

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
MUMBAI.

O.A.192/2013

ted this Wednesday the 21st day of September, 2020.

Coram: Dr. Bhagwan Sahai, Member (Administrative)
Ravinder Kaur, Member (Judicial).

1. Nitin Dilip Shinde,
Working as Helper-I,
under the Chief Works Manager,
Lower Parel Workshop, Western Railway
Repair Workshop, Mumbai-400013 and
residing at: Sunder Niwas,
Shivaji Nagar, Near Bhaskar School,
Ambivali (West) - 421 102.
2. Sameer Arjun Salkar,
Working as Helper KH-I,
under the Chief Works Manager,
Lower Parel Workshop, Western Railway
Repair Workshop, Mumbai-400013 and
residing at: C-Block Room No.19,
Madhav Bhuvan, N.M. Joshi Marg,
Lower Parel,
Mumbai - 400 013.
3. Kiran Bhikaji Palav,
Working as Helper-I,
under the Chief Works Manager,
Lower Parel Workshop, Western Railway
Repair Workshop, Mumbai-400013 and
residing at: C/94, Meghwadi,
2nd Floor, Dr.S.S. Rao Road,
Lalbaug, Mumbai - 400 012.
4. Mahesh M. Labade,
Working as Khalasi Helper-I,
under the Chief Works Manager,
Lower Parel Workshop, Western Railway
Repair Workshop, Mumbai-400013 and
residing at: C/301, Jai Hari CHS Ltd.,
V.N. Naik Marg, Opp. Bhatia Hospital,
Mumbai - 400 036.
5. Ganesh Dattaram Kanekar,
Working as Helper-II,
under the Chief Works Manager,
Lower Parel Workshop, Western Railway
Repair Workshop, Mumbai-400013 and

residing at: 1183, Modern Mills Compound, K.K. Marg (W), Satrasta, Jacob Circle, Mumbai - 400 011.

6. Laljee Ramdhari Barai, Working as Helper-II, under the Chief Works Manager, Lower Parel Workshop, Western Railway Repair Workshop, Mumbai-400013 and residing at: 103, E-Wing, Dinesh Terrace, Parsawa Nagar, N.R. Sai Petrol Pump, Mira Road (East), Thane - 401 107.
7. Rohan M. Tiwari, Working as Helper-I, under the Chief Works Manager, Lower Parel Workshop, Western Railway Repair Workshop, Mumbai-400013 and residing at: 527, Gokul, A.NO.311, N.M. Joshi Marg, Byculla (W), Bakari Adda, Mumbai - 400 011.
8. Nilesh L. Padwal, Working as Helper-II, under the Chief Works Manager, Lower Parel Workshop, Western Railway Repair Workshop, Mumbai-400013 and residing at: ½, Khanolkar Chawl, Sion, Chunabhatti, Mumbai - 400 022. .. Applicants.

(By Advocate Shri R.G. Walia).

Versus

1. Union of India, through General Manager, Western Railway, Churchgate, Mumbai - 400 020.
2. Chief Work Shops Manager, Lower Parel Workshop, Lower Parel, Mumbai - 400 013.
3. Yogesh B. Pednekar, Working as Helper, Under Chief Works Manager, Lower Parel Workshop, Western Railway, Mumbai - 400 013.

4. Ajay B. Pal,
Working as Helper,
Under Chief Works Manager,
Lower Parel Workshop,
Western Railway,
Mumbai - 400 013.

5. Santosh Kumar Yadav,
Working as Helper,
Under Chief Works Manager,
Lower Parel Workshop,
Western Railway,
Mumbai - 400 013. .. Respondents.

(By Advocate Shri V.S. Masurkar for R-1 & 2).

Order reserved on : 16.12.2019

Order delivered on : 23.09.2020

ORDER
Per : Dr. Bhagwan Sahai, Member (A).

Shri Nitin D. Shinde and 7 others working as Helpers under Chief Works Manager, Lower Parel Workshop, Western Railway, Mumbai have filed this O.A. On 08.04.2013. They seek quashing and setting aside provisional selection panel notified on 30.01.2013 by S.P.O. (W)/PL, office of Chief Workshop Manager for the purpose of Skilled Artisan Gr.III (Technician) in pay scale of Rs.5200-20200 + GP 1900/- and letter dated 28.03.2013 selecting the members on that panel for training. They seek declaration that above mentioned selection panel for the purpose of Skilled Artisans based on the notification dated 22.12.2011 should be made based on seniority in Helper-I and Helper-II grades, and not based on merit, thereby forming of fresh panel

including the names of the applicants with consequential benefits. They also seek cost of this O.A. from the respondents.

