.11.2016, it is stated that there is no vacancy whereas vide letter dtd.24.4.2017(Annexure-R13), it is stated that the selection is still going on which is contrary to the reply statement. The respondents have not submitted any records in support of impugned order. The General Manager has delegated powers in terms of Rule 124 of IREC for framing rules for Gr-D&C and the respondent No.1 has delegated powers for conducting examination only but not delegated for policy matters. The respondents have not stated in the reply statement whether the final panel is declared or not. The respondents failed to establish in reply statement under which rule the impugned order is passed.
10. We have heard the Learned Counsel for both the parties. The Learned Counsels for the applicant and the respondents have made submissions reiterating the factual position and their points as highlighted by them in the OA, reply statement and rejoinder.
11. We have gone through the main contentions of the applicant and reply of the respondents in detail. The point for consideration is whether there is any typographical error in the recruitment notification at Annexure-A1 & Annexure-R1 relating to the category which is mentioned as requiring medical standard

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of A-II. The applicant claims that instead of C-II, it has been wrongly stated as A-II. The respondents have categorically stated that it is indeed A-II and there is no clerical error in this regard. From the list of A-II category of staff as available at Annexure-R5, it is seen that the posts mentioned in the notification as requiring A-II category are also part of the staff required for the operating wing of the Railways. However, it is seen that in the list of staff categorised as C-II, the posts mentioned are Porter, Safaiwala etc. It is not clear whether the category No.13 as per the notification mentioning medical standard as A-II can also be considered as C-II since the similar sounding posts are available in both the categories. However, since the respondents have categorically stated that category C-II is not contemplated and the overall provisions of C-II also talk of clerical staff, we could not come to a definitive conclusion in this regard. The applicant was found unfit for a period of 3 months and subsequent to a surgery, he has been found unfit for Class A-II and fit for Class C-I & C-II by the Medical Board. As seen from the bare notification, there is no category requiring medical standard of C-II. With regard to C-I, the respondents state that the last person to be selected was at the rank of 361 and the rank of the applicant is 480. Therefore, the applicant will not have any chance to claim appointment under category C-I. Further as per Annexure-R13 which is a reply to the query under RTI Act, the respondents themselves have stated that the recruitment process of Gr.D as per the notification has not yet been finalised. If that be the case, if based on dropouts or non-selection of candidates on any other ground, the applicant having been found suitable for C-II classification, and similar posts are available under A-II, the respondents may consider appointment of the applicant if found suitable otherwise.

12. The OA is therefore disposed of with the above orders. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00205/2017

- Annexure A1: A copy of employment notice dtd.28.09.2013
- Annexure A2: A copy of admit card for written test dtd.16.11.2014
- Annexure A3: A copy of admit card for PET test dtd.24.04.2015
- Annexure A4: A copy of admit card for record verification dtd.21.07.2015
- Annexure A5: A copy of memo for medical test 22.07.2015
- Annexure A6: A copy of letter dtd.24.11.2015
- Annexure A7: A copy of letter dtd.08.09.2016
- Annexure A8: A copy of impugned order dtd.25.11.2016

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Annexure A9: A copy of Rule-510 of IRMM, I-2000
 Annexure A10: A copy of Railway Board's dtd.18.07.2005
 Annexure A11: A copy of Railway Board's dtd.29.09.2005
 Annexure A12: A copy of Railway Board's dtd.12.03.2007
 Annexure A13: A copy of Railway Board's dtd.17.06.2008
 Annexure A14: A copy of Railway Board's dtd.08.12.2011
 Annexure A15: A copy of application under RTI dtd.07.04.2017

Annexures with reply statement:

Annexure-R1: Employment Notice No.02/2013 dtd.28.9.2013
 Annexure-R2: Medical certificate No.013064 dtd.22.07.2015
 Annexure-R3: Medical certificate No.013386 dtd.19.10.2016
 Annexure-R4: Dy.Chief Personnel Officer (Rectt.) South Western Railway, Hubli
 letter No.SWR/RRC/564/ME/02-2013(Genl)/16-17 dtd.25/28.11.2016
 Annexure-R5: As per IRMM-I-2000 Chapter-V of Medical Manual, para 510 of
 Annexure-IV, the detailed categories of railway Posts under each of
 the classes/groups
 Annexure-R6: Railway Board's letter No.E(NG)-II/2009/RR-1/10/Pt (7525),
 dtd.10.12.2014 (RBE No.138/2014)
 Annexure-R7: Dy.Chief Personnel Officer (Rectt.) South Western Railway, Hubli
 letter No.SWR/RRC/564/ME/2013(Genl) dtd.28.09.2016
 Annexure-R8: Railway Board Letter No.2008/H/5/3 dtd.04.02.2010
 Annexure-R9: The details of the medical board proceedings held at Railway Hospital
 Mysore on 13.10.2016
 Annexure-R10: Railway Board letter No.2014/H/5/8 (Policy), dtd.05.06.2014
 Annexure-R11: The powers are delegated to Deputy Chief Personnel Officer
 (Recruitment), South Western Railway, Hubli as "administration" by
 General Manager
 Annexure-R12: Railway Board letter No.E(NG)-II/2008/RR-1/33 dtd.10.01.2014
 (RBE
 No.06/2014)
 Annexure-R13: The copy of letter No.SWR/RRC/564/RTI/IH/17-18 dtd.24.04.2017
 provisions of information under RTI Act, 2005 to Sri.Izzhar Ahmed,
 Advocate

Annexures with rejoinder:

Annexure-Re16: A true copy of application dtd.08.05.2017
