

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23277 of 2019

Sunil Singh S/o Shri Shivbalak Singh Resident of Village- Bisiyait, Tola
Dhobani, P.o.- Pasadhi Hero, Distt.- Nawada, At present residing at Mohalla-
Chanakyapuri Colony, M.I.G.- 20, Road No. 4, Block- C, Gaya, Distt.- Gaya

... .. Petitioner

Versus

1. The Union of India through the General Manager, Central Railway,
Mumbai-400001
2. The Chief Personnel Officer Central Railway, Mumbai-400001
3. The Senior Divisional Personnel Officer Central Railway, Munger

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Umesh Kumar Mishra, Adv.
For the Respondent/s : Mr. Ramadhar Shekhar, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 26-11-2019

Heard Mr. Umesh Kumar Mishra, learned counsel for
the petitioner and Mr. Ramadhar Shekhar, learned counsel for the
respondents.

2. The present application under Articles 226 and 227 of
the Constitution of India has been filed by the petitioner
challenging the order dated 27.09.2019 passed by the Central
Administrative Tribunal, Patna Bench, Patna (for short 'the
Tribunal') in OA No.050/00202/16 by which the original



application filed by the petitioner against the speaking order dated 28.10.2013 passed by the Chief Personal Officer, Central Railway (Respondent No.2) whereby the representation of the petitioner dated 10.10.2006 requesting for alternative appointment in Railway services was denied has been dismissed.

3. Mr. Umesh Kumar Mishra, learned counsel appearing for the petitioner submitted that since the petitioner was declared successful for appointment on the post of Apprentice Supervisor (Pathway) against Employment Notice No.1 of 2003 vide result dated 03.04.2006 and was issued appointment letter on 12.07.2006, the subsequent declaration of being unfit in medical examination could not have come in the way of his alternative appointment, which was made available to other similarly situated candidates pursuant to the Railway Board's letter issued in the year 2001. He submitted that the Tribunal failed to appreciate that even though the petitioner was not found medically fit for the post of Apprentice Supervisor (Pathway), he had been declared fit for the alternative appointment in the lower medical category B-1 and below, but the respondent authorities have arbitrarily denied him alternative appointment. He submitted that the impugned order passed by the Tribunal is not fit to be sustained in view of the fact that the same has been passed ignoring the bonafide claim and vested right of the



petitioner to be appointed under the appropriate category in view of the various letters issued by the Railway Board from time to time.

4. Per contra, learned counsel appearing for the respondents submitted that the petitioner has got no case. He had applied only for the post of Apprentice Supervisor (Pathway) and was found medically unfit. On being found medically unfit, the petitioner requested for alternative appointment. According to him, as the petitioner belongs to the OBC category and there were many other empanelled candidates, who were senior to him and could not be appointed because of lack of vacancy till the discontinuance of the scheme, the petitioner cannot have any grievance, if he was not provided with alternative appointment. He has further contended that the Tribunal has rightly held that the respondents have considered the case of the petitioner for various vacancies, which arose till discontinuance of the scheme and he could not be given employment in view of unavailability of vacancy. In absence of any vested right for alternative appointment, the petitioner cannot claim to have his case considered as and when vacancies arises whether the scheme is in force or not.

5. We have heard learned counsel for the parties and carefully perused the record.



6. The undisputed facts of the case are that the petitioner was selected through the Railway Recruitment Board, Mumbai for the post of Apprentice Supervisor (Pathway) in grade Rs.4500-7000 vide Employment Notification No.1/2003. The required medical standard for medical fitness for the said post was of A-III category. The medical board, which examined the petitioner found him medically unfit for the said post. Therefore, he could not be appointed against the post for which was empanelled provisionally. The final supplementary result was published by the Railway Recruitment Board, Mumbai on 03.04.2006, which indicated that the selected candidates should note that panel is provisional and does not confer on them any right to appointment unless,

- (a) they produce original certificate of educational qualification, age and community in support of their eligibility;
- (b) vacancies are available;
- (c) they pass prescribed medical examination;
- (d) complete the requisite formalities/procedure; and
- (e) their photographs, signature, handwriting and other details in their application match before appointment and actual joining.

7. On being found medically unfit, the petitioner requested for alternative appointment as per Railway Board's



letters dated 09/1999, 06/2000 and 05/2001. His request was considered and his name was registered for alternative appointment in equivalent grade of Rs.4500-7000 commensurate with his medical fitness and educational qualification. The scheme of alternative appointment to medically unfit candidate was abolished by the Railway Recruitment Board vide letter dated 25.05.2009.

8. Since the petitioner had filed an application for alternative appointment and had filed several representations also, but no appointment was offered to him, he filed an original application vide O.A. No. 387 of 2010 before the Tribunal. The said original application was disposed of by the Tribunal vide order dated 23.09.2011 directing the respondents to consider his case for alternative appointment and pass a reasoned and speaking order within a period of four months from the date of communication of the order.

