

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

OA No. 2379/2002

NEW DELHI THIS. ^{30th} DAY OF JUNE 2004

Hon'ble Shri Kuldip Singh, Member (J)
Hon'ble Shri S.A. Singh, Member (A)

Attar Hussain S/o Shri M.H. Zaidi
Diesel Electric Technician Gr.II
Northern Railway,
Tughlakabad New Delhi.

.....Applicant

(By Advocate: Shri B.S. Mainee)

Versus

1. The General Manager
Northern Railway
New Delhi.
2. The Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi.

....Respondents

(By Advocate: Shri Rajeev Bansal)

O R D E R

Hon'ble Shri S.A. Singh, Member (A)

Applicant filed this O.A. aggrieved by the respondent's impugned order No.725E / 10/ 2084/ Diesel/ P7 dated 9.8.2001 declaring him unsuitable for empanelment for the post of Junior Engineer Gr. II in the panel issued on 28.10.1998.

2. The brief facts of the case are that the applicant was appointed as Diesel Cleaner on 26.7.1978 and consequently promoted Electric Diesel Fitter Grade of Rs. 950-1500 in 1982 and further

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promoted as Technician Gr. II in November 1993 in the pay scale of Rs. 1200-1800 after qualifying the prescribed test.

3. The applicant contends that his services were always satisfactory and having unblemished record. Next higher post in the trade is of Junior Engineer Grade in the scale of Rs. 1400-2300 and to be filled up by following mode of recruitment:

- a) 50% by open market through Railway Recruitment board;
- ii) 25% by seniority-cum-suitability basis;
- iii) 25% by serving matriculate employees with 3 years service in skilled grade and below 45 years of age as Intermediate Apprentice Mechanic.

4. The 25% quota for intermediate Apprentices Mechanics is therefore to be filled up by holding Limited Departmental Competitive Examination (LDCE) as per rules contained in IREM-I and circular dated 26.11.1986. The departmental candidates from Technicians cadre who applied for appearing in LDCE are called for written test and those who qualify the test by securing 60% and above are called for interview. The candidates who secure at least 60% in Professional ability and 60% in aggregate are to be empaneled. For filling up 3 vacant posts against this quota the respondents issued a notice on 9.9.1998 which includes 1 reserved for ST community. Total 36 departmental

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candidates including the applicant were found eligible and a written test was held on 26.9.98, the result of which was declared vide letter 3.11.98. Only 4 candidates from mechanical side and 3 from electrical side were declared qualified in written test and their viva voce test was held on 19.11.1998. Only 3 were finally selected and their list was issued on 27.11.989.

5. The applicant contended that his name was wrongfully ignored in violation of the rules and excluded from the list of person to be called for viva voce test. He made a representation on 6.11.1988 but no response from respondents. Thereafter the applicant filed OA 66/1999 and the same was allowed by this Tribunal vide order dated 6.2.2001 and the respondents were directed to reconsider the case of the applicant in terms of the relevant rules and instructions and in case found eligible to be called for viva voce test and that the applicant will be entitled for promotion as JE-II DSL/Elec from the date his junior was so promoted, with all consequential benefit in accordance with the relevant rules and instructions.

6. In compliance to the Tribunal's judgement the applicant's case was re-considered and he was called for viva voce test which was held on 18.7.2001. But the applicant was not found suitable for empanelment for the post of JE Gr.II. The applicant further stated that he earlier also had

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appeared in the competitive examination in 1996 and even passed the written test but he was not empanelled. Further contention of the applicant is that in accordance with rules he being senior most and having been found fit for the viva voce test should be placed on the panel as it was to be formed on the basis of seniority amongst those who qualified after securing 60% marks. Therefore, the impugned orders passed by the respondents are illegal and arbitrary and were liable to be quashed and the respondents should be directed to empanel the applicant with consequential benefit.

7. During oral submissions/arguments the learned counsel for the applicant reiterated his pleas and pressed his pleadings made in the OA and prayed for empanelment.

8. The respondents in their counter submissions stated that the post of JE (DSL-Elect) against 25% is filled amongst the skilled Artisan having three years of service with matriculation qualification and less than 45 years of age. In 1998 selection test for JE Gr. II was held in which the applicant also appeared but could not qualify the written test. The applicant filed an OA 66/99 seeking directions for calling him for viva voce after adding notional marks for seniority. Accordingly he was reconsidered eligible for viva voce test by adding notional marks of for seniority as per the directions of the Tribunal passed in above stated OA filed by the applicant and

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accordingly was called for viva voce test held on 18.7.2001. Selection board, however, has not found him suitable and thus not placed in provisional panel. Therefore, claim of the applicant is baseless, unfounded and is liable to be rejected outrightly as the orders passed by the Hon'ble Tribunal in OA 66/1999 have been fully complied by the respondents.

