

**HIGH COURT OF JAMMU AND KASHMIR
ATJAMMU**

SWP No. 520/2017
IA Nos. 1/2017 & 2/2018

Reserved on: 12.03.2020

Pronounced on: 06.05.2020

Jasvir Kour

.....Petitioner(s)/Applicant (s)

Through :- Mr. A. K. Sharma, Advocate.

V/s

Central Administrative Tribunal and Others

.....Respondent(s)

Through :- Mr. P. S. Chandel, Advocate.

Coram:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH BINDAL, JUDGE

JUDGMENT

GITA MITTAL, CJ

1. By way of the instant petition, the petitioner has assailed the order dated 21st November 2016 passed by the Central Administrative Tribunal, Chandigarh Bench (Circuit Bench at Jammu) in O.A. No. 061/00052/2015. This original application was filed by the writ petitioner praying for following reliefs:

- “i) partially annul and quash the order dated 27.05.2015 to the extent it denies consideration for being placed on panel of Junior Engineer on account of medical de-categorisation;*
- ii) to command and direct respondents to place the applicant on panel and regularize the applicant as Junior Engineer and shift him to a post of Junior Engineer with the same pay scale and service benefits;*
- iii) to command and direct respondents to assign the seniority in the cadre of Junior Engineer grade pay Rs.4200/-*

against existing alternate vacancy from the date of working of applicant as SOM and pay fixation be directed accordingly notionally from the date of filing of OA i.e. 1.1.1986 and actual from the date of filing of OA i.e. 16.8.2009 (in view of order dated 29.6.2015) with all consequential benefits.”

2. The facts giving rise to the writ petition are within narrow compass and to the extent necessary are briefly noted hereafter.

3. As per the extract of the service book placed before us, the petitioner was regularized as Gangman and his lien fixed at the Ferozpur Division by a letter dated 9/1995. His pay had been fixed in the scale of ₹1200-2040 w.e.f. 2nd November 1995.

4. The petitioner is stated to have officiated as a Mason (Mistry) in the pay band of ₹5200-20200, GP ₹2400/- in the construction organization of the respondents. Vide a letter dated 17th August 2010, the petitioner was declared unfit by the De-categorisation Board for medical category of A-3, B-1, B-2 and was found fit in medical category C-1 and below with glasses.

5. The respondents have submitted that in this background, Divisional Office, Ferozpur was requested by the Chief Administrative Officer/ Construction at the Headquarters at Kashmiri Gate, Delhi by letter dated 3rd September 2010 to create an alternative post to absorb the petitioner in the Construction Organization. As a consequence, a supernumerary post was created by Ferozpur Division at the same station in the Construction Organization by communication dated 24th September 2010 till an alternative post was located for him to charge his salary against the post. We may extract the memo for creation of the special supernumerary post herein which reads as under:

**“Memo for creation of Special Supernumerary Post for
Medically Decategorized Staff**

Sh. Jaswinder Singh s/o Sh. Hargopal Singh, Trackman working as Mason Mistry under Dy.CE/Const/JAT grade 5200-20200, G. Pay=1800/- (MACP=2000/-) having lien with ADEN/FZR has been declared medically unfit permanently for his original job by the Medical Board on 17.08.2010. Further Medical Board has declared him fit for medical classification in Cee-one & below with glasses for near vision.

As per instructions contained in PS No.11816/99, a special supernumerary for the category of Trackman grade 5200-20200 G. Pay=1800/- (MACP=2000/-) is hereby created at the same station i.e. under Dy.CE/Const/JAT w.e.f. 17.08.2010 for the purpose of charging and other allowance to the above named employee from 17.08.2010 to till the alternative post located for him.

The said special supernumerary post will stand abolished as soon as the alternative post is located for above named employee.”

(Emphasis by us)

6. The respondents have further submitted that Ferozpur Division Office circulated a list of medically de-categorised staffs a result of the suitability adjusted of those medically de-categorised. It appears that an evaluation was conducted of the medically de-categorised staff for absorption in alternative categories on 28th September 2010 and such staff as was suitable for alternate posts was so absorbed. So far as the petitioner is concerned, he was found suitable for absorption as Works Khallasi against his regular post of Trackman, due to his de-categorisation in the medical category, in the grade pay 5200-20200 GP 1800 (MACP-2000) for the Construction Organization with paper lien as existing.

