

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 1223 OF 1997

ALLAHABAD THIS THE 3rd DAY OF June 2005

HON'BLE MR. JUSTICE S. R. SINGH, VICE-CHAIRMAN
HON'BLE MR. S.C. CHAUBE, MEMBER (A)

Gorakh Nath Singh
Son of Shri Shyam Narayan Singh
Resident of B-12 Fertiliser Colony,
Gorakhpur.

.....Applicant

(By Advocate: Shri S.K. Om)

1. Union of India through General Manager, N. E. Railway, Gorakhpur.
2. Chief Personnel officer, N.E. Railway, Gorakhpur.
3. Chief Mechanical Engineer, N.E. Railway Workshop, Gorakhpur

..... Respondents

(By Advocate: Shri A. Sthalaker)

O R D E R

By Hon'ble Mr. S. C. Chaube, Member (A)

Through this O.A. the applicant has sought directions to quash the final panel declared in pursuance to notification dated 1996 and to issue a fresh panel including the name of the applicant; not to delete the name of the applicant from the list of eligible candidates; to declare the result of the applicant and consider him for promotion to the post of Assistant Works Manager and to assign seniority from the date of declaration of panel and finally to change of date of eligibility from 15.05.1996 to 28.08.1996.

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2. Briefly the facts are that the applicant was initially appointed on 10.08.1991 as junior Engineer Grade-II in the pay-scale of Rs.1400-2300/- in Wagon Repair Shop, Central Railway, Kota. Later on he was transferred to Gorakhpur on 01.11.1994 and was posted on mechanical workshop. Subsequently on 19.08.1997 he was promoted as Junior Engineer Gr.I in the pay-scale of Rs.1600-2660/-.

3. The respondents on 20.08.1996 notified selection for formation of the panel for promotion to the post of Assistant Mechanical Engineer (Loco Stream-Group 'B') against 30% vacancy. The selection was notified for only 2 posts. According to the notification the desirous railway employee should have completed 5 years of non-fortuitous service as on 05.01.1996 in the grade minimum of which is Rs.1400/- . It has been stated by the applicant that since notification was issued by the respondents on 28.08.1996 there was no justification for respondents to fix the cut off date for the purpose of eligibility as on 05.01.1996 i.e. date of notification for selection against 70% vacancy. It is argued that since both the selections were entirely different no common date can be fixed and the same is arbitrary.

4. The applicant has referred ~~to~~ the instructions issued by the Railway Board. It is well settled that eligibility is to be seen on the date of notification and no prior date than the date of notification can be fixed. Further in every selection including LDCE Selections the date of eligibility is always fixed on the date of notification (Annexurs 2 and 3 of O.A.).

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5. In terms of notification dated 28.08.1996 the applicant submitted his willingness to appear in the selection and further intimated that he was initially appointed on 10.08.1991 and would be completing 5 years of requisite service on 09.18.1996. A list of eligible candidates was published by the respondents on 22.11.1996 wherein the name of the applicant finds place at serial No.57. A written test was held on 15.02.1997 and the applicant performed in the written test very well. About 3,000 candidates appeared in the selection pursuant to the notification dated 20.08.1996. Out of them only the applicant and another one Shri C.M. Mehrotra had qualified. The result of the written test was finalized on 08.04.1997. However, on 09.04.1997 the respondents deleted the name of the applicant on the ground that he had not completed 5 years of requisite service as on 15.05.1996. The applicant filed a representation against the letter dated 09.04.1997 pointing out that he had completed 5 years of requisite service on the date of notification i.e. on 28.08.1996 and there was no justification to fix cut off date prior to the date of notification. Further once the applicant had appeared in the selection after being permitted by the respondents and he qualified the selection there is no justification for the respondents to detain the result of the petitioner. This action on the part of the respondents, according to the applicant, is wholly illegal, arbitrary, and liable to be quashed. After submitting the representation dated 09.04.1997, the applicant sought personal interview of the respondents and further pointed out that he being short by only one month the cut off date be substituted by the date of notification.

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6. However, pursuant to the notification dated 20.08.1996 a panel was published notifying only one name of Shri C.M. Mehrotra and the other post is still lying vacant. The applicant has further stated that in the interest of justice he may be empaneled as Assistant Works Manager in the Grade of Rs.2350-3500/- in pursuant to the notification dated 28.08.1996.

7. It has been further contended that the cut off date fixed by the respondents for determining the eligibility is in violation of instructions issued by the Railway Board which prescribed the eligibility to be determined on the date of notification as cut off date; that the applicant has requisite service on the date of notification and hence eligible to appear in the selection pursuant to the notification dated 28.08.1996; that the date of initial appointment of applicant in the grade of Rs.1400-2300/- has been duly declared by the applicant to the respondents; that there is no justification to fix cut off date other than the date of notification and action of the respondents in fixing cut off date as 15.05.1996 is wholly illegal and arbitrary.