12. The applicant in his rejoinder vehemently opposed the pleas made in the counter and reiterated his claims made in the OA.

13. We have gone through the pleadings made by the parties and also related documents placed on record. The applicant earlier also filed OA No.66/1999 which was decided by this Tribunal on 6.2.2001 and operative portion of the same is as under:

"In view of what has been stated above the OA succeeds and is allowed with the following directions:

The respondents to re-consider the case of the applicant in terms of the aforesaid relevant rules and instructions and in case he is found eligible he shall be called for viva voce test. The applicant shall be entitled to the promotion to the post of JE-II DSL/Elec from the date his junior was so promoted, with all consequential benefits in accordance with the relevant rules and instructions. This shall be

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done within three months from the date of receipt of a copy of this order. No order as to costs."

14. In compliance to these directions the respondents reconsidered the case of the applicant by adding the seniority marks and was called for viva voce test held on 18.7.2001. But since the Selection board has not found him suitable he could not be placed on provisional panel.

15. The main ground of the applicant is that though the respondents held a viva voce test on 18.1.2001 in compliance of the direction of the Tribunal in the OA 66/99, however, they have revengefully and in an arbitrary and illegal manner maliciously passed the impugned order wherein he has not been found suitable for empanelment for the post of JE Gr.II. The respondents have contested this and stated that as per extant rules it is mandatory for the candidate to secure minimum of 60% marks in the written test and professional ability and the aggregate of written and interview should not be less than 60% to be qualified for empanelment. The panel will be drawn on the basis of seniority from among those who have qualified the limited Departmental examination for the number of vacancies. Annexure detailing with this has been attached by the applicant himself as A-II. The applicant secured less than 60%, however ~~as~~ he was still called for the viva voce test on the direction of Tribunal by adding notional marks for seniority, but the Selection Board did not find him suitable for empanelment.

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16. We find that the applicant has not been able to show any ground for supporting his contentions that respondents had acted in a malicious revengeful and arbitrary manner. They have in fact complied with the directions of the Tribunal and there is nothing on record to make us come to the conclusion that the Selection Board had not acted in fair and unbiased manner. In fact under Rule 219(g) of IREM which is relevant in the present case and is reproduced below:

"219(g) Selection should be made primarily on the basis of overall merit, but for the guidance of Selection Board the factors to be taken into account and their relative weight are laid down below:-

	Max'm Marks	Min'm Marks
Professional ability	50	30
Personality address, Leadership and Academic qualification	20	-
A record of service	15	-
Seniority	15	-

Note (ii) The record of service should also take into consideration the performance of the employee in essential Training Schools/Institutes apart from the examining CRs and other relevant records.

Note (iii) Candidates must obtain a minimum of 30 marks in professional ability and 60% marks of the aggregates for being placed on the panel. Where both written and oral tests are held for adjudging the professional ability, the written test should not be of less than 35 marks and the candidates must secure 60% of the total of the marks prescribed for written examination and for

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seniority will also be the basis for calling candidates for viva-voce test instead of 60% of the marks for the written examination only; marks for the written examination only; marks of seniority being awarded on notional basis. However, it should be specifically made clear to them that they are being called for interview based on the marks for seniority awarded on notional basis and that empanelment will be subject to their security 60% marks in the professional ability (written test and viva-voce test) and 60% in the aggregate."

17. The said rule specifically mentions that marks for seniority are only awarded on notional basis and that empanelment is subject to securing 60% marks in the written test, professional ability and in the aggregate. The applicant has not challenged the contention of the respondents that he secured less than 60% marks in the written test. He has merely mentioned in the rejoinder that in the earlier OA this issue had been contested and the Tribunal have directed addition of notional marks for purposes of eligibility of the applicant to be called for viva voce test. We find from the judgement on the said OA that the Hon'ble Tribunal had not gone into the issue of whether the applicant secured the required 60% marks in the written for being called for viva-voce test and only adjudicated on the question of addition of notional seniority marks for calling for viva voce.

18. It is clear from note (iii) to Rule 219 (g) of IREM that for empanelment the applicant is required to secure 60% marks in professional ability and also in aggregate which admittedly he has not obtained. Therefore, we see no reason to interfere in the assessment of the Selection Board.

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18. In view of the above the OA fails, being without merit and is accordingly dismissed. No order as to costs.



(S.A. Singh)
Member (A)



(Kuldip Singh)
Member (J)

Patwal/