

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, RANCHI

Reserved on: 19.11.2019
Pronounced on: 21.11.2019

CORAM

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

1. OA/051/00209/2017

1. Raju, Son of Sri Lal Bahadur aged about 37 years, now holding the post of Sr. Tech (E) (GP-4200) in the office of SSE/LE/DLS. BNDM, S.E. Railway, CKP Division, Chakradharpur, Dist.- Singhbhum (West), Pin No. 833102.
2. Laxmidhar Oram, Son of Sridhar Oram aged about 48 years, now holding the post of Sr. Technician (GP-4200) Diesel Shed, BNDM, S.E. Railway, CKP Division, Dist.- Singhbhum (West), Pin No. – 833102.

..... Applicants.

- By Advocate(s) : Mrs. M.M. Pal, Sr. Counsel with Mrs. Ruby Pandey.

-Versus-

1. Union of India through the General Manager, South Eastern Railway, Garden Reach, Kolkata - 43.
2. Divisional Railway Manager, CKP Division, South Eastern Railway, Dist.- Singhbhum (West) Pin No.- 833102.
3. Sr. Divisional Personnel officer, CKP Division, South Eastern Railway, Dist.- Singhbhum (West), Pin No. 833102.
4. Sr. Divisional Mechanical Engineer (D), South Eastern Railway, CKP Division, Dist- Singhbhum (West) Pin- 833102.
5. Asstt. Personnel Officer, CKP Division, South Eastern Railway, Dist- Singhbhum (West), Pin No. 833102.
6. Mr. P. Ramesh Patnaik
7. Mr. Prabin Kumar
8. Mr. Subrat Kumar Das

All are empanelled vide order dated
31.03.2017 now posted as JE in the office of

SSE (LM/Diesel Loco Shed BNDM, CKP Division), PO & PS- Chakradharpur, Dist.- Singhbhum (West)- 833102.

..... Respondents.

- By Advocate(s): Mr. Prabhat Kumar, Standing Counsel for Railways.
Ms. Shivani Kapoor for Pvt. Respondents No.6 to 8.

2. OA/051/00210/2017

Prabhakar Oda, Son of Sri Mangulu Oda, aged about 48 years, now holding the post of Tech-I (M) in the office of SSE, DLS/BNDM, S.E. Railway, CKP Division, PO & PS- Chakradharpur, Dist.- Singhbhum (West), Pin No. 833102, Jharkhand.

..... Applicant.

- By Advocate(s) : Mrs. M.M. Pal, Sr. Counsel with Mrs. Ruby Pandey.

-Versus-

1. Union of India through the General Manager, South Eastern Railway, Garden Reach, Kolkata- 43.
2. Divisional Railway Manager, CKP Division, South Eastern Railway, Dist.- Singhbhum (West) Pin No.- 833102.
3. Sr. Divisional Personnel officer, CKP Division, South Eastern Railway, Dist.- Singhbhum (West), Pin No. 833102.
4. Sr. Divisional Mechanical Engineer (D), South Eastern Railway, CKP Division, Dist- Singhbhum (West) Pin- 833102.
5. Asstt. Personnel Officer, CKP Division, South Eastern Railway, Dist- Singhbhum (West), Pin No. 833102.
6. Mr. Manas Das (SC)
7. Mr. Amarendra Sahoo (SC)
8. Mr. Dhiraj Kumar (UR)
9. Mr. R.R. Mahto (UR)
10. Mr. Ashish Mazumdar (UR)

All are empanelled vide order dated 31.03.2017 now posted as JE in the office of SSE (LM/Diesel Loco Shed BNDM, CKP

Division), PO & PS- Chakradharpur, Dist.-
Singhbhum (West)- 833102.

..... Respondents.

- By Advocate: Mr. Prabhat Kumar, Standing Counsel for Railways.
Ms. Shivani Kapoor, for Pvt. Respondents No. 6 to 10.