2. Summarized relevant facts:

2(a). At the time of filing this O.A., the applicants were working as Khalasi Helpers/Helpers (unskilled employees) with Respondents No.3 to 5 who are beneficiary of the impugned selection panel dated 30.01.2013, have been included in the representative capacity of others. They claim that the procedure followed by the respondents to form a selection panel based on merit (total/aggregate marks) is not correct. Against 25% LDCE quota for promotion as Skilled Artisans the applicants are qualified and fulfil the necessary required conditions for the 14 vacancies of Skilled Artisans notified on 22.12.2011 (Annex-A-3).

2(b). In the list of eligible candidates published by the respondents on 07.06.2012 the applicants were included. For the 25% LDCE quota, written test was held on 20.07.2012 and the applicants were declared as pass in the result dated 24.09.2012 (Annex-A-4). In that notification it was mentioned that further process for recommending employees from the list on the selection panel will be done as per Railway Board letter dated 02.02.1998 (RBE No.23/1998) as well as the letter from General

Manager, Western Railway and criteria set by the Selection Board.

2(c). Railway Board letter dated 02.02.1998 mentioned that - the panel may be drawn up on the basis of seniority from amongst those who qualify, the total number to be empanelled not exceeding the number of vacancies assessed to be filled up against the prescribed quota. There will be no classification of outstanding. These instructions of the Railway Board are mandatory, have statutory force, and are applicable to the result of the examination conducted by the respondents for promotion of Helpers as Skilled Artisans Gr.III, but the selection panel has been prepared by the respondents based on merit and not on seniority.

2(d). It has been further stated that based on a similar selection by the respondents in 2009, the final selection panel was made on seniority only. But this condition has been violated by the respondents in preparing the impugned selection panel, they have also violated the condition mentioned in their letter dated 24.09.2012 when the result of written test was notified. The applicants along with many other senior persons are eligible to be included in the selection panel but their non-inclusion is illegal. At the Parel and Mahalakshmi Workshop, a common seniority of Khalasi/Helper Gr.I

or II is maintained which includes the names of the applicants and it should have been used by the respondents for preparing the impugned panel.

Therefore, this O.A. has been filed.

3. Contentions of the parties:

In the O.A., rejoinder and arguments of their counsel on 16.12.2019, the applicants contend that -

3(a). the impugned selection panel has been prepared illegally. It was necessary for the respondents to prepare the selection panel based on the instructions of the Railway Board in letter dated 02.02.1998. Not complying with those instructions has resulted in violation of fundamental rights of the applicants as provided under Articles 14,16 and 21 of the Constitution. The impugned selection panel prepared only based on the merit in the written test is arbitrary and it should be set aside;

3(b). the respondents have submitted in their written statement that the posts of Skilled Artisans are not general posts and they are not outside the normal channel of promotion. Selection of the candidates, who appeared in the selection process is common, therefore, instructions in Railway Board letter dated 19.06.2009 pertaining to general posts are not applicable to the present case. The Railway Board instructions in the letter of 02.02.1998 have

not yet been withdrawn and the impugned selection panel pertains to Mechanical Department and not Electrical Department for which some different criteria seems to have been followed by the respondents;

3(c). in the notification declaring the results of the written test dated 24.09.2012, it was specifically mentioned that the instructions of Railway Board in letter dated 02.02.1998 would be followed but they have not actually been followed. Therefore, this O.A. should be allowed.

In their reply, sur-rejoinder and arguments of their counsel on 16.12.2019, the respondents contend that -

3(d). this O.A. has been filed by the applicants without exhausting departmental remedies i.e. without submitting any representation to the respondents and, therefore, on this ground the O.A. is liable to be dismissed;

3(e). action of the respondents is as per rules and no legal or vested rights of the applicants has been violated. The impugned selection panel pertains to 25% quota for promotion as Skilled Artisans meant for serving Group 'D' and Group 'C' employees in the Mechanical Department to fill up 14 vacancies of Skilled Artisans in Group 'C'. The selection panel was prepared based on merit in terms of Railway Board

letter dated 19.06.2009 (Annex-R-1);

3(f). for 114 employees found eligible, written test was conducted on 20.07.2012 in which 103 candidates appeared and 47 of them were declared as pass. This is a general selection process, based on guidelines of the Railway Board in letter dated 19.06.2009 and 01.07.2009 and further clarification dated 13.12.2012 (Annex-R-2);

3(g). the 14 employees in the selection panel have been included purely based on merit and none of the grounds of challenge to it is maintainable;

3(h). the Railway Board instructions dated 02.02.1998 stipulated preparation of final panel based on seniority but as per latest policy circular dated 19.06.2009 the new guidelines have been made applicable for preparing panel strictly on merits. Therefore, the panel prepared based on merit is correct and the O.A. should be dismissed.

