

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 247 of 2001
Allahabad, this the 21st day of July, 2003.

HON'BLE MAJ GEN K K SRIVASTAVA, MEMBER A
HONIBLE MRS MEERA CHHIBBER, MEMBER J

Chandrika Sharma son of late Shri M Sharma
Resident of 332/1/D.L.W. Colony, Varanasi.

..Applicant.

(By Advocate : Shri O P Gupta)

Versus

1. General Manager(P) D.L.W., Varanasi.
2. Union of India through G.M. D.L.W.,
Varanasi.

..Respondents.

(By Advocate : Shri A Sthalekar)

O R D E R (Oral)

BY HON'BLE MRS MEERA CHHIBBER, MEMBER J

In this O.A. applicant has sought the following
relief(s) :

" In view of the facts and grounds mentioned
above, it is prayed before the Tribunal to
be pleased to declare that applicant is
legally entitled to participate in the above
selection as notified by notification dated
2.2.2001 for the post of C.M.S. grade II and
the act of respondents debarring the applicant
from participating in the above selection is
wholly illegal arbitrary and discriminatory.

It is further prayed before the Tribunal that
if proposed selection is completed by the
respondents without permitting the applicant
to participate, the same may be declared
illegal and may also be quashed.

Hon'ble Tribunal may be pleased to declare
that Railway Board's Circular dated 4.7.94
need not to apply in D.L.W., Varanasi parti-
cularly in the matter of applicant and may
further be please to direct the respondents
not to deprive the applicant from participating
in the selection of C.M.S., Grade-II on account
Railway Board's Circular dated 4.7.94. "

2. It is submitted by the applicant that he was initially appointed ^{as} D.R.A. in 1971 and was promoted as Junior C.M.A. in the year, 1977. Since he was non-science Graduate, as such he was required to qualify special examination conducted by R.D.S.O. to be equal to the Science Graduate Junior C.M.A. . The applicant qualified the said examination also and became equal to the Science Graduate Junior C.M.A. , as a result of which he was entitled to be considered for next promotion as C.M.A. Grade- I. It was keeping in view his qualification acquired from R.D.S.O. that the applicant was promoted as C.M.A. Grade I in the month of February, 1986.

3. The next promotional post is that of C.M.S. Grade II which is the selection post and promotions are given on the basis of merit-cum-seniority after holding a viva-voce test from amongst the C.M.A. Grade I candidates.

4. It is submitted by the applicant that the respondents issued their notifications in the year 1992, 1997, 1998 and 1999 and each time applicant was allowed to appear in the written examination, as he was considered to be eligible for the post of C.M.S. Grade II ^{as} apparent from pages 24 to 29 of the O.A. . On page 26 applicant's name figured as serial no. 6, while (page 28) his name appears as serial no. 3 in the notifications dated 16.8.1997 and 28.5.1999 respectively. Applicant appeared in the examination, but he could not qualify. Thereafter in the year 2000, when notification was issued on 14.3.2000 (page 29) applicant's name did not figure in the eligible candidates. Therefore, being aggrieved he filed O.A. No. 384 of 2000, which was decided by the Tribunal, and initially by way of interim relief respondents were directed to permit the applicant to appear in the selection test scheduled to be held on 15.4.2000 subject to the out come of the O.A. the said order

