

**(2021) 08 GAU CK 0054**

**In the Gauhati High Court**

**Case No :** Writ Petition (Civil) No. 5561 Of 2020

Union Of India And 7 Ors

APPELLANT

Vs

Manas Ranjan Mohapatro

RESPONDENT

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**Date of Decision :** 16-08-2021

**Acts Referred:**

Constitution Of India, 1950 — Article 14

**Citation :** (2021) 08 GAU CK 0054

**Hon'ble Judges :** Sudhanshu Dhulia, Cj; Manash Ranjan Pathak, J

**Bench :** Division Bench

**Advocate :** H K Das, M Sarma

**Final Decision :** Dismissed

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## **Judgement**

The matter is taken up through video conferencing.

Heard Mr. H.K. Das, learned counsel for the petitioners. Also heard Mr. M. Sarma, learned counsel, appearing for the sole respondent.

This writ petition has been filed by the petitioners challenging the order dated 06.03.2020 passed by the Central Administrative Tribunal, Guwahati

Bench (hereinafter referred to as "the Tribunal") in O.A. No.040/00323/2016, by which the Original Application of the private respondent was

allowed holding as under:-

10. Keeping in view of the above, we are of the considered view that the case of the applicant should be appropriately considered by the

respondent authorities for the post where he could be suitably accommodated in the promoted post of Group B as recommended by the Chief Medical

Officer based on input of PC/MLG dated 26.02.2015. Accordingly, the impugned letters dated 06.06.2016 and 20.07.2016 are hereby set aside and

quashed. The respondent authorities are hereby directed to re-consider the case of the applicant as indicated above. This exercise may be completed

by the respondent authorities within a period of three months from the date of receipt of this order.

The private respondent was a Group-C employee in the N.F. Railway at the relevant point of time, i.e. in the year 2015. The admitted facts are that

departmental promotions are made from Group-C to Group-B posts and 30% of the vacancies in Group-B posts are to be filled up by such promotions.

The posts which were available for promotion were that of Assistant Executive Engineer, which are admittedly all technical posts. The advertisement

clearly stipulated that the candidates will have to first clear the written examination and only those candidates who are successful in the written

examination will be called for viva-voce. Another condition was that before they are actually called for the viva-voce, they will have to clear the

medical examination. The private respondent was one of the successful candidates in the written examination and before he could be called for the

viva-voce, as per the Rules he faced the medical examination where it was found that he has some defective colour vision. At this stage, the

petitioners relied upon a Circular dated 09.04.2007 wherein it was stipulated as under:-

532(4) The relaxation of medical standards on promotion from Group C to Group B in all categories may however be considered

for specific posts in the concerned Department on case to case basis under the following clause "any one of the conditions may be relaxed in favour

of any candidate for special reasons. The relaxation in medical standards in each case should have specific approval of the concerned Board Member

of the Railway Board."

The orders shall be effective from the date of issue of the Board's letter dated 09.04.07.

(Authority: Board's letter No.2005/H/5/13 dated 09.04.07.)

Note:

1. CMD/Zonal Railway if satisfied with adverse Medical exam report can refer the case to PHOD for examining the concerned employee for a

suitable posting if available in his department, where if posted, the underlying medical condition shall not compromise the safety and productivity of

work.

2. After obtaining the above clarification from PHOD, a fresh medical exam may be processed for the specified post.

3. The report of re-medical exam if in favour of the employee, will be forwarded through CMD/Zonal Railway to DG/RHS for obtaining the approval

of concerned Railway Board Member.

4. The Board decision shall be communicated to Zonal Railway for further action.â??

The above provision of law, in a given case gives powers to the authorities to relax medical conditions. The private respondent availed that provision

and hence he faced another medical examination conducted by the Chief Medical Director, who gave his findings as under:-

â??In response to the notification dated 18/9/2013 for selection for the post of AEN (Group-B) against 30% LDCE for forming a panel of 09 persons,

written examination was held on 03/08/2014 in which 31 candidates secured qualifying marks. Out of 31 candidates, 1 staff namely Shri Manas

Ranjan Mahapatra JE/Draw/Con/MLG was declared â??unfitâ?? for promotion from group-C to Gazetted group-B post in technical category due to

defective colour vision.

As per corrected para 532 of IRMM 2000 the case was referred to PCE/MLG on 19/1/2015 for examination for suitable posting availability as the

underlying medical condition canâ??t be compromised the safety & productivity of work.

On 26/2/2015 PCE/MLG has specified certain posts such as AEN/Works, AEN/G, AEN/Plg, AEN/Br./Design & AEN/Track (HQ) on which Shri

Manas Ranjan Mahapatra can be accommodated with defective colour vision.

On 08/6/2015 four (4) doctors of CH/MLG were nominated for fresh medical examination of the case at CH/MLG. On 31/8/15 fresh medical

examination was held at MD/CH/MLG. MD/CH/MLG has submitted medical examination report on 3/9/15 to CMD. He has been declared fit for the

nominated post subject to approval for relaxation of the standard in relation to defective colour vision as per provision in corrected para 532 IRMM

2000. The report of medical board is enclosed.

It is requested to obtain the approval of concerned Rly Board member (ME in this case) or other wise for disposal of the case.

(emphasis provided)

In other words, in the aforesaid examination the expert opinion which was given was that the private respondent was fit for post. The final decision in

this case had to be taken by the Railway Board. The decision taken by the Board, however, was that although there was an opinion in favour of the

private respondent, which gave him the benefit of relaxation as per the Rules and the private respondent was found fit for promotion to a Group-B

post, yet since his residual service is still 28 years, and therefore, keeping him in a Group-B post for 28 long years will not be in the interest of the

Railway Administration. Thus, the claim of the private respondent for consideration for promotion to Group-B post was rejected.

We consider the above reasoning totally unreasonable for the following two reasons:

Firstly merely because the private respondent was to remain in Group-B post for 28 years cannot be a reason for denying him promotion.

Secondly and more importantly, while denying promotion to the private respondent the Railway Board has presumed that in his next 28 years of

service the private respondent will never be promoted to a Group-A or next higher post.

In sum and substance therefore the reasons assigned for not promoting the private respondent was incorrect and clearly violative of Article 14 of the

Constitution of India. It is for this reason that the Tribunal has also allowed the claim of the private respondent and has called the finding of the Board

â??weirdâ??.

Under these circumstances, we do not find any merit in the present writ petition. The writ petition is hereby dismissed.

We direct the Railway authority to forthwith grant promotion to the private respondent to a Group-B post with all consequential benefits, as contained

in Para 10 of the order of the Tribunal.

We make it very clear that the date of his promotion shall be the date from which all other persons were considered for promotion in the viva-voce i.e.

in the year 2015.