7. The petitioner has claimed that while working as Mason (Mistry) on ad hoc basis, he along with others approached the Principal Bench of the Tribunal by filing O.A. No. 2533/2009 for promotion/regularization to the post carrying pre-revised pay scale ₹1400-2300 and ₹5000-8000. This application

was disposed of by an order dated 10th December 2010 directing the applicants as follows:

“12. The applicants are directed to file a comprehensive representation as per the direction of the Hon’ble High Court claiming their eligibility for promotion to the posts carrying the pre-revised scales of ₹1400-2300/- and ₹5000-8000/- respectively in terms of Circulars of Railway Board and the respondents are directed to dispose of such a representation within three months from the date of receipt of such representation by passing a speaking reasoned order keeping in view the Railway Circulars and the judicial pronouncements on the subject.”

8. In compliance of the above orders, the Northern Railways considered the representation and passed an order dated 24th January 2012 directing that the 11 petitioners (including the petitioner) working as SOM in Construction Organization in the Grade of ₹5000-8000 with designation like SOMs/Mistries on ad hoc basis may be given the opportunity according to their suitability and qualification and that they would be allowed exemption from the age restriction for appearing in the examination.

9. Pursuant to the order dated 24th January 2012, the petitioner participated in the written examination for selection to the post of Junior Engineer/works against the direct recruitment quota was held on 20th June 2013 and claims to have fared well. It is also claimed that he was granted vigilance clearance, however, the result of the written examination was not declared. For this reason, O.A. No. 061/00026/2015 titled Tilak Raj and others v. U.O. I and others was filed before the Chandigarh Bench of Tribunal for declaration of the result of the written examination held on 20th June 2013. This application was disposed of by an order dated 8th April 2015 calling upon the competent authority to declare the result of the selection within a period of four weeks from the date of receipt of certified copy of the order. The respondents

resultantly passed the order dated 22nd May 2015 directing regularization of the service of the ad hoc SOMs (now Junior Engineers) for all the applicants except the petitioner for the reason that he had been medically de-categorized from A-3 to C-1.

10. The petitioner assailed the refusal of the respondents to appoint him as a Junior Engineer by way of O.A. No. 061/00052/2015 which claim stands rejected by the impugned order dated 21st November 2016. The petitioner has claimed that he is entitled to the appointment even though he stands medically de-categorized.

11. The Tribunal has considered the question as to whether the petitioner could legitimately claim that merely because he was allowed to appear in the written examination pursuant to the orders of the Tribunal and was successful in the same, he is legally entitled to be appointed as Junior Engineer.

12. It is not disputed that the petitioner stood medically de-categorised on 21st August 2010 three years before the written examination took place and his medical category was lowered from Category A-3 to C-1. The petitioner was never selected as Junior Engineer. The applicant was permitted to take the examination only because of the order of the Tribunal. The order came to be passed because it was not brought to the notice of the Tribunal that the petitioner was not eligible to undertake the selection process because he was medically unfit. It was only because of the order of the Tribunal that the result of the written examination was declared on 22nd May 2015. In normal course, if the Tribunal direction was not there, the petitioner would have been disqualified even for sitting in the written examination. Even if he had been

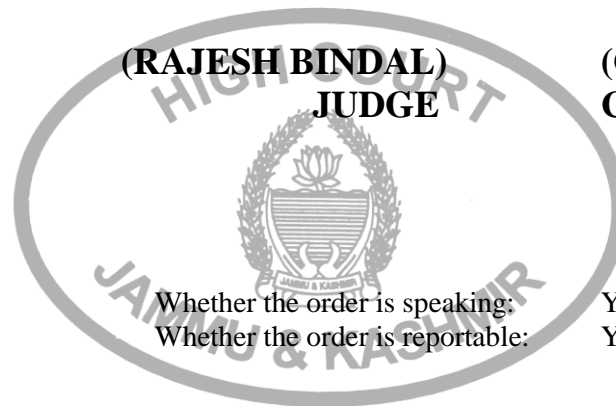
permitted to sit in the written examination, he would have been subsequently eliminated on the ground of his medical status.

13. In this background, it was not open for the petitioner to contend that he stood selected to the post of Junior Engineer and could not have been given the post not carrying the pay scale of Junior Engineer.

14. The petitioner has not been able to point out anything which would enable us to take a view contrary to that taken by the Tribunal.

15. We find no merit in the petition, which is hereby dismissed.

Jammu
06.05.2020
Raj Kumar



(RAJESH BINDAL)
JUDGE

(GITA MITTAL)
CHIEF JUSTICE

Whether the order is speaking:
Whether the order is reportable:

Yes/No.
Yes/No.