

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALIAHABAD BENCH

ALLAHABAD.

Allahabad this the 2<sup>nd</sup> day of June 2000

Original Application no. 1267 of 1998

Hon'ble Mr. S.K.I. Naqvi, Judicial Member  
Hon'ble Mr. M.P. Singh, Administrative Member

1. DINESH KUMAR UPADHYAYA

Son of Shri K.P. Upadhyaya, Resident of 515/B  
Bichhia Railway Colony N.E. Railway, Gorakhpur  
presently posted Chief Vigilance Inspector in the  
office of General Manager (Vigilance) North East  
Railway Gorakhpur.

2. RAMESH KUMAR KANOJIA

Son of Shri B.L. Kanojia, resident of Tejikhara  
H.No. 548/158 GH Near R.D.S.O., Lucknow presently  
posted as Senior Section Engineer/Works/West  
North Eastern Railway Gorakhpur.

3. JAYA PRAKASH SINGH

Son of Shri Babu Lal, presently posted as Section  
Engineer Track Relaying North Eastern Railway,  
Burhwal District Gonda.

4. ALOK KUMAR SRIVASTAVA

Son of Shri Chandra Prakash Srivastava, presently  
posted as Section Engineer Flas Butt Welding  
Plant North Eastern Railway Gonda.

5. DILEEP KUMAR SHUKLA

Son of Late Shri K.D. Shukla, Resident of 695/D  
Kawa Bagh Railway Colony Gorakhpur, presently  
posted as Section Engineer Tracks, Gorakhpur.

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6. ANIL KUMAR SINGH

Son of Shri Shivaji Singh, presently posted as Senior Section Engineer Works, South in the office of Chief Engineer Survey North Eastern Railway, Gorakhpur.

7. RAVI PRAKASH

Son of Shri Khelai Ram, resident of near Pragati Shikchha Niketan, Jatepur North, Gorakhpur Gorakhpur, presently posted Senior Section Engineer Works, West North Eastern Railway Mau.

8. JAGDAMBIKA PRASAD

Shri Ramlal Prasad, resident of Kasturi Niwas Power House Road Mohaddipur Gorakhpur presently posted as Senior Section Engineer Tracks North Eastern Railways Gorakhpur.

9. ANIL KUMAR SINGH

Son of Shri A.P. Singh, presently posted as Section Engineer Permanent Way Siwan West North Eastern Railway, Siwan.

10. ARUN KUMAR SINGH

Son of Shri Ram Kumar Singh, resident of Dharampur Geetavatika Gorakhpur, presently posted as Senior Section Engineer (W)/ Construction Darbhanga North Eastern Railway Samastipur.

11. RAJIV KUMAR TRIPATHY

Son of Shri R.N. Tripathy, resident of Q.No. 634 B, B.G. Colony near Indira Stadium North East Railway Samstipur presently posted as Senior Section Engineer Works Construction North Eastern Railway, Samastipur.

12. DHIRENDRA MEHROTRA

Son of Late Shri R.N. Singh, resident of Bungalow no. E/27, Railway Colony North East Railway Badaun presently posted as Section Engineer permanent Way North Eastern Railway, Badaun.

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13. S. Ramesh Babu, S/o Shri S. Kondala Rao,  
presently posted as Senior Section Engineer Works  
Quarry North East Railway, Tanakpur.

... Applicants

C/A Shri Sanjay Sareen

Versus

1. Union of India through the Secretary,  
Department of Railways, New Delhi.
2. The General Manager Personnel,  
North Eastern Railway, Gorakhpur.
3. The Chief Personnel Officer  
North Eastern Railway, Gorakhpur.
4. Vinod Kumar Gupta, S/o Jagdish Prasad Gupta,  
Posted as Section Engineer (Permanent Way)  
Distt Ballia
5. Awadh Narain Singh, S/o Ram Rup Singh Section  
Engineer Bridge Gorakhpur.
6. Ghanshyam Chaurasia, S/o Ram Kumal Verma, Section  
Engineer, Chief Engineer Office, N.E. Rly, Gorakhpur.