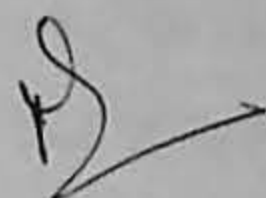
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was passed on 12.4.2000 (Page 31), and after applicant was allowed to appear in the said test, the said O.A. was dismissed as having become infructuous vide order dated 10.8.2000 (Page 32). Applicant once again did not qualify in the said examination. Thereafter another notification was issued on 02.02.2001 (Page 14), wherein it was categorically mentioned that as per Railway Board's letter dated 04.7.1994, only such of the C.M.A. Grade II candidates would be allowed to appear in the examination who are Science Graduates and those who are not Science Graduates would not be eligible to sit in the examination. It is basically against this condition stipulated in the notification itself, ^{hence} that applicant filed the present O.A. Vide order dated 12.3.2001, Respondents were directed to permit the applicant to appear in the written test. However, results were not to be declared without the permission of the Court. Subsequently, vide another order dated 29.5.2002 the interim order was modified to the extent that respondents were permitted to declare ^{the} result, however, one post ^{was} to be kept vacant subject to the out come of this O.A.. Thereafter, during the pendency of the O.A., another notification was issued on 17.1.2003 for subsequent vacancies in which again the same stipulation was there, so applicant filed another M.A. bearing no. 559 of 2003, seeking permission once again to appear in the said test also. On this M.A. also, the Tribunal vide order dated 13.2.2003 permitted the applicant to appear in the test and once again directed the respondents not to declare the results without taking the permission of the Court.

5. Applicant's counsel has mainly raised six contentions in this case :

- (1) It is submitted by the applicant's counsel that once applicant had become eligible for being considered for the post of C.M.S. Grade II in the year 1992, Respondents could not ^B have put further rider on his eligibility in the year 1994. *B*

- (ii) Once applicant was allowed to appear for the post of C.M.S. Grade II in the year 1992, 1997, 1998 and 1999. There is no justification now to insist that only Science Graduates alone would be permitted to appear for the post of C.M.S. Grade II.
- (iii) Applicant was promoted to the post of C.M.S. Grade II on ad-hoc basis in the year 1998 and was permitted to continue on the said post, for good 4 years during which period he had worked satisfactorily on the said post, therefore, his eligibility can not be doubted now, on the contrary, his working itself is certified by the fact that he had been allowed to continue on the post for good 4 years. After 4 years i.e. in 2002, the applicant was reverted to his original post of C.M.A. Grade I which has been challenged by him in a separate O.A. bearing no. 914 of 2002.
- (iv) It is further submitted by the applicant's counsel that in any case since applicant was working in the D.L.W. department and not in the open line, Therefore, circular dated 04.7.1994 would not be denied to be applicable in his case.
- (v) Applicant's counsel further contended that another candidate namely Shri Akhilesh Kumar was also allowed to appear in this selection for the post of C.M.S. Grade II in the year 1999, even though he did not belong to P.C.M. Group. Therefore, applicant cannot be discriminated against by not permitting him to appear in the said examination.
- (vi) Applicant's counsel further contended that in any case applicant had qualified R.D.S.O. which was equivalent to the Science Graduate that was the reason how he was promoted as C.M.A. in the year 1986 and once he was promoted as C.M.A., the next promotion



should come to him as a matter of natural consequence after qualifying the written as well as viva-voce test and respondents insist that only Science Graduate C.M.S. alone would be allowed to appear in the selection for the post of C.M.S. Grade II. He has also submitted that statutory rules cannot be superseded by the Railway Board.

6. Respondents, on the other hand, have opposed this O.A. and have submitted that in accordance with law provisions of Rule 168 of I.R.E.M., Vol-I, the vacancies in the lab in Scale Rs.110-180/260-430(RS)/3050-4590(RPS) of Mechanical Engineering Department (Chemical and Metallurgical wing) has to be filled 50% by direct recruitment, through Railway Recruitment Board with the educational qualification, Matriculation/Higher Secondary with Science and remaining 50% by promotion of Group D staff possessing the same qualification as prescribed for direct recruitment. The applicant was selected for the post of Dark Room Assistant, Grade Rs110-180/- through Railway Service Commission, Allahabad and was appointed in D.L.W. with effect from 16-9-1971.

