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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1247/2016.

UNION OF INDIA & ORS ..... Petitioners

Through: Mr. J.K. Singh, Advocate.

versus

DHARAM VIR SINGH BHARTI ..... Respondent

Through: Ms. Meenu Mainee, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**HON'BLE MS. JUSTICE REKHA PALLI**

**ORDER**

**01.08.2017**

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1. The petitioner Union of India has preferred the present writ petition to assail the orders dated 08.01.2013 and 20.04.2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No. 671/2012 and Review Application No.52/2014 filed in the said Original Application. By the first order, the Tribunal had allowed the Original Application preferred by the respondent applicant, and by the second order, the review application preferred by the petitioners herein was dismissed.

2. The respondent, who holds a B.Tech. Degree applied for the post of Section Engineer (Carriage & Wagon) in response to a notification dated 07.06.2008 issued by the Railway Recruitment Board (Chandigarh) [RRB]. He appeared in the written examination on 30.11.2008 and successfully qualified the same. On 08.04.2009, he was issued a communication

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informing him that his name has been provisionally kept in the panel of candidates selected by the RRB. He was informed that his name had been sent to the General Manager (Personnel), Northern Railways for issue of offer of appointment according to availability of vacancies, and completion of necessary formalities like verification of documents, medical fitness test, etc.

3. The record shows that on 22.06.2009, another communication was issued to the respondent, informing him that he had been taken on panel for appointment as Section Engineer. He was informed that it was essential for him to pass the medical test for B1 category, for appointment. The medical examination of the respondent was conducted on 24.07.2009. Unfortunately, for him, he could not clear the said medical test. A Review Medical Board was conducted on 23.10.2009, which again found him unfit to be appointed for the aforesaid post. Thus, he was unfit for both category B1 and B2 posts. Consequently, he was not appointed. The respondent claimed that he should be appointed to a category C2 post, as had been the practice earlier in the Railways.

4. We may observe that prior to 25.05.2009 – when a new medical policy was brought into force, under the erstwhile policy, candidates who failed to meet the medical criteria for B1 and B2 posts, were offered alternative employment in C2 category post.

5. The respondent claimed that since he had been made an offer on 08.04.2009, i.e. prior to promulgation of the fresh medical policy on 25.05.2009, his case should be governed by the erstwhile medical policy and

he should be made an alternate offer. Raising this plea, he approached the Tribunal. The Tribunal by the impugned order held that the cause of action arose in favour of the respondent on 08.04.2009, and consequently, he was entitled to be covered under the erstwhile medical policy, and not the one brought into force with effect from 25.05.2009. On this premise, the Tribunal directed the petitioner Railways to offer alternate appointment to the respondent commensurate with his medical category, and in the eventuality of his being found fit, to make an offer to him prospectively. The review petition preferred by the petitioner, as noticed above, was dismissed.

6. The submission of learned counsel for the petitioners is that the process of recruitment is governed by the Recruitment Rules, which are distinct from the medical policy. Under the Recruitment Rules, there is no provision that on the candidate failing to meet the medical requirement in respect of the post for which he is undergoing selection, he shall be offered an alternate appointment in a lower post. He submits that past experience showed that the erstwhile medical policy was being abused and, consequently, on 25.05.2009, the new medical policy was brought into force. He has referred to the said policy, the relevant extract whereof reads as follows:

*“2. The genesis of the provision for considering alternative appointment primarily lies in the high cost of recruitment, short panels and filling up of vacancies where there is acute shortage of staff. However, the experience of the Railways over the years indicates that this provision is being misused. A large number of candidates empanelled for the post of ASM/ Assistant Loco Pilot/ Motorman had been failing in the prescribed*

*medical examination thereby resulting in short panels. Board had, therefore, decided not to provide appointment in alternative posts to the medically failed empanelled candidates for these categories. These orders were issued in 2001 vide reference No.3 above.*

3. *Some of the Railways have brought to the notice of the Board that due to a large number of surplus/ medically decategorized staff awaiting re-deployment, it is not feasible to consider cases of alternative appointment to medically unfit RRB/RRC empanelled candidates. Moreover, some candidates take this provision as a matter of right and misuse it for securing alternative appointment in Non Technical Popular Categories posts where the level of competition is much tougher. This matter was also discussed in the Conference of Chief Personnel Officers held in Board's office on 01.05.2009 wherein the general consensus was that the policy of providing alternative appointment to the medically failed empanelled candidates both for Group 'C' and Group 'D' posts should be dispensed with.*

4. *Considering all these aspects, Board have decided to discontinue the policy of providing alternative appointment to the medically failed empanelled candidates selected through RRBs/RRCs for any Group 'C' or Group 'D' post.*

5. *These orders supersede all earlier orders issued on the subject and will take effect from the date of issue."*

7. *Learned counsel submits that it is this policy which was in vogue at the time of conduct of medical examination of the respondent on 24.07.2009, and it is this policy which would be applicable to him. He submits that neither on 08.04.2009, nor on 22.06.2009, the respondent was made any definite offer of appointment. These communications were merely communications informing the respondent about his being provisionally empanelled, and that if he completes all the formalities –*

including being found medically fit, he would be made the offer of appointment.