... Respondents

C/Rs Shri Lalji Sinha, Sri A.V. Srivastava  
and Shri P.K. Mishra

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O R D E R

Hon'ble Mr. M.P. Singh, Member-A.

The applicants <sup>are</sup> 13 in number/aggrieved by notification dated 21.10.98, issued on behalf of General Manager, Personnel North Eastern Railway, Gorakhpur.

2. The brief facts of the case are that the applicants were appointed in the pay scale of Rs. 2000-3200 now revised as Rs. 6500-10500 on various dates between 01.07.1992 to 20.04.1995. The notification dated 18.03.1997 was issued by respondent no. 2 for selection on the post of Assistant Engineer (Group B) under 70% of the vacancies. <sup>Competitive</sup> Limited Departmental/Examination is held to fill up the remaining 30% of the vacancies. The condition of service of eligibility is given in paragraph 203.1 and 203.2 of the I.R.E.M.

3. Another notification dated 16.02.1998 was issued by the respondent no. 2 for preparing the panel against the 30% vacancies of Assistant Engineer (Group B) on the basis of Limited Departmental <sup>Competitive</sup> Examination. However, the date of eligibility for appearing in the Limited Departmental <sup>Competitive</sup> Examination was provided as 18.03.1997. As per notification dated 16.02.98 ~~the~~ Group 'C' employees working in the grade the minimum of which is Rs. 1400/- and have 5 years of non fortutious service on 18.03.1997 shall be eligible for L.D.C.E. <sup>no. 1</sup> The applicant/ submitted this applicacation in pursuance of notification dated 16.02.1998. He also submitted a representation to respondent no. 2 for <sup>the change</sup> of cut off date

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from 18.03.1997 to 01.09.1997. The respondents vide their order dated 27.02.1998/02.03.1998 informed that it is not possible to change the cut off date i.e. 18.03.1997. The notification dated 21.10.1998 contains a list of 253 candidates declared eligible for written examination. The names of the applicants are not shown in the list of eligible candidates whereas the names of many juniors to the applicants have been included in the list of eligible candidates for written examination. As per order dated 4.3.93 of this Tribunal in O.A. 995 of 1992 *Mateshwari Prasad Mishra versus Union of India & Others* it was held that by virtue of the provisions of para 203.2 the applicants were deemed to be eligible for the selection and directed for their consideration. Union of India preferred a Civil Appeal against order of the Tribunal dated 4.3.1993 which was dismissed by the Apex Court on 23.01.98. Aggrieved by this the applicants have filed this O.A. seeking direction to quash the notification dated 21.10.1998/ <sup>(Annexure A 6).</sup> The applicants have also sought direction to the respondents to include the name of the applicants among the list of eligible candidates called to participate in the written examination of L.D.C.E. for preparation of a panel for promotion to the post of Assistant Engineer (Group B).

4. The respondents have contested the case and have stated that the LDCE against 30% is governed with the provision of recruitment rules which has statutory force and administrative instructions issued from time to time. In the relevant recruitment rules of AEN (Gr. B) no provision has been provided to call for senior candidates when junior employee is called up by virtue of his

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satisfying the minimum service conditions.

5. The provisions in para 203.2 of IREM can not go against the provisions in the recruitment rules which have statutory force. Railway Board <sup>have</sup> further clarified the matter vide their letter dated 9.02.99 that paragraph 203.1 and 203.2 of IREM pertain to the selection which is for 70% and not for the LDCE 30% vacancies as per the recruitment rules dated 24.08.1982.