7. They have further submitted that according to Rule 168(3)(ii) of Indian Railway Establishment Manual Vol-1, 50% of the vacancies of Jr. Chemist and Metallurgical Asst. (JCMA)/CMA-II in Scale Rs.380-560/1300-2040 may be filled by promotion of Lab Assts with educational qualification Bachelor Degree with Physics and Chemistry with minimum 45% of marks, relaxable to matriculation or equivalent with Science. The applicant was Matriculate with Science as such he was promoted as JCMA Gr. Rs.380-560 w.e.f. 22.2.1978 on ad-hoc basis and thereafter regularised on the said post w.e.f. 20.8.1981. The Railway Board vide their letter no. PC-v/98/I/11/18(Pt.) dt. 17.8.98 (Copy enclosed as Annex. CA-8 to this counter reply) have introduced w.e.f. 1.8.1998 the promotional avenue to Lab Asst. Gr. II, 4000-6000 AND Lab Asst. Gr.I 4500-7000. Railway Board vide their letter no. E(NG) I-2000/PM7/2 dt. 5.4.2000

(Copy enclosed as Annex. C.A.-9 to this counter reply) provided avenue to Lab. Asst. Gr. I 4500-7000 as CMA-II Scale Rs.5000-8000 with qualification Matriculate with Science.

8. That in accordance with the Rule 168(4)(ii), 33 1/3% of the vacancies of the CMA (Chemist and Metallurgical Asst.) in scale 425-700/1400-2300/CMA-IRs.5500-9000 has to be filled up by promotion from JCMA's Gr. Rs. 1320-2040/CMA-Gr.II Rs. 5000-8000.

9. That the non-science Graduate Jr. Chemist and Metallurgical Asst. (JCMA)/CMA-II, scale Rs.5000-8000 will be eligible for being considered for promotion subject to passing a test securing a minimum qualifying marks of 60% a common question paper for which question has to be set-up by Research and Design Organisation (RDSO) as laid down in Railway Board's letter dt. 6.11.85 (Annex. A-I read with Railway Board's letter dt. 5.4.2000 (Annexure CA 9)). The applicant being a non science graduate Jr. Chemist and Metallurgical Asst./CMA-II after being declared suitable, was appointed as. Chemist and Metallurgical Asst./CMA-I on ad hoc basis w.e.f. 21.2.86 and was regularised on the said post w.e.f. 20.8.92.

10. Learned counsel for the respondents further submitted that Chemist and Metallurgical Asst/CMA-I working in Grade Rs/- 425-700/- /5500-9000 are having their avenue of advancement for the post of Lab Supdt./CMS Gr. II in scale Rs.6500-10500/-. The Railway Board vide their letter No. E(NG)I-91PM7/19 dt. 4.7.94 (Copy enclosed as Annexure CA-I to this counter reply) issued orders to all Indian Railways that this issue was discussed in AIRF meeting held on 7/8-1-94, when it was clarified by the Board that the non science Graduate Chemist and Metallurgical Asst./CMA-I (e designation) can not be allowed avenue of promotion to the post of Lab Supdt. CMS -II (new designation), on the ground that for the post of Lab Supdt., Qualification of Graduation in science is absolutely necessary, as Lab Supdt. are engaged in actual application of

the most sophisticated equipment, often calling for on spot decision for which higher knowledge of science is necessary. The aforesaid order, issued by the Railway Board, was not available in the office of the respondent No.1. However, a copy of the letter issued by the Headquarter Office of the N.Railway vide letter No. 752-E/502/E2W dt. 10-10-94^{was R} received in DLW, in which it has been incorporated that a proposal for promotion of non science graduate CMAs on the post of Lab Supdt. was sent to the Railway Board and the same was rejected by the Board vide their letter No.E(NG)I-91/PM 7/19 dt. 26-9-94(Copy enclosed as Annexure CA-2 this counter reply). On receipt of N.Railway's^{Board} letter dt. 10-10-94, a reference was made to Railway Board by the D.L.W. Administration vide letter No. 29/8/67E/Lab/Pt.III dated 11-8-99(Copy enclosed as Annexure CA-3 to this counter reply). The Railway Board, in response to DLW's letter dt. 11-8-99 forwarded the decision of the Board enclosing copy of their letter dt. 4-7-94(Annexure -CA-I) vide their letter no. E(NG)I/99/PM 7-15 dt. 21-9-99(Copy enclosed as Annexure CA-4 to this Counter reply).

