

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

- 1. Original Applications Nos.203/00432/2016**
- 2. Original Applications Nos.203/00548/2016**
- 3. Original Applications Nos.203/00568/2016**
- 4. Original Applications Nos.203/00720/2016**

Bilaspur, this Monday, the 20th day of January, 2020

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. Surendra Kumar Kaushik, S/o Ganesh Ram Kaushik, aged about 39 years, working as Sr PWS, R/o Qtr No 270/1, NE Railway Colony, Manendragarh, Korea Chhattisgarh 497442.
2. Krishna Kumar, S/o Tarkeshwar Prasad, aged about 33, working as Sr PWS, R/o Qtr No 24/1, Railway Colony, Chirmiri Chhattisgarh 497451

-Applicants in OA 203/00432/2016

Rajkishore Choudhary s/o Shri Gandhi Choudhary aged about 39 years, R/o Railway Qr No.45, Chandiya Road, Distt – Umaria (M.P) 484660

- Applicant in OA 203/00548/2016

Devanandan Patel, S/o Shri Nilambar Patel, aged about 39 years, working as Sr PWS, O/o Railway Colony, Belparhad, Distt – Jharsuguda (Orissa) 768217

- Applicant in OA 203/00568/2016

Rabindra Sharma s/o Shri Dukho Sharma, aged about 40 years, presently at Baikunthpur, R/o Qtr 21/1 Railway Colony, Baikunthpur, District – Korea (C.G.) 497339

- Applicant in OA 203/00720/2016

(By Advocate – Shri A.V. Shridhar in all the OAs)

V e r s u s

1. Union of India – Through the Secretary, Railway Board, Ministry of Railways, Rail Bhawan, Raisena Road, Rafi Marg, New Delhi – 110001.

2. General Manager, South East Central Railway, New GM Building, Bilaspur, Chhattisgarh – 495004.
3. Chief Personnel Officer, Divisional Office South East Central Railway, Bilaspur, Chhattisgarh 492008.
4. Divisional Personnel Officer, Divisional Office South East Central Railway, Bilaspur, Chhattisgarh 492008.
5. Gajendra Prasad Sahu
6. Jitendra Singh
7. Santosh Kumar Gupta
8. Pushpram Kousale
9. Ramsurat Yadav
10. Dhananjay Upadhyay
11. Rameshwar Prasad
12. Ravi Shankar Dwivedi
13. Santosh Kumar
14. Amrit Lal
15. Deena nath Yadav
16. Pramod Kumar Yadav
17. Pradeep Minj
18. Vinod Kumar Kanwar
19. Bind Ram Kousale
20. Dan Bhushan Tirkey
21. Manoj Kumar Singh

Respondents No. 5 to 21 all through Chief Personnel Officer, Divisional Office, Personnel Branch, SECR, Bilaspur – 495004.

- Common Respondents

(By Advocate – Shri Vijay Tripathi for respondents Nos.1 to 4 and Shri B.P. Rao for respondents Nos.5-10, 13-16 & 19)

O R D E R (O R A L)

By Navin Tandon, AM.

The issue involved in all these four Original Applications is similar and, therefore, they are being disposed of through a common order. For the purpose of this order, reference is made from the facts mentioned in OA 203/00432/2016 and the documents annexed therein unless other specified.

2. The undisputed facts of the case are as under:

2.1 The respondents issued notification dated 21.05.2012 (Annexure A-2) for filling up 17 posts (UR-12, SC-1, ST-4) of Sr. PWS against 25% LDCE quota.

2.2 The result of the written examination was declared on 14.11.2012 (Annexure A-3) and panel was declared on 15.02.2013 (page 15 of Annexure A-3).

2.3 The said panel was challenged by two candidates in Original Application No.221 of 2013 before this Tribunal, which was allowed on 27.08.2015. The official respondents had

approached the Hon'ble High Court of Chhattisgarh in Writ Petition (S) No.157 of 2016, which was dismissed on 18.01.2016 (Annexure A-5).

2.4 Accordingly, the selection committee met again and the panel was recasted and published on 08.04.2016 (Annexure A-1).

2.5 All the five applicants in the four Original Applications were included in the panel dated 15.02.2013 (Annexure A-3), but are not included in the revised panel dated 08.04.2016 (Annexure A-1).

3. The applicants have, therefore, sought for the following reliefs:

“8.1 That the learned Tribunal may kindly be pleased to call the entire records pertaining to the case of the applicants.

8.2 That the Hon'ble Tribunal may kindly be pleased to quash the impugned office No. DPB/388/2016 dated 08.04.2016 (Annexure A/1).

8.3 That, the Hon'ble Tribunal may kindly be pleased to direct the respondents to prepare fresh panel considering the 17 posts of Senior PWS to be of General Categories.

8.4 Cost of the petition be awarded to the applicants.

8.5 Any other relief which the learned Tribunal deems fit and proper.”

4. The main grounds for challenging the subsequent panel (Annexure A-1) are as under:

4.1 The impugned order dated 08.04.2016 (Annexure A-1) has been published by granting reservation in promotion, which is not permissible as per law.