9. Pursuant to the order dated 23.09.2011 passed by the Tribunal in O.A. No. 387 of 2010, the claim of the petitioner for alternative appointment was examined and his prayer for appointment against an alternative post was denied by the respondent no.2 vide speaking order dated 28.10.2013. The operative part of the order reads as under :-

“... Since the applicant had not acquired any vested or accrued right and the arrangement of



alternative appointment was abolished by Railway Board on 25.05.2009, the claim of applicant cannot continue further. Railway Board in its letter No. E (RRB)/2005/25/18 dated 28.07.2010 have also stated that alternative appointment in such cases cannot be given as the scheme stands abolished.

As can be seen from the above, his request for alternative appointment in Railway services has remained in consideration during the period 30.10.2006 to 25.05.2009, but his appointment could not materialise as no alternative vacancy for OBC in the pay scale of 4500-7000 having the medical class “B-1” or below commensurate with his educational qualification, could be found during this period. His request has lapsed on 25.05.2009, the date when the Rly Board abolished the scheme of alternative appointment.

Shri Sunil Singh may be advised accordingly.”

10. Being aggrieved by the aforesaid order dated 28.10.2013, the petitioner filed original application before the Tribunal vide OA No. 050/00202/16. The said original application was dismissed by the Tribunal vide impugned order dated 27.09.2019.



11. Having noticed the aforesaid admitted facts when we look to the case of the petitioner, we find that the petitioner was selected against the post of Apprentice Supervisor (Pathway) for which he was provisionally empanelled. The said provisional panel did not confer upon him any right of appointment unless he fulfilled the conditions enumerated therein. One of the conditions was that he ought to have passed the prescribed medical examination. It is not disputed that the petitioner was found medically unfit in the prescribed A-III category.

12. It is true that on being found medically unfit, the petitioner requested for alternative appointment as per Railway Board's letter dated 09/1999, 06/2000 and 05/2001. The respondents considered his case and he was registered for alternative appointment. However, the respondents have pleaded that since there was no vacancy available in OBC category upto 04.05.2009 in the equivalent grade of 4500-7000, the petitioner could not have been appointed. The respondents have also pleaded that the scheme of alternative appointment to medically unfit candidates was abolished by the Railway Board vide letter dated 25.05.2009. They have further pleaded that as per the available records of 2006-2009, the case of the petitioner was considered twice along with other similarly placed candidates, but he could not



be offered alternative appointment for want of direct recruitment vacancy in OBC category in equivalent grade. The last OBC candidate, who was considered and offered appointment was much senior to him as he was from employment notice no.01/2001. The respondents have further pleaded that there are still many empanelled candidates senior to the petitioner in the same grade as his i.e. 4500-7000, who also could not be offered alternative appointment in equivalent grade commensurate with the medical fitness and educational qualification and during the period when the scheme was in force.

13. At this stage, it would be apposite to refer to Letter No. 90 of 2009 dated 25.05.2009 of the Railway Board regarding alternative appointment to medically unfit candidates empanelled in Group 'C' and Group 'D' posts, which reads as under :-

“R.B.E. No. 90/2009

Subject : Alternative appointment to medically unfit, candidates empanelled by RRBs and RRCs in Group 'C' and Group 'D' posts- regarding.

Reference : (1) Railway Board's letter No. 99/E(RRB)/25/12 dated 20.08.1999 (RRCB No.09/99)(Bahri's RBO 211/1999 p-203)
(2) Railway Board's letter No. 99/E (RRB) /25/12 dated 07.08.2000 (RRCB No.6/2000)(Bahri's RBO 150/2000 p-163).
(3) Railway Board's letter No. E(RRB)/ 2001/25/21 dated 04.09.2001



(RRCB No.5/2001)

[No.99/E(RRB)/25/12 dated 25.5.2009]

The matter regarding provision of alternative appointment in the same grade to candidates selected for Group 'C' and Group 'D' posts by RRBs and RRCs who fail in the prescribed medical examination has been engaging the attention of the Board for quite some time. In terms of Boards letters under reference, General Managers of the Zonal Railways/Pus are presently authorized to consider requests from such candidates for appointment in alternative categories provided there is an acute shortage of staff in the alternative posts of the same grade and on fulfillment by the candidate of the prescribed medical standard, educational qualifications and other eligibility criteria prescribed for the post. This provision is not to be taken as a matter of right by the candidates.

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 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.” (emphasis mine)

14. It would, thus, appear that vide Letter No. 90 of 2009 dated 25.05.2009, the Railway Board has withdrawn the scheme of alternative appointment.

15. The alternative appointment dependent upon availability and identification of vacancy in the alternative way and also other relevant factors.

16. When the scheme for offering the alternative appointment was withdrawn by the Railway Board on 25.05.2009, there were still 22 candidates senior to the petitioner in Grade 4500-7000, who could not be appointed in the equivalent grade for want of vacancies.

17. There is nothing to suggest that vide Railway Board's letters any vested right was created in favour of the petitioner. In absence of any vested right, when the Railway Board has discontinued the policy of providing alternative appointment to the medically unfit empanelled candidates, the petitioner could not have been offered any alternative appointment.

18. In our opinion, the Tribunal has rightly dismissed the application filed by the petitioner challenging the order impugned dated 28.10.2013.



19. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

(Prakash Chandra Jaiswal, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	29-11-2019
Transmission Date	

