



2024:DHC:8261-DB



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

+ **W.P.(C) 9241/2024, CM APPLs. 37858/2024 & 37859/2024**

SECRETARY, RAILWAY BOARD & ORS.Petitioners

Through: Mr. Kamal Kant Jha, Senior
Panel Counsel GOI, Mr. Animesh Singh,
Advs.

versus

SHRI RAJESH YADAVRespondent

Through: Mr. Karanjot Singh Mainee,
Mr. Sahil Chopra Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

% **21.10.2024**

C. HARI SHANKAR, J.

1. The respondent underwent apprenticeship for the post of Book Binder from January 2007. The apprenticeship was completed on 1 April 2009. It is not in dispute that the respondent is a person suffering from physical disability and categorises as B-II in the categories of disability.

2. It is also not in dispute that the system that is followed by the petitioner is that persons with disability, who undergo training with them, are considered from time to time for appointment against posts which are suitable to the category and degree of disability suffered by them.



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3. The respondent was considered on 24 November 2010 for the post of C & W Cleaner. The post of C & W Cleaner requires disability to be of B-I category or lower.

4. The respondent was found to suffer from disability of B-II category, as a result of which he was not eligible for appointment C & W Cleaner. Nonetheless, as the respondent was not informed of any reason as to why he was not being appointed, he approached the learned Central Administrative Tribunal¹ by way of OA 3229/2015. By order dated 21 September 2015, the learned Tribunal disposed of the said OA directing the petitioner to take a decision on the respondent's representation against his non-appointment as C & W Cleaner. The representation of the respondent was rejected by the petitioner on 8 February 2016.

5. Aggrieved thereby, the respondent re-approached the learned Tribunal by way of OA 713/2017, in which the impugned judgment has come to be passed by the learned Tribunal on 30 October 2023.

6. During the course of proceedings before the learned Tribunal, the respondent filed an additional affidavit on 18 October 2022. In the said additional affidavit, the respondent raised an additional ground, with reference to two other persons, namely, Sunny Bhardwaj and Anil Pal. Of the two, Mr. Mainee, learned Counsel for the respondent, submits that Anil Pal was, like the respondent, found unfit for appointment against a post which required B-I degree category but

¹ "the learned Tribunal", hereinafter



was instead granted appointment against an appropriate post which required fitness of B-II category.

7. The assertion to this effect, as contained in paras 7 to 9 of the additional affidavit, read thus:

“7. Applicant aggrieved by the actions of the respondents filed this present OA. While this OA remains pending before this Hone Tribunal for adjudication, applicant received information from reliable sources about appointment of two similarly situated persons, Sh. Sunny Bhardwaj s/o Sh. Rajeshwar Prasad and Sh. Anil Palso Sh. Ram Sewak Pal both of these persons being declared medically unfit were given appointment.

8. It is submitted that applicant also sought information about the appointment of these two people, however, that was not forthcoming. It is submitted that both these person completed their apprenticeship with applicant in 2009 and their name appeared against item 11 & 16 vide Annexure A-4 of the present OA. It is also important to submit that both of these persons were declared medically unfit along with applicant.

9. However, recently applicant received information the reliable sources that both of these persons, Sh. Sunny Bhardwaj & Sh. Anil Pal were given appointment in 2010/11 while same has been refused to applicant herein. It is further submitted that the respondents have acted in partial manner by not giving the appointment to applicant in category-II even when they had already been given appointment to aforementioned two similarly situated persons in the same category who were also declared medically unfit.”

8. The petitioner, in its response to the additional affidavit, stated, apropos paras 7, 8 and 9 of the additional affidavit, as under:

“7. That in reply to para 7, it is submitted that Mr. Sunny Bhardwaj S/o Sh. Rajeshwar Prashad and Sh. Anil Pal S/o Sh. Ram Sewak Pal is working with respondent.

8. That in reply to para 8, it is submitted that the contents of the corresponding para, being matter of records, need no reply.



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9. That in reply to para 9, it is submitted that the contents of the corresponding para, being matter of records, need no reply.”

9. Thus, by stating that the contents of para 9 of the additional affidavit filed by the respondent were a matter of record, the petitioner impliedly acknowledged, at least that Anil Pal had been appointed to a post which was suitable to a person suffering from B-II category medical disability.

9. Paras 14.1 and 15 of the impugned judgment of the learned Tribunal read as under:

“14.1 We do not discount the averments made by the learned counsel for respondents. The respondents have the prerogative of considering the apprentice trainees for appropriate appointment considering their eligibility and fitness as per the Recruitment Rules prevalent for the said post which they would be considered. However, the learned counsel for respondents could not give a satisfactory response as to why the present applicant cannot be considered for any other suitable post, if available with the respondents because the applicant has undergone apprentice training in the Railway. In view of the fact that the present applicant has undergone the apprentice training, and spent precious two years of his life serving the railways, it is appropriate that he should be considered for an appropriate position taking into consideration his degree of disability. The impugned order dated 08.02.2016 states that the case of the applicant was considered for accommodation for posts appropriate for B-II medical classification, but there was no group-D post in the said medical category in Mechanical Department in Delhi Division. Accordingly, his appointment could not be made.

15. In view of the averments made by both the counsels, it will be appropriate that the respondents will reconsider the matter regarding offering appointment to the present applicant for any post having B-II medical classification if available in Delhi Division. In absence of such post in Delhi Division, they may consider him for offering such post in any other Division of the Railways. This exercise shall be completed within a period of eight weeks from the receipt of a certified copy of this order.”

10. Thus, the learned Tribunal has, in passing the impugned



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judgment, not chosen to interfere with the decision of the petitioner not to appoint the respondent as C & W Cleaner, as the respondent did not possess the requisite B-I Category disability which was necessary for the post. To that extent, the petitioner is, needless to say, not aggrieved.

11. The grievance of the petitioner is with respect to the further directions contained in para 15 of the impugned judgment which required the petitioner to consider offering appointment to the respondent for any post suitable for a person suffering from B-II category disability either in Delhi or outside Delhi.

12. These directions, according to Mr. Kamal Kant Jha, learned Senior Panel Counsel for the petitioner, were not warranted and cannot, therefore, sustain.

13. Having heard learned Counsel for the petitioner and seen the material on record, we see no reason to interfere with the said directions issued by the learned Tribunal.

14. It is an acknowledged position at least that Anil Pal, who was a person who had trained with the respondent and suffered from B-II category disability and was in fact offered a post commensurate with B-II category disability.

15. The assertion to this effect, as contained in para 9 of the additional affidavit dated 18 October 2022, filed by the respondent,



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was acknowledged, in the reply filed by the petitioner to the additional affidavit, to be a matter of record and not requiring any reply. This amounts to an implied acknowledgement of the correctness of the said assertion.

16. Moreover, we find that the learned Tribunal has not issued any categorical direction for granting appointment to the respondent. All that has been said is that the respondent should be considered for being offered appointment to a post having B-II medical classification if it is available in Delhi and, if it is not available in Delhi, available elsewhere.

17. Inasmuch as this was actually done in the case of Anil Pal, and keeping in mind the fact that the respondent has undertaken three years of training with the petitioner, we see no infirmity in the directions issued by the learned Tribunal as would justify any interference within the limited scope of Article 226 of the Constitution of India.

18. For the aforesaid reasons, we see no reasons to interfere in the present matter. The writ petition is accordingly dismissed.

C. HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 21, 2024/dsn

Click here to check corrigendum, if any