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HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No.7888/2010

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Date of Decision: 25.3.2011

Union of India & ors

...Petitioner

Through Mr.Kumar Rajesh Singh, Advocate

Versus

Jugeshwar Dhrva

.... Respondents

Through None

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether reporters of Local papers may be allowed to see the judgment? No
2. *To be referred to the reporter or not?* Yes
3. Whether the judgment should be reported in the Digest? Yes

VEENA BIRBAL, J.

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1. By way of this petition under Article 226 of the Constitution of India, petitioners have challenged the impugned order dated 16th March, 2010 passed in O.A No.653/2010 as well as the order dated 26th August, 2010 passed in R.A.No.212/2009 by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal').

2. Briefly the facts relevant for disposal of the present petition are as under:-

In the year 1996-1997, an advertisement was issued for

recruitment against several posts under Railway through Railway Recruitment Board, Allahabad (in short referred to as 'the RRB'). Respondent had applied for the post of JE-II/Signal in scale of ₹ 1400-2300 (pre-revised) against employment notice dated 3/96-97. An admit card was issued to him. The examination was held on 30.1.2000 and result was published on 25.4.2000 wherein respondent was declared selected. On 9th May, 2000, a letter was issued to the respondent informing that on the basis of selection conducted by the RRB, his name had been placed on the panel and had been forwarded to Chief Administrative Officer (P) Construction Office, Kashmiri Gate, Delhi. Thereafter, vide letter dated 5th April, 2002, respondent was informed that he had been declared medically unfit in A-3 category, as such, was not fit for J.E-II/Signal in the scale of ₹ 5000-8000. He was further informed that in case he wanted to opt for an alternative post, he was required to give an application within one year of receipt of said letter. Vide letter dated 5th June, 2002, respondent was informed that his case for an alternative post had been referred to the Chief Officer and was further asked to report to the office within 15 days of receipt of letter so that his medical could be done. On 4th July, 2002, respondent wrote a letter wherein he requested for an alternative post for which he was medically fit. Thereafter on 22nd October, 2002, the office of petitioner no.3 & 4 informed respondent that he had been declared fit for B2 and below, as such his application dated 4.7.2007 had been considered by the competent officer and in their division the post of

Commercial Clerk grade 3200-4900 (R.P.S.) ST, was lying vacant and his case would be referred to the Chief Officer if he was ready for the same. The respondent requested for issuance of appointment letter for the aforesaid post. On 10th December, 2002, the Divisional Railway Manager, Ambala, wrote a letter to the General Manager, Baroda House, New Delhi informing that the post of Commercial Clerk was lying vacant in their division and decision in that regard be informed to him. Reminders in this regard were also sent by the Divisional Railway Manager, Ambala on 9th November, 2006, 7th March, 2007 to the General Manager, Baroda House, New Delhi. Finally on 14th August, 2008, petitioners informed the respondent that as per order of the competent authority, for direct appointment against DMS-III Grade 5000-8000, there was no vacant position for S.T. and as such it was not possible to consider his case for an alternative appointment.

3. Aggrieved with the same, respondent filed an O.A. before the Tribunal challenging the rejection order dated 14th August, 2008 issued by petitioner nos.3 & 4.

4. The stand of the respondent before the Tribunal was that as per Railway Board circulars dated 24.9.1999, 7.8.2000 and 29.12.2000 there are instructions for an alternative employment to the medically unfit candidates against the below category post for which a candidate was medically fit. Respondent also cited precedents contending that in the past also, many such candidates who were medically unfit for B1 have been appointed in the alternative posts with medical fitness C1,

C2 and below category in different divisions of Railways and also referred to various orders issued by petitioners in this regard (Annexure A-15 (colly). Respondent also contended before the Tribunal that through out he opted for an alternative post in the year 2002 and the same has been rejected after a lapse of 6 years which has caused serious prejudice to him in as much as he has become overage.

