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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION(CIVIL) NO. 775/2014**

Date of decision: 7th April, 2016

UNION OF INDIA & ANR. Petitioners

Through Mr. Kumar Rajesh Singh, Advocate.

versus

ANURAG PANDEY Respondent

Through Mr. Suman Kumar Divakar & Mr. Shiv
Kumar Tripathi, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL):

The Union of India (General Manager (Personnel), North Frontier Railway) by this writ petition assails order dated 9th October, 2013 passed by the Principal Bench, Central Administrative Tribunal, New Delhi (Tribunal, for short) in OA No. 2176/2016 and MA No. 1919/2013. The impugned order allows the said OA and directs that the respondent herein should be given an alternative post in terms of circular dated 26th October, 1999 within a period of two months from the date a copy of the order is received.

2. We would begin by noticing that the Tribunal had earlier by order dated 3rd June, 2010 allowed OA No. 2176/2006, *inter alia*, holding that the Union of India could not have relied upon subsequent circular dated 4th

September, 2001 withdrawing the earlier circular dated 26th October, 1999, for the new circular cannot be applied retrospectively. The Union of India thereupon had filed W.P. (C) No. 7884/2010, which was allowed by order dated 7th May, 2013 observing that policy decisions in the form of circulars could be changed and if a claim is made with respect to previous policy, the same has to be decided upon consideration as to whether a vested right had accrued pertaining to selection and appointment and whether a select panel was drawn. Thus, the policy, that upon a person found to be medically unfit for a post to which he had applied and was selected, he would be given alternate employment commensurate with the medical category in which he was placed, would be enforced and relied upon if the policy was applicable when the Select List was prepared. However, if the policy had been withdrawn prior to the date when the Select List was prepared, the Court held that *prima facie* the person concerned could not lay any claim to the benefit under the previous policy.

3. In order to appreciate the controversy, the facts in brief may be noted. Pursuant to the employment notice No. 2/1999 published on 13th November, 1999, the respondent had applied for appointment to the post of Apprentice Diesel Assistant Driver. The last date for submission of applications was 31st December, 1999. The mode of selection was written examination, speed test/practical test, interview, etc, as per Railway Board's guidelines. Appointment was subject to the candidate being found

medically fit in the appropriate medical classification.

4. The respondent, along with the other applicants had participated in the written examination held on 21st January, 2001. The respondent qualified, having cleared the competitive written examination. He participated in the psychological test and his personal creditinals/papers were verified along with other short listed candidates between 25th June, 2001 to 29th June, 2001. On the basis of the marks in the written examination, psychological test and verification of records, a Select List was published on 10th August, 2001. The petitioner did not file this list before the Tribunal and with the writ petition. The select list has been filed today in the Court. It was issued by the Railway Recruitment Board, Gauhati and forwarded to the Chief Personnel Officer, North Frontier Railway, Malegaon. It refers to recruitment for the post of Apprentice Diesel Assistant Drivers vide category No. 7, Employment Notice No. 2/1999. The first paragraph of the said select list reads as under:-

“ Sub: Recrutiment for the post of Appr. Diesel Assistant Driver against Category No. 07 of Employment Notice No. 2/99.

Ref: Your Indent No.E/227/216/RRB/2 (Rectt.) Pt III dt. 28.9.99 and 3.11.99

The written examination of above categories was held on 21.1.2001 and psychological test and verification of records was done from 25.6.2001 to 29.6.2001. On the basis of above test following candidates have been provisionally selected and are being recommended for appointment against above mentioned post. The empanelment of one candidate has been withheld due to

mismatch in signature. The case has been referred to handwriting expert for his opinion. In case his name is cleared, a supplementary list will be sent. Accordingly the merit position of this category may be treated as provisional.

CAT No. 07 Appr. Diesel Assistant Driver E/NOTICE
NO. 2/99

NO. OF POSTS 105 (UR=47, SC=13, ST=17, OBC=18, ESM=10)

NO. EMPANELLED 78 (UR=57, SC=5, ST=6, OBC=10)”

The respondent was at serial No. 22 in the order of merit, in the list of 47 unreserved category selected candidates. The last two paragraphs of the said letter/select list read as under:-

“ Necessary re-verification of certificates/testimonials of education, academic/technical qualification, date of birth, caste certificate etc. may please be done at your end before appointment. Verification of their character and antecedents may also be done at your end, as required.

The original application forms along with copies of testimonials submitted by the successful candidates are being sent herewith for further necessary action and record.”

5. A reading of the said letter indicates that the Select List was prepared by the Railway Recruitment Board, Gauhati after the selection process had been completed. It was sent to the Chief Personnel Officer, North Frontier Railway, Malegaon for necessary action and steps.

6. Upon selection vide Select List dated 10th August, 2001, the respondent was issued letter dated 10th October, 2001, which stipulated that

the formal appointment letter for Trainee Diesel Assistant Driver would be issued after being found fit in the medical examination. On 18th November, 2001, the respondent appeared before the Medical Officer and was declared medically unfit for appointment to the post of Trainee Diesel Assistant Driver on the ground of colour blindness.

7. The respondent thereafter made repeated representations relying upon policy decision dated 26th October, 1999 issued pursuant to the Railway Board's letter No. 99/E/(RRS)25/1/RBE No. RRCB No. 09/99 dated 20th August, 1999. The policy decision mandates and authorises General Managers to consider requests from candidates empanelled by the Railway Recruitment Selection Board, who fail in the prescribed medical examination. These candidates were to be offered appointment to alternate technical post, subject to satisfaction of conditions. The policy decision dated 26th October, 1999 mentions that the Board had reviewed the earlier policy keeping in view the high cost of recruitment and the need to adopt a uniform policy for candidates of all categories for recruitment. General Managers were given the authority to consider request from candidates empanelled by Railway Recruitment Board, who fail to meet the prescribed medical standard. While giving alternate employment, fulfilment of prescribed medical standards for the said post, educational requirements and other eligibility criteria in the alternate category were to be considered.