ORDER

Per Dinesh Sharma, A.M: Since the grounds for challenging the impugned orders in both the OAs are the same and also because the issues involved in both the cases are similar, these cases are disposed of with the following common order.

2. In OA/051/00209/2017, the applicants have challenged the order of the Sr. Divisional Personnel Officer, Chakradharpur dated 31.03.2017 by which 3 persons, i.e. respondents no. 6, 7 & 8 in that OA, have been empanelled for promotion to the post of JE (E) against 25% DPQ of DLS/BNDM Mech (D) Department. In OA/051/002010/2017, the applicants therein have challenged the order of Sr. Divisional Personnel Officer dated 31.03.2017 by which 5 persons (respondents no. 6 to 10) have been empanelled for promotion to the post of JE(M) against 25% DPQ of DLS/BNDM Mech. (D) Department. Both these selections were made following their respective notifications for JE(E) and JE(M) dated 16.07.2015 notifying 5 vacancies for JE(M) and for 3 vacancies of JE(E). These notifications were later amended through modified notification dated 18.11.2015, in which, on account of not getting adequate options, the eligibility criteria was diluted to include Sr. Tech. possessing minimum educational qualification equivalent to matriculation and for Tech. I

possessing minimum educational qualification equivalent to matriculation having completed 2 years of regular service. Following these modified notifications, and after seeking options, new communications, dated 06.05.2016, were issued where a list of 18 candidates [for JE(E)] and 41 candidates [for JE (M)] were shown eligible for attending the examination schedule on 17.05.2016 and 20.05 2016 respectively. The applicants have challenged the selection made, on the basis of the result of these examinations, by orders dated 31.03.2017 (The impugned orders in the two OAs) . The main ground of their questioning the selection process is that the number of candidates declared eligible for these examinations was more than three times the number of vacancies and thus the respondents have violated the condition mentioned in Estt. Sl. No. 3 /2005 (RBE 31 of 2005) according to which the promotion by selection should have been amongst Sr. Techs., on a ratio of 1:3 basis. The applicants have also questioned the selection as being different from the procedure adopted in the East Coast Railways where the formula of 1: 3 was followed with respect to the persons to be taken into zone of consideration. They have also questioned not taking into consideration the seniority aspect of the applicants (and selecting their juniors in rank) and doing the selection without publication of the result of the written test. Besides these, the applicants have also stated about pendency of disciplinary action against some of the selected candidates.

3. The respondents have denied the claim of the applicants. Their main contention is that this selection process was for a General post for which the current rules do not provide for limiting the zone of consideration

to the ratio of 1:3 but allow promotion on the basis of the marks secured in an examination in which all persons who fulfil the eligibility criteria are allowed to appear. In such cases the selection is purely on the basis of performance in the examination. Since after the first notification the number of candidates who gave their options resulted in an eligibility list of only 3 persons for Sr. Tech. (E) and 5 persons for Sr. Tech. (M) the Department had to issue a modified notification dated 18.11.2015. Following this revised notification, a larger number [42 for the post of JE(M) and 18 for the post of JE (E)] were found eligible and this was published vide letter dated 06.05.2016. The applicants have appeared in the written test organised subsequent to this eligibility list and failed to find their place in the selection panel on account of their position being lower in the order of merit. The respondents have clarified that the mode of selection for the post of JE (E) /JE(M) is a general selection after the implementation of the 6th Pay Commission and under the rules (RBE No. 161 of 2009) option is to be called from all eligible candidates as per notification. The respondents have also denied pendency of disciplinary proceeding against the selected candidates at the relevant time and have also provided a reply to the request under RTI regarding disclosure of marks and evaluation sheet given to the concerned applicant (Annexure R-3 of the Written Statement).

4. The applicants have filed rejoinder in which they reiterated their claims, denied the averments in the written statement and again questioned adopting of completely separate procedure in one Railway from

another Railway. They have also questioned not publishing the entire result and the rejection of their request for re-evaluation of answer sheets.

