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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.1740/2004

New Delhi this the 18th day of March, 2005.

Hon'ble Mr. V.K. Majotra, Vice-Chairman (Admnv)
Hon'ble Mr. Shanker Raju, Member (Judl.)

Shri P.P. Singh,
S/o late Shri Kamal Singh,
R/o 415/9G, Punjab Lines,
Railway Colony, Ghaziabad (UP).

-Applicant

(By Advocate Shri S.S. Tiwari)

-Versus-

1. Union of India, through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Chief Personnel Officer (NR),
Baroda House,
New Delhi.
3. Dy. C STE (MWM),
DRM Office,
New Exchange Building,
New Delhi Railway Station,
New Delhi.

-Respondents

(By Advocate Shri V.S.R. Krishna)

ORDER

Mr. Shanker Raju, Hon'ble Member (J):

Applicant impugns respondents' order dated 15.7.2004, whereby he has been denied a chance to appear in the examination for promotion under 20% quota for promotion to the post of Junior Engineer-II (JE-II, for short) on regular basis. He has sought consideration of promotion on the same criteria as adopted in the examination held on 31.3.2001 with all consequential benefits.

2. Applicant was appointed as a Wireless Maintainer Grade-III and promoted upto Grade-I while working in IRCOT he was promoted on ad

hoc basis as JE-II in 1997. By a letter dated 2.3.2001 a written test was held for several posts under 20% intermediate quota where name of applicant figured at serial No.34. As he was not relieved by IRCOT, OA-1628/2001 filed though was dismissed on 3.1.2003 but it was observed that in case of Prem Pal Singh as the respondents have admitted in their sur rejoinder on 12.12.2001 that he has not been spared in public interest, respondents shall deal with this person in accordance with law after checking their record. Applicant preferred a representation on 13.2.2003 to comply with the direction whereby it was informed vide letter dated 21.2.2003 that action may be taken as per paragraph 219 (m) of Indian Railway Establishment Volume-I (IREM-I, for short), which deals with selection of persons who were abroad on deputation and could not take part in the selection.

3. However, vide letter dated 24.2.2003 issued by respondents it was clarified that applicant should be given the benefit of selection in respect of seniority if he qualifies in the next selection against the requisite quota.

4. On 26.8.2003 a notification was issued for selection to the post of JE-II against 20% intermediate apprentice quota with a stipulation that applicant should not be above 45 years of age. Applicant in response represented on 24.10.2003.

5. Vide letter dated 11.3.2004 qualifications were revised for the posts of JE-II and syllabus was also revised. The selection was held on 16.7.2004 and name of applicant appeared at serial No.58 of the list. He was asked to submit his forms and in pursuance thereof he filed a representation stating that he is to be subjected to an examination in continuation of examination dated 31.3.2001 and be given the same syllabus as per paragraph 316 of the IREM-I.

6. By an order dated 15.7.2004 applicability of paragraph-316 of IREM-I was not found applicable and as far as syllabus is concerned, it is stated that more or less it is the same. This has resulted in filing of the present OA.

7. Learned counsel for applicant states that in the light of respondents' letter dated 24.2.2003 when he is entitled for seniority on subsequent participation in the selection process he is to be promoted for the vacancies occurred earlier to his non-participation, which was on account of his non-relieving from IRCOT, direction of the Tribunal in earlier OA holds the field and once taken this stand applicant cannot be compelled to participate in the subsequent selection process which is different from the earlier selection held in 2001.

8. Learned counsel further states that as per paragraph 316 a railway servant who has not appeared in the examination on account of non-relieving shall be immediately subjected to examination and as per Appendix II and III of IREM-I which applies only to Section Officers and Accounts Department the selection to the post of Assistant would be governed by paragraph-316 and accordingly he is to be subjected to a selection on the same criteria as followed in the year 2001 and thereafter be considered for promotion with all consequential benefits.

9. On the other hand, respondents' counsel vehemently opposed the contentions and stated that applicant has become over-aged but despite permission to appear he has not appeared in the selection held in 2004, Moreover, it is stated that paragraph 219 (m) of the IREM-I has application. As applicant has not applied for the selection the syllabus of new examination is the same as earlier and applicant has no legal and valid right and a case on merit.

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10. We have carefully considered the rival contentions of the parties and perused the material on record.

11. It is no more res integra that in OA-1628/2001 as it is admitted by the respondents that applicant was not spared in public interest he has to be dealt with in accordance with law. Paragraph 316 of the IREM-I, which does not distinguish between an internal examination or an examination in pursuance of a selection, provides that one who beyond his control fails to appear has to be immediately subjected to an examination and shall be entitled for promotion as if he has passed the examination in his turn. However, an exception to this is that when the examination in respect of Section Officer as well as Accounts Officer and category of applicant for the post of JE-II is not covered under any of the appendix the exception would not apply. Complying with the aforesaid rule respondents have rightly ordered vide order dated 24.2.2003 accord of seniority in the 20% intermediate appendix quota for the post of JE-II to applicant on qualification in the next selection clearly shows that not only is promotion but seniority would be ante dated. This also implies that his promotion would be related to the vacancies occurred in the year 2001.

12. The resort of respondents to paragraph 219 (m) of the IREM is misplaced as it would apply only to those employees who have returned from abroad and could not participate in the selection.

13. Refusal of applicant though it is under protest to the new selection was on the ground of difference in syllabus and qualification. If his seniority is to be ante dated and he is to be immediately subjected to an examination the same would have been held as per the old syllabus, formalities and qualifications which were in vogue in 2001 when earlier selection had been held.

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14. In the result, for the foregoing reasons, impugned order is set aside. Respondents are directed to hold an examination as a part of selection on the same criteria as adopted in the examination held on 31.3.2001 and thereafter applicant be considered for promotion to the post of JE-II from the date his juniors have been promoted and in that event he shall be entitled to all consequential benefits. Respondents are further directed to comply with the aforesaid directions within a period of three months from the date of receipt of a copy of this order. No costs. O.A. is allowed. ^h

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra) 18.3.05
Vice-Chairman(A)

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