

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, CAMP AT NAGPUR.ORIGINAL APPLICATION NO.2189/2016DATED: 31st July, 2019

CORAM:- R. VIJAYKUMAR, MEMBER (A).

Shri Abhiram S/o Anil Dhok  
Aged about 33 years,  
Trainee Technician Grade-III,  
Under Chief Workshop Manager,  
Motibagh Workshop,  
South East Central Railway,  
Nagpur, R/o Flat No.E-126,  
NIT Gharkul Parisar,  
Venkatesh Nagar, Near KDK College,  
Nandanvan, Nagpur-440009.

....Applicant.

(By Advocate Shri A. B. Bambal)

***Versus***

1. Union of India, through  
General Manager,  
South East Central Railway,  
Bilaspur-495004.
2. Divisional Railway Manager,  
South East Central Railway,  
Nagpur-440001.
3. Chief Personnel Officer,  
South East Central Railway,  
G.M.'s Office,  
Bilaspur-495004.

....Respondents.

(By Advocate Shri V. M. Gadkari)

ORDERPER: R. VIJAYKUMAR, MEMBER (A).

1. Today, when the matter was called out, heard Shri A. B. Bambal, learned counsel for applicant and Shri V. M. Gadkari, learned counsel for the respondents. We have carefully perused the

case records.

2. The applicant has filed this OA on 04.07.2016 under Section 19 of the Administrative Tribunal's Act, 1985 seeking for the following reliefs:-

"1. Call for the records of the case from the respondents.

2. Quash and set aside the impugned order dated 30.09.2015 (Annexure A-1) communicated vide letter dated 16.02.2016.

3. Direct the respondents to appoint applicant as Junior Engineer with Grade Pay Rs.4200/- with all consequential benefits.

4. Any other relief deemed fit and proper in the circumstances of the case may kindly be granted.

5. Allow the application with cost."

3. The applicant was considered for compassionate appointment and considering his Diploma in Electronic Engineering, he was eligible for the post of Technician Grade-III and Junior Engineer Grade-II. However, he was medically qualified only under C-1 category and hence, appointment in these two categories were limited to the Workshop after ascertaining his medical status, the applicant was granted Compassionate Appointment as Technician Grade-III in the workshop considered his medical category in order no. SDPO/ NGP/ CON/

EA /Gr'C'/ AAAD/ 249061112 dated 27.06.2013 (Annexure A-2). The applicant accepted the employment after and joined in this post.. The learned counsel for the applicant submits that the applicant was initially appointed as Technician Grade-III in open line and as he was not medically qualified for this position, he was shifted as Technician Grade-III to the workshop. The applicant submits that at this point in time, there were posts of JE Grade-II in the workshop for which also he was academically and medically qualified. The respondents have taken the view that since he accepted the offer for appointment as Technician Grade-III in the workshop, he cannot now be considered for change in position to the higher cadre of Junior Engineer Grade-II. In the letter of the General Manager dated 30.09.2015 which is annexed to impugned order (Annexure A-1), the letter records the nature of irregularities found in the appointment made and offered to the applicant but concludes that despite the irregularities mentioned above, it would not be correct to consider the applicant for the higher post than which has been offered and accepted by him and for which lower post, he was trained for more than six months.

Therefore, they have reiterated the employment and posting as Technician Grade-III in the workshop for the applicant. In the course of this letter at para-III they have observed as follows:

"3) In terms of Estt. Rule No.286/2005, compassionate appointment of wards of deceased employees, who are Diploma holders should normally be considered for JE-II post subject to the availability of vacancies and the candidate being found eligible and suitable for the post. The candidate should have been considered for the post of JE at the initial stage and not after appointing him as Technician or other lower grade post. Further, DRQ vacancy position has also not considered while screening him for the post of JE. No vacancy of JE of C-1 medical category, having more than 25% DRQ, has been shown in your letter dated 21.08.2015.

4) It terms of Estt. Rule No.188/2009, 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."

7. The point in question now is that the observation in the last sentence in para-III which states that no vacancy of JE in C1 category is

available. The learned counsel for the applicant submits that the applicant obtained the vacancy position for the category of Junior Engineer in the year 2013-2018 which showed vacancies of 10,18,5,5,5,4 but there is no clarity as to JE Grade-II to workshop. It is also unclear as to whether the respondents examined the aspect of whether there were vacancies available in the grade of Junior Engineer Grade-II while shifting the applicant from the category of Technician Grade-III open line to Technician Grade-III workshop. In the affidavit last filed by the respondents and in reference to a list provided by the learned counsel for applicants at the time of hearing on 26.07.2019, there appears to be an increase in the medical category of JE-Gr-II to A3 which some categories of JE-Gr-II are retained a C-1. No clarity could be provided.

**5.** Therefore, given the diversity of information and the need for appropriate consideration in accordance with the establishment rules and policies of the respondents, the respondent no.1 is directed to consider the facts brought as above along with other material already available with the respondents and produced during

the course of the hearing by both the applicant and the respondents and to pass a reasoned and speaking order on the request of the applicant within a period of eight weeks from the date of receipt of a certified copy of this order and communicate the same to the applicant within two weeks thereafter.

**6.** In the aforesaid terms, this OA is disposed of with no order as to cost.

(R. VIJAYKUMAR)  
Member (A)

V.

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07/07/12