4.2 Excessive marks have been allotted under the head ‘Awards’ and excessive deduction of marks have been done for ‘Penalty’.

4.3 As per the notification dated 21.05.2012 (Annexure A-2), two lists were to be prepared mainly comprising of candidates with 10+2 (Science and Maths) and second list of matriculate candidates. However, the respondents have published only one list.

4.4 In addition to the above, it has also been brought out in OA 203/00548/2016 that the selection committee has formulated the scheme for awarding 30 marks to all the candidates, who have qualified in the written test for the purpose of assessment of service record as per their note dated 08.04.2016 (Annexure A-8 in OA 203/00548/2016). The applicant has questioned the allotment/deduction of marks for grant of increment and/or unauthorised absence. Further, it has been submitted that Railway Board, vide letter dated 23.08.2004 (RBE 185/204) (Annexure A-10 in OA 203/00548/2016) has

directed that Diploma in Railway Engineering issued by the Institution of Permanent Way Engineers (India), may also be taken into account under the heading of 'Record of Service'. The applicant submits that he is having such a Diploma (page 65 Annexure A-10).

4.5 Further, in Original Application No.203/00720/2016, it has been submitted that the issue with regard to selection of Junior Engineers (Track Machine) and selection of Senior PWS are one and the same and, therefore, there was no any reason or occasion for the respondents to frame different scheme for allotment of 30 marks under the head record of service.

5. The official respondents have filed their reply in which the following submissions have been made:

5.1 After scrutiny of the application, a total of 239 eligible candidates for the post of Sr. PWS against 25% LDCE, who possess education qualification 10+2 with Science and Mathematics with three years of regular service, was published by the respondent department vide letter dated 08.08.2012 (Annexure R-1) in which the applicants and the private respondents are featuring.

5.2 Total 95 candidates were declared successful in the written examination (Annexure A-3). Final panel of 17 candidates was declared on 15.02.2013 (Annexure A-3).

5.3 In compliance with the orders of this Tribunal in OA 221 of 2013 and the orders of Hon'ble High Court of Chhattisgarh dated 18.01.2016 in Writ Petition (S) No.157 of 2016, the steps were initiated to recast the panel.

5.4 Selection Committee laid down the following criteria in awarding the 30 marks for the purpose of assessment of 'Service Record':

1	Application to work	Maximum Marks – 10	(a) If an employee earns regular increments during the last three years (2010, 2011 & 2012) will be awarded full marks. (b) If an employee does not earn regular increments, 0.5 marks will be deducted for each year.
2	Attendance	Maximum Marks – 10	(a) If any employee during the last 3 years (2010, 2011 & 2012) is unauthorized absent more than 10 days, 01 mark will be deducted for next each 10 days or part thereof. (b) If the employee during the last 3 years (2010, 2011 & 2012) is not unauthorized absent more than 10 days, will earn full 10 marks.
3	General Conduct	Maximum Marks – 10	
	(a) Awards	05 Marks	If any employee earns the following awards during the last 3 years (2010, 2011 & 2012) will be awarded marks as

			follows: Railway Board Level - 05 Marks GM's Level – 04 Marks PHOD/CHOD Level – 03 Marks DRM's Level – 02 Marks.
	(b) Punish- ments	05 Marks	(i) For major penalties during 3 years (2010, 2011 & 2012) under consideration, 01 marks should be deducted. (ii) For minor penalties other than stoppage of increment, $\frac{1}{2}$ mark should be deducted. (iii) If there is no punishment during the last 3 years (2010, 2011 & 2012) under consideration, he will earn full 05 marks.

5.5 Consequently, following the above criteria, the respondents published a fresh panel of 17 candidates on 08.04.2016 (Annexure A-1) after obtaining approval of the competent authority.

5.6 Regarding the contention of the applicants about reservations to SC/ST category, it has been submitted that it has never been raised by the applicants earlier either during the notification or after the publication of the previous panel. The applicants were also party in Original Application No.221 of 2013, but have never raised this issue at that time.

5.7 As far as the grounds raised in Original Application No.203/00548/2016 regarding the diploma issued by Institution of Permanent Way Engineers, it has been stated that the

allotment of marks has been done in compliance of the orders of this Tribunal.

5.8 Regarding the contention of the applicant in Original Application No.203/00720/2016, it has been submitted that the selection of JE (TM) is conducted from eligible candidates of Group 'C' in which ACRs of some candidates are available, whereas the selection of Sr. PWS is conducted from eligible candidates of Group D and ACRs of Group D employees are not maintained in Railways.

5.9 Regarding the contention of preparing two lists, it has been stated that the notification No.32/2012 (Annexure A-2) stipulated for preparation of two merit lists comprising the candidates having passed 10+2 (Science and Maths) and others with Matriculation. Since, so many eligible candidates were found with 12th class, hence the issue is irrelevant.