4. Analysis and conclusions:

4(a). We have carefully considered the contents of the OA, contentions of the applicants in it and in the rejoinder filed by them on 03.07.2013 and also those raised in the arguments of their counsels on 16.12.2013 as well as reply and sur-rejoinder of the respondents filed on 29.06.2013 and 01.08.2013 and contentions during the arguments by their counsel on 16.12.2013. On such consideration, the issue

involved in the present OA is analysed as under:

4(b). The main issue for decision in this O.A. is whether in preparing the impugned selection panel for promotion of Helpers as Skilled Artisans based on merit instead of seniority is justified.

4(c). The undisputed fact is that the Railway Board instructions dated 02.02.1998 for filling up posts of Skilled Artisans against 25% quota from serving Khalasi and Khalasi Helpers stipulated that the panel should be drawn on the basis of seniority among those who qualify in the written test and viva-voce, and the total number of empanelled persons is not to exceed the number of vacancies to be filled up against the prescribed quota and there will be no classification as outstanding. The seniority of the staff on promotion in the skilled category was to be regulated in terms of Para 302 of the IREM with reference to the date of promotion maintaining their inter-se seniority in the respective groups.

4(d). After notifying the list of eligible candidates and conducting the written test on 27.07.2012, the respondents published the results of 47 passed employees. That notification specifically mentioned that further process for recommending to keep the employees in the list of panel will be done as per the Railway Board letters dated 02.02.1998 and of General Manager (E), CCG Policy No.33/98, PA

161/2013 and criteria set by the selection board. The present applicants were included in that list. However, the respondents while notifying the impugned provisional selection panel on 30.01.2013, all 14 employees based on merit mentioned that the panel is in order of merit in the written test held on 20.07.2012. In this regard, the contention of the applicants has force that while notifying the result of the written test on 24.09.2012, the respondents themselves had mentioned that further process for recommending the employees from the list for promotion would be as per the Railway Board instructions dated 02.02.1998 and CCG Policy.

4(e). Once the respondents thus declared the result of the written test (which included the present applicants) and mentioned therein that further recommendation for the selection panel would be made as per the instructions of Railway Board in letter dated 02.02.1998, thereafter publishing the selection panel without following those instructions is not justified. The contention of the respondents that they have notified the selection panel based on merit in view of the Railway Board instructions dated 19.06.2009 circulated with letter of 01.07.2009 is not correct. We also find that the reply dated 13.12.2012 from SPO Hqrs by the General Manager, Western Railway pertained to selection for the posts

of Skilled Artisans against 25% quota in the Electrical Department and it was not meant for the selection panel of the applicants in the Mechanical Department.

4(f). In fact with the letter dated 11.02.2009, the office of General Manager, Headquarters, Churchgate also circulated the earlier instructions of Railway Board dated 02.02.1998. The subsequent instructions of the Railway Board dated 19.06.2009 mentioned that the separate instructions prescribing different method for placement of names on panel such as qualified staff quota in the category of Skilled Artisans in various engineering departments have also been issued. However, the respondents have not brought on record any such separately issued instructions applicable to this quota of LDCE in the mechanical department.

4(g). In view of these facts and particularly in view of the notification by the respondents themselves that the list of 47 candidates who had been declared pass in the examination (which included the present applicants) that further process recommending for inclusion in the panel will be done as per the instructions of Railway Board in letter dated 02.02.1998, thereafter notification of selection panel without following those instructions amounts to violation of the commitment given by the

respondents themselves.

4(h). Reliance of the respondents on the Apex Court decision dated 15.03.1996 in case of **M. Ramjayram Vs. General Manager, South Central Railway and others, 1996 (1) SC SLJ 536** based on which subsequent instructions for preparing selection panel based on merit when employees from different units take the written test are not of help to them in this case. Therefore, we conclude that the applicants have succeeded in making out the case for relief and the O.A. deserves to be allowed.

5. Decision :

The O.A. is allowed, the selection panel notified by the respondents for promotion as Skilled Artisans Gr.III dated 30.01.2013 is set aside. The respondents are directed to prepare within two months from date of receipt of copy of our order a fresh selection panel for those posts based on the instructions of Railway Board on 02.02.1998. No costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

H.