8. The respondents on the other hand have categorically stated that the applicant was not eligible to be called to appear in the written examination as he had not completed 5 years service but because of clerical omission his name was published in the eligibility list. They have further stated for promotion from Group 'C' to Group 'D' total existing vacancy and the anticipated vacancy for two years, besides 30% of total cadre of JS/Gr.B are taken into account. Vacancies, thus

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arrived at are divided into two parts 70% and 30%. Accordingly the Railway Board letter dated 14.04.1987 (Annexure CA-I) eligibility conditions are prescribed for this purpose. Thus the employee working in grade the minimum of which is Rs.1400/- and ^h higher 'C' grades with 5 years of non fortuitous service in the grade on the date of notification for selection against 70% vacancies will be eligible to appear at the examination of L.D.C.E. 30%.

9. Further, the recruitment rule of grade B post in respect of mechanical department was issued on 24.08.1982 (Annexure CA-2). It laid down the conditions for selection against 25% (now 30%) that 25% of the vacancy shall be filled through a LDCE open to all non-ministerial grade "C" Staff of the mechanical staff holding the staff in the grade the minimum of which is Rs.425/- (revised to Rs.1400) in the scale and in higher Gr. 'C' grade and have put in minimum 5 years of non fortuitous service in the grade. The Railway Board vide letter dated 05.08.1998 have issued advance correction slip No.28 pertaining to amendment in para 201.1 of I.R.E.M. Vol.I, which reads as under:-

"The conditions and procedure governing the selection for promotion to Group 'B' posts are given in the following paras. Regarding conditions and procedure governing LDCE, the provisions of relevant Recruitment Rules and administrative instructions issued from time to time should be referred to".

10. To facilitate proper appreciation extract of para 201.1 of IREM Vol. I 1989 Edition is given below:

201.1 - All vacancies in Gr. 'B' are filled by promotion on the basis of selection of eligible Gr. 'C' employees and also on the basis LDCE, wherever the scheme is in force. Where the scheme of LDCE, is in

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force, selection is held to fill 75% (now 70%) of the vacancies and LDCE is held to fill the remaining 25% (now 30%) of the vacancies"

11. As the total selection consists of both 70% and 30% therefore, the cut off date for eligibility is determined on the date of notification for selection against 70% vacancies (Annexure No.CA-5). Accordingly, the date of eligibility for the candidature in 30% LDCE has been determined as 15.05.1996 i.e. the date of notification for selection against 70% vacancies. Respondents have contended that there is no element of arbitrariness in determination of date of eligibility as 30% of LDCE vacancies are an integral part of selection of total assessed vacancies. It has been further argued that the contentions of the petitioner regarding the crucial date for determination of eligibility for 30% LDCE vacancies should be the date of issue of notification for 30% is untenable in terms of the aforesaid circular of the Railway Board. Nor has it any support of any rule. As the candidature of the applicant was invalid since he had not completed 5 years of service on the date of notification dated 15.05.1996 i.e. the date of notification against the 70% vacancies. As soon as the fact that the applicant was not eligible came to the notice of the respondents his name was deleted. As a matter of fact the name of the applicant was published in the list of eligible candidates due to clerical omission. The applicant cannot therefore, claim the benefit of incorrect candidature. By his own admission in para-4.6 of the O.A. the applicant was appointed on 10.08.1991, according to which he would be completing 5 years of requisite service on 09.08.1996. The mere fact that the applicant submitted his application form and ^{was} ~~were~~

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wrongly called in the examination would not entitle him to claim the benefit of promotion. In fact his very candidature was ab-initio void. Thus, the question of including his name on the panel would not arise.

12. In the rejoinder affidavit the applicant has contended that both the selections i.e. 70% and 30% LDCE are entirely different therefore, there is no justification to fix any common cut off date for both the examination. Secondly, in all the Railways 30% LDCE selection according to the applicant, takes place independently and the same has no relevance with the cut off date fixed for 70% examination. In support of his contention the applicant has cited the example of North Eastern Railway where date of notification of LDCE examination has always been treated as cut off date for determining the eligibility criteria. Yet another contention of the applicant is that the relevant circulars of the Railway Board only suggest that as far as possible the selection under 30% and 70% quota held simultaneously. This however, does not imply that the cut off date for determining the eligibility will also be the same. The applicant has also challenged the justification to fix cut off ~~date~~ ^{to} date to a period which is almost about 5 months back from the date of notification of 30% vacancies. Once the respondents had permitted the applicant to appear in the selection they are estopped from barring the applicant from selection. In support of his contentions the applicant has annexed circular dated 03.06.1977 issued by the Railway Board according to which a candidate taking LDCE Examination should be a permanent Railway Servant with a minimum of 5 years Railway Service. Accordingly, it has been contended that the