5. The stand of petitioners before the Tribunal was that as per instructions contained in its circular P.S.No.13588 dated 25th May, 2009, no alternative appointment was permissible to the medically unfit empanelled candidates and all the previous policies in this regard have been discontinued. It was also contended that as per instructions contained in its circular PS No.11931 dated 16.12.1999 which has been relied upon by respondent, alternative appointment could be considered only in the equivalent grade and as no vacancy for ST in the grade of ₹5000-8000 was available for which he was provisionally selected, no alternative appointment could be given to him. It was also contended that in the past the candidates who were provided alternative post were of Group 'D' and were in initial grade of appointment.

6. After considering the rival contentions of the parties, the Tribunal has held that the post of 'Commercial Clerk' as well as the post for which respondent was found provisionally selected are Group C posts though in a different pay scale and if there was a policy laid down by the Railway Board that a person who is selected for a post by the RRB but is found medically unfit for the said post, could be

considered for an alternative appointment in the same grade only, then why the petitioners have taken six years to decide the issue. The Tribunal further held that as far as the Railway Board's circular/letter dated 25th May, 2009 by which it has been decided to discontinue the policy of alternate appointment to the medically unfit empanelled candidates, the said circular is prospective in nature as it is specially mentioned therein that it will take effect from the date of issue, as such the same will not come in the way of respondent. Further the case of respondent has already been taken up for alternative appointment in the year 2002. Accordingly, the Tribunal vide impugned order dated 16th March, 2010 has directed the petitioners to reconsider the claim of the respondent for any other alternative post against ST category in case the respondent fulfills the eligibility conditions and the medical category is B-2 and below for the said post or even against the post of Commercial Clerk in Ambala Cantt in case that vacancy is still available and communicate the decision to respondent.

7. Aggrieved with the aforesaid impugned order of the Tribunal, petitioners had filed a review application i.e R.A.No. 212/2009 before the Tribunal and contended that as per instructions contained in PS NO.11931/99 dated 16th December, 1999, respondent cannot be given an alternative appointment in lower grade and the said aspect of matter was not considered by the Tribunal, as such review of impugned order dated 16th March, 2010 was sought.

8. The review application was dismissed by the Tribunal vide

impugned order dated 26th August, 2010 holding that the petitioners were trying to re-argue the matter which was not permissible and all the points raised had already been considered and the Tribunal cannot sit in appeal over its own decision.

9. Aggrieved with the aforesaid orders dated 16th March, 2010 and 26th August, 2010 of the Tribunal, present writ petition is filed.

10. Learned counsel for the petitioners has contended that the Competent Authority has rightly rejected the claim of the respondent for an alternative appointment. It is contended that as per instructions contained in PS No.11931/99 dated 16.12.1999 an alternative appointment can be provided only in the equivalent grade whereas post of 'Commercial Clerk' was falling in the lower grade and there was no vacancy against the ST quota in the equivalent grade and same was informed to the respondent vide letter dated 14th August, 2008 by the Divisional Office, Ambala Cantt. It is further contended that as per instructions contained in circular PS 13588/2009 dated 25.5.2009 the policy of providing alternative appointments to the medically unfit empanelled candidates selected through RRBs/RRCs for any Group 'C' or Group 'D' post has been discontinued. In these circumstances, Tribunal ought not to have issued directions to the petitioners for considering the case of the respondent for an alternative appointment.

11. On the other hand, the stand of respondent is that as per instructions contained in its circular bearing no. PS 13588/2009 dated 25.5.2009 are not applicable in the case of respondent as the said

circular is applicable from the prospective date i.e. the date of issue. As regards instructions contained in its circular PS No.11931/99 dated 16.12.1999 is concerned, it is contended that Tribunal has considered the said circular while passing the impugned order and there is no illegality in the impugned orders which call for interference of this court in the exercise of writ jurisdiction under Article 226 of the Constitution of India.

12. It is an admitted position that as per instructions contained in circular in PS No.11931/99 dated 16th December, 1999 General Managers Railways had the authority to consider requests from candidates who fail in prescribed medical examination after empanelment by RRB for an appointment in the alternative category subject to fulfilment of eligibility criteria. The stand of the petitioners is that as per instructions in the aforesaid PS, if a candidate is found medically unfit, an alternative post can be provided in the equivalent grade and as there was no vacancy in the equivalent grade, alternative post was not offered to him.

Perusal of record shows that vide letter dated 9th May, 2000, respondent was informed that his name has been placed in the panel of selected candidates and thereafter on 5th April, 2002, respondent was informed that he was unfit for A-3 post, as such he was not fit for JE-II/Signal, Scale 5000-8000. He was further asked vide aforesaid letter that if he wanted to opt for an alternative post then he should inform the office. It is also an admitted position that petitioner applied for an

alternative appointment. Thereafter on 22nd October, 2002, respondent was informed that his application has been considered by the competent officer and the post of Commercial Clerk grade ₹ 3200-4900 was lying vacant and if he was ready, his case could be referred to the Chief Officer. The letter dated 22nd October, 2002 reads as under:-

“S.No. 729E/1400/S&B/P.B/UMB
Dated: 22.10.2002

Divisional Officer
N.R. Ambala Cantt.

Sh. Jugeshwar Dhrva
Sh. Nityananda Dhrva
Village/P.O. Meghdaga,
Rangodhama
P.S. Sundargarh, Orissa-770002.

Sub:- In reference to appointment to alternative post other than A.P.P.J.E.T.T./Sig.

Ref:- Your application dated 04.07.02

After been declared unfit for A-3 grade by medical memo No. 231541, dated 4.7.02; and been declared fit for B2 and below; you by you said letter, have made request for suitable job. Your application has been considered by competent officer and it has been decide that in this division, the post of commercial clerk grade – 3200-4900 (R.P.S.), S.T., is lying vacant for this post, your case can be referred to Chief Officer, if in case you are ready for it. It you are not ready, then send your application to this office. Please send your application within 15 days of this letter, so that appropriate action may be taken.

Sd/-
DRM
N.R., Ambala”

Thereafter vide letter dated 10th December, 2002, Divisional Railway Manager, Ambala informed office of General Manager, Baroda House, New Delhi that the post of Commercial Clerk, Grade 3200-4900

ST was lying vacant and requested for his decision as per memo no. 11931/99. The said letter reads as under:-

Divisional Office
Ambala Cantt.

S.No. 729 E/1400/S& T/P.O. Ambala
Dated: 10.12.2002
Office of General Manager,
Baroda House
New Delhi.

Sub: In reference to appointment of Sh. Jugeshwar/ Nityananda to post of alternative to Upper J.E. 11/sig. grade 5000-8000; through Memo no.11931/99.

The abovestated person was selected by virtue of R.R.B. for post of Upper J.E./sig.

However, he by medical examination done by DMO/UMB/Ambala through medical memo no. 23541, dated 4.7.02 was declared unfit for post of J.E. 11/sig. Grade and by medical memo no. 231541, dated 4.7.02, was declared fit for B2 post.

In this division at present the post of commercial clerk, Grade 3200-4900, S.T. is lying vacant. The applicant has made application for appointment to alternative post. Thus, by memo no.11931/99, the matter has been referred to General Manager for his decision it. Please inform the office with your decision on this matter, so that applicant may be given answer.

Sd/-
(Trilok Chawdhary)
Divisional Railway Manager/
Acting, Ambala”

Again vide letter dated 7th March, 2007, General Manager, Head Office, Baroda House was informed by the office of Divisional Railway Manager, Ambala that the post of Commercial Clerk was still lying

vacant and appropriate directions were sought from the Head Office.

If appointment in the equivalent grade was not permissible then why option was given to the respondent for an alternative appointment for the post of 'Commercial Clerk' in the scale of ₹ 3200-4900.