8. On the other hand, the submission of learned counsel for the respondent is that since the respondent had been issued the communications dated 08.04.2009 and 22.06.2009, the respondent became entitled to be governed by the medical policy as was prevalent on 08.04.2009. Merely because the respondent took their own sweet time to conduct the medical examination on 24.07.2009, the respondent could not be made to suffer.

9. Having heard the submissions of learned counsel, we are of the view that the impugned orders passed by the Tribunal are not sustainable.

10. The Tribunal has proceeded on the assumption that when the petitioner sent the communication dated 08.04.2009 to the respondent, a definite offer was made to the respondent for his appointment on selection as Section Engineer (C&W).

11. We cannot agree with this interpretation of the communication dated 08.04.2009. Insofar as it is relevant, it reads as follows:

*"Sub:- Section Engineer (C&W) scale 6500-10500, category no.02 employment no.EN-01/2008 for appointment of selection.*

*Your name has been provisionally kept in the panel of candidates selection basis of Railway Recruitment Board, Chandigarh.*

*Your name has been sent to the General Manager, GM (Personal), Northern Railway, Baroda House, New Delhi for issue of offer of appointment according to available to vacancy*

*and necessary formalities like verification of documents medical fitness test etc. In future any communication this regard should be done in the above written office address."*

12. The above would show that the respondent was merely intimated that his name had been "*provisionally kept in the panel of candidates*".

13. This communication further stated that the name of the respondent had been sent to the General Manager, GM (Personnel), Northern Railways for issue of offer of appointment according to available vacancies, and subject to completion of necessary formalities like verification of documents, medical fitness test, etc. Thus, the offer of appointment was not yet made to the respondent and would have been made only subject to completion of necessary formalities like verification of documents, medical fitness test, etc., and that too, subject to availability of vacancies. This letter itself shows that verification of documents and medical fitness test was necessary and essential to be undertaken even before an offer of appointment was made to the respondent. The respondent was called for verification of documents vide communication dated 15.01.2009. Thereafter, on 22.06.2009, he was informed that he had been taken on panel for appointment as Section Engineer (C&W). He was again informed that it was compulsory for him to pass the medical fitness test in B1 category before appointment. Thus, once again, the respondent was clearly informed that he had to clear the medical fitness test in B1 category before he was made an offer for appointment as Section Engineer (C&W). Merely because he may have been placed on the panel for appointment as Section Engineer (C&W), did not vest any right in the respondent to get appointed to the said post, or to any other post.

14. In view of the aforesaid, the approach of the Tribunal in assuming that the right of the respondent got crystallised on 08.04.2009, or at any point of time thereafter till the conduct of medical examination of the respondent, does not commend to us. The respondent did not acquire any vested right till the date of his medical examination. He could not, therefore, claim any right to be governed by the pre-existing medical policy and was liable to be governed by the medical policy as was prevalent on the date of his medical examination.

15. It is not claimed that the notification dated 07.06.2008 issued by the RRB, in response to which the respondent applied for the said post, stipulated that in case he does not meet the B1 medical category, he would be accommodated in some other post.

16. It is not claimed that under the Recruitment Rules, upon the candidate not meeting the medical fitness test for B1 category, he could be given an alternate appointment. Prior to the framing of the new medical policy on 25.05.2009, accommodation of candidates, who failed to meet the requirement of the medical test in B1 & B2 category, for lesser appointment was being made de hors the Recruitment Rules. To remedy the said lacuna, the new medical policy was brought into force on 25.05.2009. The purpose of introducing the new medical policy is clearly set out in the communication dated 25.05.2009 itself, as extracted hereinabove.

17. In these circumstances, we are of the view that the respondent could not have been governed by the medical policy in vogue prior to 25.05.2009. The medical policy framed on 25.05.2009 was applicable to him since he

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was medically examined on 24.07.2009.

18. Accordingly, we set aside the impugned order while leaving the parties to bear their respective costs.

  
VIPIN SANGHI, J

  
REKHA PALLI, J

AUGUST 01, 2017  
*B.S. Rohella*