6. The private respondents have also filed their reply, which is almost on the same lines as the official respondents.

7. Heard the arguments of learned counsel for all the parties and perused the pleadings available on record.

8. Learned counsel for the applicants averred that there are many irregularities in distribution of 30 marks of service record. As far as deduction of marks for not earning increment is concerned, it is a case of double jeopardy, as marks will also be deducted for the punishment. Similarly, in the case of unauthorised absence, they will lose the marks in punishment as well as the marks will be deducted for attendance.

9. Learned counsel for the official respondents submitted that after the notification dated 21.05.2012 (Annexure A-2), a letter dated 08.08.2012 (Annexure R-1) was issued in which it has been stated that as per Para 143 of IREM-2009, the posts are to be filled by those who are having educational qualification of 10+2 (Science and Maths). If after that also the posts remain vacant, then the candidates of matriculation/HSLC would be considered for filling up the posts. Therefore, in the first round, only those are being called for written examination, who are having educational qualification of 10+2 in Science and Maths.

10. Learned counsel for the official respondents as well as private respondents placed reliance on the following judgments of Hon'ble Supreme Court:

(i) **Manish Kumar Shahi vs. State of Bihar**, (2010) 12 SCC 576.

(ii) **Dhananjay Malik vs. State of Uttaranchal**,
(2008) 4 SCC 171.

(iii) **Vijay Syal vs. State of Punjab** (2003) 9 SCC 401.

11. We have considered the matter.

12. As far as the issue of reservation is concerned, the respondents have been able to convince us that the issue of reservation was never raised at any stage by the applicants. The respondents have also highlighted the fact that all the applicants were party in Original Application No.221 of 2013. This issue was never raised at the time of issuance of notification, declaration of result of written examination, nor while the case was under adjudication in this Tribunal/Hon'ble High Court. Now, when the applicants have been declared unsuccessful, they have raised this issue.

13. In the case of **Dhananjay Malik** (supra), the Hon'ble Apex Court has been held as under:

“8.in the present case, as already pointed out, the writ petitioners- respondents herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and

selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.

13.1 In **Manish Kumar Shahi** (supra), the Hon'ble Apex Court reiterated the principle laid down in the earlier judgments and observed:

“We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.”

13.2 In the case of **Vijay Syal** (supra), the following has been observed by the Hon'ble Apex Court:

“The appellants knowing the criteria fixed for selection and allocation of marks, did participate in the interview; when they are not successful, it is not open to them to turn around and attack the very criteria.”

14. It is a settled principle of law that the parties cannot blow hot and cold at the same time and they are estopped from raising the question regarding the stipulation of the Notification for selection after participating in the selection process. In the

present Original Applications, the issue of reservation has been raised for the first time after the applicants have been declared unsuccessful.

15. Thus, it is clear that the issue of reservation cannot be raised in this Original Application, as held in judgments of Hon'ble Apex Court cited above.

16. Regarding the breakup of marks for 'Records of Service' is concerned, it was brought to our notice that Para 219 of Indian Railway Establishment Manual (IREM) Vol.I, deals with the subject of 'Procedure to be adopted by Selection Board'. Para 219 (g) of IREM reads as under:

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:-

[Railway Board's letter No. (E(NG)I-69/PM 1-126 dt. 18-9-69)

Factor/Headings	Maximum Marks	Qualifying
(i) Professional ability	50	30
(ii) Record of Service	30	-
(iii) Seniority	20	-
Total	100	60

16.1 While there was unanimity amongst the parties that 30 marks are to be provided for the same, no records have been

produced to show that breakup of 30 marks has to be done in a particular manner. Further, through arguments it was clear that the awards are to be given extra marks and penalties will result in deduction of marks.

16.2 As far as marks for not earning regular increments and attendance is concerned, we find that the Selection Committee has tried to quantify the dedication of the candidates in terms of application to work and attendance. Since, these are very important parameters for considering the fitness of the candidates, who are being promoted from Group D to a Supervisor, we do not find any irregularity or illegality in awarding the marks the way it has been done. It is also to be noted that no ACRs are written at the instant time for Group D.

16.3 The issue of non preparation of two merit lists have been clarified by the official respondents through their pleadings as well as the arguments of learned counsel for the official respondents that candidates having only education qualification of 10+2 (Science and Maths) were called for exam.

17. So far as the issue of grant of marks for Diploma issued by Institution of Permanent Way Engineers is concerned, we find that the Railway Board vide RBE No.185/204 have said

that this may be taken into account, but have not specified whether this has to be necessarily included therein or not. Further, it does not specify the marks to be awarded for such a Diploma. Therefore, it could be presumed that this criteria is left to the Selection Committee. We do not find anything wrong in the procedure in this respect.

18. From the above discussions, we do not find any merit in all these Original Applications. Accordingly, the Original Applications are dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member
am/-

(Navin Tandon)
Administrative Member