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

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Date of decision: 08.03.2022+ **W.P.(C) 10946/2021****DEVENDRA KUMAR**

.....Petitioner

Through: Mr Abhinav Mishra with Ms Nivedita Chauhan, Ms Komal Singh and Ms Jagriti Dosi, Advocates.

*versus***UNION OF INDIA THROUGH THE SECRETARY MINISTRY OF RAILWAYS & ORS.**

.....Respondents

Through: Dr Ashwani Bhardwaj, Advocate for respondents no.2 and 3.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR JUSTICE JASMEET SINGH****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J.: (ORAL)**

1. Dr Ashwani Bhardwaj, who appears on behalf of respondent nos.2 and 3, has returned with instructions. Mr Bhardwaj says that insofar as the aspect of appointment and seniority of the petitioner is concerned, this Court can pass suitable orders.

2. To be noted, at the time when notice was issued in the writ petition i.e., on 27.09.2021, the following order was passed:

“1. This writ petition is directed against the order dated 29.07.2021, passed by the Central Administrative Tribunal (in short ‘the Tribunal’) in OA No. 1398/2017.

2. The record shows that, the petitioner had applied for the post of Senior Section Engineer (Traction Rolling Stock) [in



short "SSE(TRS)"].

2.1. The written test was conducted on 01.09.2015; the petitioner qualified the exam and secured 78th rank.

2.2. The petitioner was, however, declared medically unfit, at the stage of verification of documents. According to the respondents, the petitioner does not meet the A-3 medical category.

3. Before we proceed further, we would want to know from the respondents, as to whether any vacancy is available in the subject post.

3.1. Mr. Jagjit Singh, who appears on advance notice on behalf of the respondents, says that, he will revert with instructions.

4. List the matter on 26.10.2021."

3. On the returnable date i.e., 26.10.2021, Mr Jagjit Singh, learned counsel, who appeared for the respondents on that date, had reverted with the instruction that one vacancy in the post of Senior Section Engineer (Traction Rolling Stock) [in short "SSE(TRS)"] was "presently available".

3.1 Having regard to the same, the Court had issued further directions via order dated 26.10.2021 after recording the proceedings of the previous date i.e., 27.09.2021. The relevant directions are contained in paragraph 3 and 3.1 of the order dated 26.10.2021:

"3. Given the fact that, there is one vacancy in the aforementioned post [as noticed above], we are of the view that, the best way forward in the matter would be, to have the petitioner medically examined. "

3.1. Accordingly, the petitioner will be examined by a Medical Board, set up by the Ram Manohar Lohiya Hospital [in short "RML Hospital"]. The petitioner will appear before the Superintendent, RML Hospital, for the said exercise."

3.2 Resultantly, the petitioner was subjected to a fresh medical



examination; which led to a medical report being submitted to this Court by the concerned hospital i.e., Dr Ram Manohar Lohia Hospital, New Delhi [in short “RML Hospital”].

3.3 The medical report dated 29.11.2021 submitted by the RML Hospital indicated that the petitioner was found medically fit for the subject post.

3.4 It is in this backdrop that, on 10.12.2021, the Court had asked Dr Bhardwaj, learned counsel for the respondents, as noticed above, to take instructions as regards his appointment and consequential relief, including seniority.

3.5 We had thought that the respondents would on their own, in these circumstances, take next steps towards appointment of the petitioner, in accordance with the prevailing rules and regulations. However, that approach has not been adopted by the respondents.

4. Having regard to the fact that the petitioner has been found medically fit, and that was the only reason why his candidature was cancelled, we are of the opinion that the petitioner should get a leg-up.

4.1. Accordingly, the impugned order dated 29.07.2021, passed by the Central Administrative Tribunal in O.A 1398/2017, is set aside.

4.2. The respondents will take necessary next steps towards appointment of the petitioner in the post of SSE(TRS), as per the extant rules and regulations.

4.3. The respondents will also consider the request of the petitioner for grant of consequential reliefs.

4.4 We may note that Dr Bhardwaj has screen-shared paragraph 303 of the Indian Railways Establishment Manual Volume-I to contend that before appointment, the petitioner will have to undergo training and take an



examination at the end of his training. The said provision reads as :

“303. The seniority of candidates recruited through the Railway Recruitment Board or by any other recruiting authority should be determined as under:

(a) Candidates who are sent for initial training to Training Schools will rank in Seniority in the relevant Grade in the order of merit obtained in the examination held at the end of the training period before being posted against working post. Those who join the subsequent courses and those who pass the examination in subsequent chances will rank junior to those who had passed the examination.

In case, however, persons belonging to the same RRB panel are sent for initial training in batches due to administrative reasons and not because of reasons attributable to the candidates, the inter-se seniority will be regulated batchwise provided persons higher up in the panel of RRB not sent for training in the appropriate batch (as per seniority) due to administrative reasons shall be clubbed along with the candidates who took the training in the appropriate batch for the purpose of regulating the inter-se seniority provided such persons pass the examination at the end of the training in the first attempt.

(Authority Board's letter NO. E(NG)I-89/SR6/32(PNM) dated 19-3-93)

(b) In the case of candidate who do not have to undergo any training in training school, the seniority should be determined on the basis of the merit order assigned by the Railway Recruitment Board or other recruiting authority.”

4.4(a) Therefore, if this necessary step is to be taken, the respondents will act with due alacrity and subject the petitioner to the training rigour, within the next three weeks from the date of receipt of a copy of the judgment passed today.

5. The parties will act, based on the digitally signed copy of this judgment.

6. The writ petition is disposed of in the aforesaid terms. Pending application(s), if any, shall stand closed.



7. Parties will bear their own costs.

RAJIV SHAKDHER, J

JASMEET SINGH, J

MARCH 08, 2022/tr

[Click here to check corrigendum, if any](#)