8. It is apparent that if case of the respondent was considered under the

policy decision dated 26th July, 1999, he was entitled to on his request to be considered for alternative employment. The respondent by the letter dated 31st July, 2002 was informed about his selection by the Railway Recruitment Board for the post of Apprentice Diesel Assistant Driver and that he should contact DRM (Personnel), Alipur Dwar Junction for further information regarding alternate employment. Thereupon, by letter dated 20th February, 2003, the respondent was asked to attend the office of DRM (Personnel), Alipur Dwar Junction for assessment of fitness for alternate employment. The respondent was again medically examined and his fitness was categorised as B-2 category. By letter dated 4th March, 2003, the Divisional Railway Manager (Personnel), Alipur Dwar Junction had asked for re-medical examination of five candidates, including the respondent. This re-medical examination was undertaken, but alternate employment letter was never issued. The respondent wrote a number of letters, and in the absence of any response, he felt compelled to file the OA in question before the Tribunal.

9. The petitioners submit that the respondent cannot be given alternate employment as the earlier policy/circular dated 26th October, 1999 stands withdrawn by the circular/policy decision dated 4th September, 2001. It records that a large number of candidates selected as Assistant Drivers and Assistant Station Masters were found to be medically unfit after empanelment. Sometimes candidates had appeared for selection in these

categories even when they were aware that they did not meet the prescribed medical standards required for the job. Perhaps such candidates would appear to take advantage/benefit of the policy dated 26th October, 1999 and secure alternative employment. Consequently, this had led to pending and long unfilled vacancies in these important critical safety category posts. The said circular records that the posts of the Assistant Drivers and Assistant Station Masters were not being filled up. This was undesirable from the safety point of view. In consultation with the Railway Recruitment Central Board, it has been decided that in future for the categories of Assistant Driver and Assistant Station Masters, the candidates would be asked to enclose medical certificates as per the prescribed proforma from an eye specialist when they apply. Therefore, candidates who conform to the notified standard of vision, need apply. For the sake of convenience, we would like to reproduce paragraphs 2 to 5 of the new circular/policy, which read as under:-

“2. The issue has been considered in the light of the above situation in RRCB meeting and it has been decided that for the categories of Assistant Drivers and ASMs. The candidates may be asked to enclose a medical certificate from an eye specialist regarding vision in a prescribed Performa when they apply for these posts. Only those candidates who conform to notified standards of vision need apply.

3. It has also been decided that at the time of certificate verification, the selected candidates may be sent to nearest *candidates may be sent to nearest* (sic) Railway Hospital for a vision test. Those who fail in the vision test need not be empanelled.

4. Candidates selected for the category of Assistant Driver/ASM/Motorman will also not be eligible for any alternative appointment if they fail in the final medical examination conducted by the Railway before appointment for any reason.

5. The fact that candidates who fail in the medical examination for these category will not be eligible for any alternative appointment on the Railways should be mentioned clearly in the employment notice so as to discourage those candidates who do not fulfil the medical requirement, from applying.”

A reading of the said circular/policy unmistakably reflects that the circular was intended to operate and apply to fresh employment notifications and was not to apply retrospectively. Paragraph 2 quoted above states that in cases of fresh employment, the candidates applying must enclose relevant medical certificates. Paragraph 3 stipulates that at the time of certificate verification itself, the selected candidates would be sent to the nearest Railway hospital for vision test and those who fail the vision test, need not be empanelled. In the present case the Select List/letter was issued by the Railway Recruitment Board on 10th August, 2001. The letter/Select List clearly records that the candidates, who had appeared and were empanelled had already undergone the psychological test and verification of records. The said exercise was carried out during the period 25th June, 2001 to 29th June, 2001. The Select List was circulated post the said exercise, on 10th August, 2001.

10. In other words, the process of selection verification of records, etc.

was undertaken and completed on or before 10th August, 2001, i.e., before the circular/policy decision dated 4th September, 2001 was circulated. This policy decision would not apply retrospectively to the Select List published earlier on 10th August, 2001. A reading of the circular/policy dated 4th September, 2001 itself indicates that it was to apply to cases where character certification had not been completed. It also prescribes a new and different procedure, which was to apply in future, post the said policy/circular dated 4th September, 2001.

11. The learned counsel for the petitioners has filed before us a chart prepared by Divisional Manager (Personnel), Alipur Dwar Junction in October, 2005. As per the said chart, the respondent, Anurag Pandey was to be offered an alternate post as Safaiwala in the mechanical department. From this chart/letter it is apparent that the petitioners themselves had understood and accepted that the circular/policy decision dated 4th September, 2001 was not applicable to the Select List published on 10th August, 2001. Counsel for the respondent has submitted that at least four candidates identically situated and mentioned in the Select List were granted alternate employment. The learned counsel for the petitioners submits that he has no instructions to contradict the said assertion.

12. Be that as it may, in view of the aforesaid findings, we do not find any merit in the present writ petition and the same is dismissed. If the petitioners have not complied with the order and directions of the Tribunal,

they will do so within one month from the date a copy of this order is communicated to them. There will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(NAJMI WAZIRI)
JUDGE

APRIL 07, 2016
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