13. Considering the above back ground of the case, the Tribunal has held as under:-

"It is thus clear that as late as in March, 2007 also the Divisional Office had maintained that one post of Commercial Clerk in ST category was lying vacant with them. At this stage applicant again requested the authorities to allow him to join on the post of Commercial Clerk which is evident from page 50. However, all of a sudden vide letter dated 20.6.2008, applicant was informed that his case has been rejected for alternative appointment on the post of Commercial Clerk as it is in the lower grade. In the same letter applicant was informed that his case is under examination in the office of General Manager (P), NDLS. At this stage, applicant again gave a representation to the authorities but vide letter dated 14.8.2008 applicant was informed that there is no vacant post for direct appointment against DMS-III Grade Rs.5000-8000 against ST category, therefore, his case cannot be considered for alternative appointment meaning thereby that till March, 2007 applicant was given the impression that his case is still under consideration in the office of GM (P), Head Quarters, Baroda House, New Delhi. It is a specific case set up by the applicant that in the meanwhile he has become overaged and had not applied for any other post as his request was sub-judiced. If there was no provision for considering a person against a lower grade then applicant should have been informed as back as in 2002 itself that he cannot be considered for alternative appointment in the lower grade. The request made by the Divisional Office, Ambala Cantt. to the General Manager (P) in 2002 clearly stated that the post of Commercial Clerk in the grade of ₹3200-4900 was available in ST category. Respondents

have not explained why it took them more than 6 years in deciding this issue. After all, there was a policy laid down by the Railway Board itself that a person, who is selected for a post by the RRB but is found medically unfit, could be considered for alternative appointment in the same grade, therefore, these facts would be known to the office of the General Manager. Keeping a person under a hope that he would be considered for the alternative appointment and ultimately rejecting the claim on the ground that it is in the lower grade after 6 years, cannot be sustained in law. In case he met the requirement of Commercial Clerk and the post was lying vacant in the ST category and there was no other claimant, respondents could always have considered the applicant for the said post. Simply because it was in the lower pay scale, the request of the applicant could not have been rejected because the post of Commercial Clerk is also a Group 'C' post and the post for which applicant was found selected was also a Group 'C' post though in a different pay scale."

The PS 11931 dated 16.12.1999 on which the petitioners are relying contain the administrative guidelines having no legal force. Despite the existence of aforesaid guidelines/instructions, the petitioners had asked the respondent for his option for an alternative post in the lower grade vide letter dated 5.4.2002 and the respondent had opted for the said post and thereafter the office of petitioners no. 3 and 4 had been corresponding with the respondent for the alternative post on a lower grade for the past 6 years. The correspondence on record shows that respondent has been informed categorically by the office of petitioners no. 3 and 4 that his application has been considered by the competent officer and it has been decided in their division that

post of commercial clerk grade 3200-4900 (R.P.S.) ST was lying vacant and if he was ready his case can be considered for that. The respondent's request for issuance of appointment letter is kept pending for 6 years. There is no explanation for the same. It is not denied that when the case of the petitioner was under consideration, there was a policy in existence for an alternative post. It is not the case of the petitioner that post of commercial clerk in S.T. category is not lying vacant. Respondent has also set up a case for the Tribunal that he had become over age and had not applied for any other job. Taking into consideration all the facts and circumstances, it is not open for the petitioner either in equity or in the facts of the present case to deny the respondent an alternative post on the ground that the same is in lower grade. The petitioner itself had chosen to deviate from the aforesaid circular and had been continuously stating that post of commercial clerk is lying vacant and respondent can be considered for that. Under these circumstances, it is not open for them to now contend that an alternative post can be given only in the equivalent grade and not in the lower grade.

As regards PS No. 13588/2009 dated 25.5.2009 by which it is contended that policy to consider for alternative post has been discontinued, the same is not applicable to the facts and circumstances of the present case and the Tribunal has rightly held so. It is categorically stated in the aforesaid circular that the same will take effect from the date of issue. The date of issue of said circular is

25.5.2009 whereas the case of the petitioner relates to the year 2002 when there was no such circular in existence.

In view of above discussion as well as on equity, we do not find any illegality or perversity in the impugned orders of the Tribunal.

The writ petition stands dismissed. The interim stay of the impugned orders of the Tribunal granted by this court vide orders dated 25th November, 2010 stands vacated.

Considering the facts and circumstances, the petitioners shall also pay a cost of ₹ 15,000/- to the respondent.

VEENA BIRBAL, J.

ANIL KUMAR, J.

March 25, 2011
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