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applicant had 5 years of eligibility of service as on 09.08.1996 whereas notification in question was issued on 20.08.1988. Further in his supplementary rejoinder reply the applicant has stated that the corrigendum dated 16.09.1996 has never been circulated by the respondents nor the same is in the petitioner's knowledge. The applicant has annexed a notification dated 21.07.2004 on the subject of limited department competitive examination in which it has been mentioned that staff who have put in minimum of 5 years regular service, as on 21.07.2004 are eligible for above selection. Thus, according to the applicant the Central Railway have followed the date of notification for LDCE as the cut off date for determination of eligibility and computation of 5 years of regular service.

13. We have heard the counsel for the parties and perused the pleadings.

14. The applicant has contended that he has completed the requisite service on the date of notification as such he is eligible to appear in the selection in pursuance of the notification dated 28.08.1996. Further he has not concealed any material fact from the respondents and ~~as~~^{he} had declared his date of initial appointment in the grade of 1400-2300/-. The respondents after verifying all the facts permitted the applicant to appear in the selection. There is, therefore, no justification to delete the name of the applicant from the list of eligible candidates after qualifying the selection. The sole object of fixing the cut off date is that a person should have sufficient experience and the applicant had acquired that

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experience on the date of notification. Lastly there is no justification according to the applicant for the respondents to fix cut off date other than the date of notification and the action of the respondents in fixing cut off date as 15.05.1996 is wholly illegal and arbitrary. In support of his contentions the applicant has annexed notification dated 21.07.2004 issued by headquarters General Manager, Central Railway Mumbai. The aforesaid notification stipulated that the Railway Staff who have put in a minimum of 5 years regular service in the grade Rs.5000-8000/- and above, as on 21.07.2004 will be eligible for the above selection. In support of his contentions the learned counsel for the applicant has cited the case of Ashok Kumar Sharma and Ors. Vs. Chandra Shekhar and Ors. 1993 (24) ATC 798 SC.

15. The applicant has further strenuously urged but in-vain that the 70% selection examination and 30% LDCE Examination are two different examinations and therefore the cut off date of notification of 70% examination cannot be treated as cut off date for LDCE examination. The practice followed by the Central Railway and the North Eastern Railway reckoning the date of notification of LDCE Examination as the cut off date for determination of 5 years regular service can at the best regarded as an aberration being in violation of the Railway Board instruction contained in Board's letter dated 18.06.1985 (Annexure CA-5). Accordingly, it has been stipulated that the date of eligibility to be fixed for the LDCE should be the same as the one fixed for selection against 75% (now 70%) of the vacancies. It has further laid down in the Railway Board's instructions aforesaid that in sequence, the LDCE should follow

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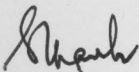
the corresponding selection against 75% vacancies (now 70%) and there should be no disturbance at all to this sequence.


16. There is a lot of force in the contentions of the respondents that the scheme of total selection to fill up the vacancies comprises exams for 70% and 30%. In this view of the matter both the exams are integral part of the scheme of total selection. There is, therefore, no element of arbitrariness in determination of the date of eligibility of 30% LDCE Examination from the date of notification for selection against 70% vacancies. In view of the clear cut provisions laying down the conditions of eligibility as in Railway Boards letter dated 18.06.1985, the contention of the applicant that the crucial date for eligibility for 30% examination should be the date of issue of notification for 30% LDCE is unsound and therefore, unsustainable in law being devoid of any support from any departmental rule. The candidature of the applicant was invalid as he had not completed 5 years of service on the date of notification of 70% vacancies i.e. 15.05.1996. In support of his contentions, learned counsel for the respondents has cited the case of Bhupender Pal Singh & Ors. Vs. State of Punjab and Ors. 2000 (5) SCC 262 wherein the Hon'ble Supreme Court held that if cut off date is laid down in relevant rules it has to be followed otherwise it may be prescribed in advertisement. In the present case, the Railway Board have already prescribed that the cut off date for determination of eligibility of officials will be the date on which the notification for examination of 70% vacancies was published. As the departmental rules clearly prescribed the cut off date for LDCE Examination in view of the settled service jurisprudence as mentioned

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above, the case of the applicant seems unsustainable and devoid of merits.

17. For the aforesaid reasons and case law mentioned above, the O.A. is dismissed with no order as to costs.


Member (A)


Vice-Chairman

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