5. We have gone through the pleadings and heard the arguments of learned counsels of both the parties. During the course of arguments, the learned counsel for the applicants cited judgment of the Hon'ble Supreme Court of India in (1992) 19 ATC 94 to support their case (for giving benefit to employees in one section of Railways which is granted by a High Court judgment to other sections of Railways). The learned counsels for the respondents cited the judgment of CAT, Cuttack Bench dated 30.07.2019 in OA 347/2012 to support their case that the selection procedure in matters of General posts were different from other selection post and a person who appears in an examination process without protest cannot subsequently question the process after being found unsuccessful in that examination.

6. After having gone through the pleadings and hearing the arguments of learned counsel for the parties, it is clear to us is that the main issue in this case is whether the post for which the selections are made is a post where the zone of consideration is to be confined to three times the number of staff to be empanelled. We find the relevant rules in this regard in paragraph 215 (e) and paragraph 219 (j) of the IREM Vol. I Chapter-2. These rules are reproduced below:-

“215 (e) Eligible staff upto 3 times the number of staff to be empanelled will be called for the selection. The staff employed in the immediate lower grade on fortuitous basis will not be eligible for consideration.

(Authority: - Railway Board's letters No. E(NG)I-99/PM1/15 dt. 26.07.99)”

“219(j) For general posts, i.e., those outside the normal channel of promotion for which candidates are called from different categories whether in the same department or from different departments and where zone of consideration is not confined to three times the number of staff to be empanelled, the selection procedure should be as under:-

(Authority: Railway Board's letter No. E (NG) 1-2008/PM7/4 SLP dt. I 9 6.2009)—ACS No.209

7. The official respondents have categorically stated in their written statement that this selection was for a general post (where the criteria of zone of consideration being limited to three times did not apply). It was specifically clarified to us (by the learned counsel for the private respondents) that the above mentioned sub rule 219(j) applies to the facts of this case since it was for selection to a general post where the candidates being considered belonged to different categories, though in the same Department and therefore, the zone of consideration could not be confined to 3 times the number of staff. The applicants have not denied that this was a selection to a General post. They have contested this selection process mainly on ground that another Railway (East Coast Railway) has followed a different procedure. We cannot find fault with the procedure adopted in the case before us, when it is apparently as per Rules, only because a different procedure was followed in a different Railway and had, perhaps, remained unchallenged. The applicants request for information about valuation of their answer sheets has also been replied by the respondents and though the applicants have challenged that reply in their rejoinder, this Tribunal is not the forum to settle grievances regarding grant of information under the RTI. In both the cases [of JE(M) and JE(E)] it was clearly mentioned

in the notifications itself that it was for the purpose of General selection to the posts of JE(D/M). The qualifications were diluted on not getting enough candidates. There is no evidence of the applicants having questioned the list of eligible candidates for appearing in this examination which was communicated vide letter dated 06.05.2016. It was argued by the learned counsel for the applicants that the applicants had no knowledge about such eligibility list. However, the lack of a specific plea in the OA (about such ignorance about the list of eligible candidates) leads us to believe that they did have knowledge about the eligibility list and thus appeared in the said examination knowing fully well who else were being called. In this regard, we agree with the finding of this Tribunal's Cuttack Bench, where this Bench has clearly distinguished between the selection procedure for a General post and other posts (for which this Tribunal clearly laid down that the seniority was important) and had also laid down, quoting the judgment of the Hon'ble Apex Court in **Chandra Prakash Tiwari & Ors. Vs. Shakuntala Shulka & Ors.** that estoppel by conduct will apply against anyone who enters the examination process without protest and is subsequently found not successful. There is no proof or even an allegation that the applicants made any such protest. Once the applicants participated in the selection process including written test and remained below in merit, hence in our considered opinion, the OAs lack merit and are therefore dismissed. No order as to costs.

[Dinesh Sharma]/M[A]

[J.V. Bhairavia]/M[J]

Srk.