6. Notification dated 16.02.98 was issued by the respondents for preparing the panel against 30% vacancies on the basis of LDCE and in the said notification cut off date to fulfil the eligibility criteria for LDCE against the said 30% vacancies was correctly fixed as per rules as 18.03.1997 the date of notification of 70% vacancies in terms of Railway Board letter dated 18.06.1985. As per initial date of appointment, the applicant having not fulfilled the minimum eligibility service condition on the cut off date for consideration against 30% vacancies selections he was suitably replied vide order dated 27.02.98. In view of the above mentioned fact there had been no illegality or violation of any Rules committed in this regard and as such the applicant is not legally entitled for any relief claimed and the aforesaid O.A. is liable to be dismissed. ~~with cost.~~

7. Heard Shri S. Sareen learned counsel for the applicant and Shri Lalji Sinha and Shri A.V. Srivastava learned counsel for the official respondents and Shri P.K. Mishra learned counsel for the <sup>private</sup> respondents, and perused the records.

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8. Recruitment to the post of Assistant Engineer (Civil) is made under the provision of recruitment rules (Annexure CA 1) which were notified on 24.08.1982. According to the column 11 of the recruitment rules, 75% of the vacancies shall be filled by promotion through selection (which will include ordinarily a written test and also a viva-voce test) of the non Ministerial Group 'C' staff of the Civil Engineering Department. The selection will normally be made from Staff holding the posts in the grade the minimum of which is Rs. 425/- in the revised scale and in higher Group 'C' grades on a regular basis, provided that they have rendered a minimum of three years non-fortuitous service and have reached the stage of Rs. 560/-.  
NOTE:- In case a junior employee is considered for selection by virtue of his satisfying the relevant minimum service condition, all persons senior to him shall also held to be eligible not-with-standing that they may not satisfy the requisite minimum service conditions. 25% of the vacancies shall be filled through a limited departmental competitive examination open to all non-ministerial Group 'C' staff of the civil Engineering Department holding the post in the grade the minimum of which is Rs. 425 in the revised scale and in higher Group 'C' grade and have put in a minimum of five years' non-fortuitous service in the grade.

9. It is quite evident from the recruitment rules that the relevant provisions in case the junior employee is considered for selection by virtue of his satisfying the relevant minimum service conditions, all persons senior to him shall also held to be eligible, is applicable

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only in the case of 75% vacancies to be filled up by promotion. There is no such relaxation available against 25% of vacancies to be filled up through LDCE. It was informed by the learned counsels of the rival contesting parties that this quota of 75% and 25% was subsequently revised to 70% and 30% respectively. It is a well settled law that the recruitment Rules framed under the provisions of Article 309 of Constitution have statutory force and the executive instructions issued in this regard can not have over-riding effect on the Recruitment Rules.

10. In view of the facts that recruitment Rules do not provide any relaxation to the requirement of minimum service condition for filling up 25% of vacancies by promotion, the case of the applicants in the OA does not have any merit and is liable to be dismissed. As regards the judgment of the Tribunal dated 4.3.93 in O.A. no. 995 of 1992 which has been upheld by the Apex Court, it is mentioned that the provision of recruitment rules were not referred and were not the subject matter of discussion in that judgment. That Judgment was with regard to the determination of eligibility for the post of Asstt. Controllers of stores under 25% quota for LDCE. The applicants have also not challenged the provisions of the recruitment rules. Moreover, the department vide their letter dated 9.2.99 (CA-IV) have further clarified the position stating that the provision of Senior becoming eligible irrespective of the minimum service condition in case a junior is called for selection by virtue of his

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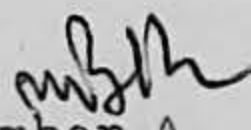



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satisfying the relevant minimum service condition is laid down only in respect of 70% selections. The provisions of para 203.24<sup>of 1 REM</sup> are not applicable to LDCE for 30% of vacancies and also cannot have over-riding effect on the Recruitment Rules.

11. In the light of the above discussions the O.A. is devoid of merit and is therefore, dismissed accordingly.

12. There shall be no order as to costs.

  
Member-A

  
Member-J

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