

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2218 of 2016**

Rajendra Sharma S/o Shri Ram Gopal Sharma, Aged About 23 Years R/o Devridh Para, Near Surbhash Kendra, Kargi Road (Kota), Distt. Bilaspur Chhattisgarh Pin 495113

---- Petitioner**Versus**

1. Union Of India Through Chairman, Railway Board, Ministry Of Railways, Rail Bhawan, New Delhi, Pin 110011
2. Railway Recruitment Cell, Through The Chairman, Central Railway, Chief Project Manager (Conv)'s Office Building, Goods Shed, Wadibunder, P D Mello Road, Mumbai Pin 400010
3. The General Manager, South East Central Railway, Bilaspur Chhattisgarh Pin 495004
4. The Assistant Personnel Officer (Welfare), Central Railway, Nagpur (Maharashtra)

---- Respondents

For Petitioner : Shri N. Naha Roy, Advocate.

For Respondent/Railways : Shri Abhishek Sinha, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board**23/01/2019****Per Ajay Kumar Tripathi, Chief Justice**

1. Heard counsel for the parties.
2. Petitioner filed an Original Application No.951 of 2013 before the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur (hereinafter referred to as 'CAT'). He sought a direction upon the Respondent-Railway authorities to consider his case for grant of alternative job in the light of the circulars of the Railway Board, since on medical examination after due selection,

the Doctors did not find him fully fit medically to undertake heavy manual work. The CAT Bench dismissed the Original Application vide order dated 18.12.2015 and therefore, the writ application.

3. Petitioner was offered appointment on a Group “D” post vide letter dated 12.04.2012. He was medically examined and was found unfit. A re-medical examination was held in which again disability to the extent of 2% was found and the Medical Board opined that he could be fit for a job but not involving heavy manual work. Since the disability pointed out by the Medical Board did not make the Petitioner eligible for appointment on the Group “D” post, he filed a representation on 24.09.2012 for a suitable adjustment or appointment on a post where heavy manual work was not required to be done. In this regard, the Petitioner relied upon some earlier circulars of the Railway Board which were in existence since the year 1999 onwards. Some of those circulars were brought before the CAT Bench in support of such a direction, for alternative employment.

4. It is significant to note that on 25.05.2009, Railway Board issued an order superseding all earlier directions and circulars with regard to provision for providing alternative employment to candidate who may be found medically unfit during medical examination, after selection. This fact has a bearing on the issue which has been decided against the Petitioner by the CAT Bench.

5. The argument before the CAT Bench as well as before us is that an Employment Notice No.1/ 2007 was issued. The selection of the Petitioner was done and communicated vide order dated 12.04.2012 was part of the exercise of recruitment of the same advertisement. Since rules of the game in relation to such appointment cannot be changed during the process of such appointment, the withdrawal of the earlier circulars by the Railway Board on 25.05.2009, cannot have any effect on the right of the Petitioner to be appointed on an alternative post due to his medical unfitness. To reiterate such a stand, it is also argued that the

Railway Board circular dated 25.05.2009 will be prospective and not retrospective.

Reliance has been placed on the decision of **State of Bihar and Others v. Mithilesh Kumar** reported in **(2010) 13 SCC 467**.

6. The CAT Bench after hearing the parties however had this to say:-

“6. On perusal of the Railway Board's order dated 25.5.2009 it is found that in the said order it has been clearly provided that “these orders supersede all earlier orders issued on the subject and will take effect from the date of issue”. Since the applicant has been appointed through RRC, the circular dated 25.5.2009 shall be fully applicable in his case and therefore he cannot be granted alternative appointment. As regard the applicant's contention that since his selection was in regard to Employment Notice No.1/2007 and therefore the Railway Board's circular dated 25.5.2009 (Annexure R-1) by which the policy of providing alternative appointment to the medically failed empanelled candidates selected through RRB/RRC was discontinued, shall not be applicable in his case, we find that in the instant case the applicant was issued offer of appointment on 12.4.2012 i.e. much after the issue of Railway Board's circular dated 25.5.2009. Further the practice of providing alternative appointment cannot be considered to be a norm of recruitment affecting the process of selection of candidates. It was just a measure of relief provided to medically unfit candidate, which has been withdrawn by the Railway Board vide their circular dated 25.5.2009. While discontinuing the policy, in para 3 of the circular dated 25.5.2009 the Railway Board has observed that:

“Some of the Railways have brought to the notice of the Board that due to a large number of surplus/medically decategorised staff awaiting redeployment it is not feasible to consider cases of alternative appointment to medically unfit RRB/RRC empanelled candidates. More over 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.”

7. Thus, in view of the aforesaid circular of the Railway Board, we do not find any justification for granting the relief prayed for by the applicant in this Original Application. In this regard, the reliance placed by the

learned counsel for the applicant on the decision **Mithilesh Kumar (supra)** cannot be of any help to the applicant keeping in view of the facts of the present case.”

7. We have perused the order of the CAT Bench as also the circular of the Railway Board and the stand of the Respondent-Railways that even otherwise the Petitioner cannot be appointed or given employment on any Group “D” post since the physical disability so pointed out by the Medical Board makes him unfit, therefore, finding an alternative appointment cannot be contrary to the norms, the eligibility and the suitability laid down for such post.

8. Without getting drawn into such submission, the question which arises for consideration is whether the circulars in question of the Railway Recruitment Board for providing alternative employment due to physical disability at the time of recruitment can be integral to the terms and conditions of the advertisement.

9. It is nobody's case that such conditions had been included or incorporated in the Employment Notice No.1/2007, therefore, it is not that any terms and conditions of recruitment has been altered after the process of recruitment had begun. The eligibility, the method and methodology as envisaged in the Employment Notice No.1/2007 was not tinkered with. The selection of the Petitioner was made within the four corners of the terms and conditions of the advertisement. However, since he was found ineligible or unsuitable for the Grade “D” post after conduct of the medical examination which is mandatory for all candidates, he was denied appointment. There were certain circulars which did provide for alternative employment but that policy was done away with on 25.05.2009 much before he was found medically unfit. The policy would come into play only after the candidate is put through a Medical Board and found fit which was in 2012. His right for consideration for such appointment depended upon eligibility laid down in the Employment Notice No.1/2007. The benefit of the circular

of the Railway Board for alternative appointment could have come into play provided such a circular was in existence the day the Petitioner was found medically unfit for the post on which he was selected. The question of finding alternative employment would not arise from the terms and conditions of the advertisement, but on Railway Board circular, if there was one.

10. The appointment of the Petitioner was completed the day an offer was made to him subject to he being medically fit. The alternative employment due to unfitness is not integral to the advertisement of recruitment. That was a kind of welfare measure as also for the reason that after all the expenses and exercise done for such selection, the Respondent-Railways did not want to lose out on manpower so shortlisted. But if by experience gained over the years, if such policy was withdrawn and all past circulars were superseded with effect from 25.05.2009 and since the Petitioner was found to be medically unfit in the year 2012, he cannot fall back upon a non-existent circular by arguing that the rules of the game is being changed to deny him employment.

11. The reasons therefore given by the CAT Bench for refusing to give any direction to the Respondent-Railways for providing alternative employment to the Petitioner was not an erroneous view to take. No interference is warranted with the order dated 18.12.2015 passed by the CAT Bench.

12. The writ has no merit. It is dismissed.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE