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CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA 2145/2003

New Delhi, this the 5th day of February, 2004

Hon'ble Sh. Shanker Raju, Member (J)  
Hon'ble Sh. Sarweshwar Jha, Member (A)

Radha Charan, S/o Sh. Budha Singh  
Gateman Group 'C',  
R/o Vill. Tumola, PO: Dhansingha  
Distt. Mathura, UP.

...Applicant

(By Advocate Sh. U. Srivastava)

V E R S U S

1. Union of India through  
The General Manager  
Northern Railway  
Baroda House, New Delhi.
2. The Chief Engineer/Divisional Engineer Delhi  
Northern Railway, DRM Office  
State Entry Road, New Delhi.
3. The Asstt. Engineer  
Tughlakabad, New Delhi.
4. The PWI, Northern Railway  
Faridabad.

...Respondents

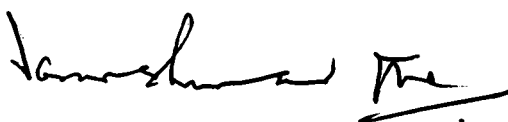
(By Advocate Sh. Satpal Singh)

O R D E R (ORAL)

Shri Sarweshwar Jha,

The applicant is aggrieved by the orders of the respondents dated 28/29-5-2003 (Annexure A-1) whereby he has been sent for periodical re-examination in B-1 category whereas the applicant claims that he is fit for A-3 medical category.

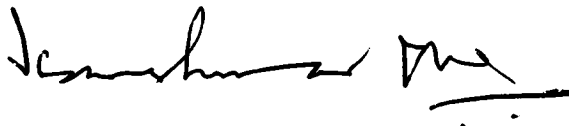
2. The applicant had initially been engaged by the respondents as a Gangman in B-1 medical category on 16-11-1985 and continued as such till 8-9-92 when he was placed in A-3 medical category in the post of Gateman. His last posting as Gateman was at Faridabad since 3-2-97. It was, however, on 26-9-2000 when he received an order dated 10-7-2000 issued by the respondents transferring him as



Gangman in public interest for safety purposes. He has represented against the said transfer, but has not received any reply so far from the respondents.


3. The applicant has claimed that his re-examination for B-1 medical category, which is meant for the post of Gangman, is arbitrary, as he is fit for A-3 medical category which is for the post of Gateman vide periodical re-examination for A-3 medical category dated 14-8-2001. He has also claimed that his service record has been unblemished and, therefore, his transfer to B-1 medical category in public interest without any rhyme or reason is illegal, unjust and malafide, and is also against the principle of natural justice.

4. The respondents have, however, submitted that the applicant has a very old history of negligence of duties as displayed by him over the years. Earlier also, he had been transferred from Kausi Kalan to Faridabad Unit for being careless and most negligent and also due to his continues misconduct during his posting as Gateman. The respondents also appear to have taken disciplinary action against the applicant after having served a memo of charge dated 23-6-2000 on the applicant and having imposed the penalty of withholding of increment for one year on 2-7-2003 after having found him guilty. The transfer in question also is reported to have been ordered by the respondents only after complaints against the applicant were received from the PWD Minister of Haryana and also from the villages near the gate No.573.



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5. On closer examination of the facts as submitted by the parties, it is observed that essentially the applicant has been indifferent towards his duties and the respondents have imposed a penalty on him after following the due process of law in the past. Facts of the matter appear to be that his performance as a Gateman has not been found to be satisfactory and there have been complaints against him during the period he has served as a Gateman. The respondents have accordingly transferred him as a Gangman to thwart chances of further complaints against him. While the respondents have submitted that his transfer has been ordered in public interest and for security reasons, and while they have not specified what security aspects are involved in the present case, it is assumed that any negligence of duty as a Gateman, for whatever reasons, might be a threat to security of men and matters as also to smooth running of the railway system, and hence the transfer. It has also transpired from the ld. counsel for the respondents that the scale of pay of the post of Gangman is the same as that of Gateman and as such there is no financial loss to the applicant due his transfer. As regards his re-examination for medical category B-1, whereas he claims that he is fit for medical category A-3, it is not clear from the submissions of both the sides whether this periodical re-examination in a particular category is based on the requirements of the job or other circumstances affecting the suitability or otherwise of the person including the need to transfer the employee from one place to another. It has been argued that the medical standards for the post of Gateman are different from the medical standards required for the post of Gangman. It is, therefore, inferred that, for his transfer as Gangman, his periodical re-examination will need to be carried out with reference to medical category B-1. There is, however,

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nothing on record to indicate whether, after having been found not fit to be retained as a Gateman at Faridabad, it was considered by the respondents whether the applicant should be subjected to re-examination for medical category A-3 so that a judicious view could have been taken on whether the applicant was medically fit to be continued as a Gateman. It is thus observed that while transfer could have been resorted to for the reasons of security involved in assigning the job of a Gateman to a person who has a history of being negligent towards his duties, it does not appear quite justified to order re-examination of the applicant in R-1 medical category without affording him an opportunity for re-examination for A-3 medical category.

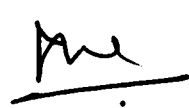
6. Having regard to the facts and circumstances of the case, we, therefore, consider it appropriate to dispose of this OA by partly allowing the same with directions to the respondents to consider re-examination of the applicant for medical category A-3 (which is the prescribed medical examination for Gateman) and not to insist on his re-examination for R-1 medical category.

7. We, however, do not consider it appropriate to interfere with the transfer order in respect of the applicant.

8. Accordingly, this OA stands disposed of in terms of the above directions/observations.



(Sarveshwar Jha)  
Member (A)



(Shanker Raju)  
Member (J)

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