11. Counsel for the respondents¹ also submitted that prior to receipt of Railway Board's letter dt. 21-9-99, in DLW non-science Graduate CMAs were being called to appear in the selection for the post of Lab Supdt./CMS Grade II Rs.1640-2900/- /6500-10500/- in order of their seniority. After receipt of Railway Board's letter dt. 21-9-99, the earlier notification dt. 28-5-99 and 12-6-99 for holding the selection for the post of CMS Gr. II Rs. 6500-10500/- were cancelled vide notification No. 29/8/67E Lab/Pt.III dt. 26-11-99(Annexure CA-5 to this counter reply). and a fresh notification, according to the revised rules of eligibility condition was issued vide letter No. 29/8/67E Lab /Pt. III dt. 14-3-2000. Since, the applicant was a non-science Graduate CMA and was not eligible to appear in the selection, he was not called to appear in the selection notified on 14.3.2000.



.....8/-

12. They have further submitted that prior to receipt of Railway Board's letter dt. 21.9.1999, since respondents were considered ^{as} non science graduate CMS Grade I also, for promotion as CMS Grade II on ad-hoc basis, in order of their seniority, Accordingly, applicant was promoted on ad-hoc basis to the post of Lab Superintendent, on the vacancy which occurred on 09.4.1998, on promotion of Shri R.N.Chaturvedi CMS Grade II as Superintendent Sepcto. Since applicant was the then senior most CMA, he was promoted on ad hoc basis for a period till duly selected and empanelled candidate as it becomes available in accordance with the rules in para 216-A of I.R.E.M. Vol. I.

13. They have also explained that pursuant to the interim order of this Tribunal, applicant was allowed to appear in the written selection test held on 15.4.2000. Once again applicant did not qualify and only 2 candidates namely Prem Sagar Sing and R.N.Thakur qualified in the written selection test and were called to appear in the viva-voce test. Against six vacancies notified on 14.3.2000 only one candidate namely Prem Sagar Singh qualified for selection by notification dt. 21.6.2000 and accordingly he was promoted on regular basis by order dt. 04.7.2000. However, the said result was made subject to decision of O.A.. Since rest of the vacancies could not be filled up, ^{it was} another notification ^{was} issued on 02.2.2001 and since applicant was not Science Graduate, he was not allowed to appear but after the interim order dt. 12.3.2001 applicant was allowed to appear in the Supplementary test held on 15.3.2001 along with 2 more candidates. The results have not been declared as directed by the Tribunal. They have, thus, submitted that Since applicant is not entitled as per the rules or as per the letter dt. 04.7.1994 issued by Railway Board, therefore, there is no merit in the O.A. and the same is liable to be dismissed with costs.



.....9/-

Respondents' counsel also relied on a judgment given by the Gowahati Bench of this Tribunal on 05th September, 1997 in O.A.No. 138 of 1993 wherein after discussing all the points the Tribunal held that there could not be any relaxation in qualification as such applicant can not claim to get promotion to the next post i.e. lab superintendent, as rule does not provide for relaxation of educational qualification, so far the posts of Lab superintendent or Senior Lab Superintendent are concerned. The O.A.s were accordingly dismissed.

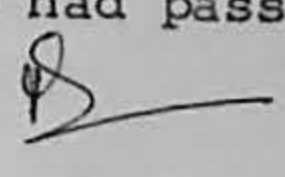
14. We have heard both the counsel and perused the pleadings as well.

15. The first contention of the applicant's counsel that respondents could not ^{have} put a further rider on the right of applicant to be considered for promotion of C.M.S. Grade II. It would be relevant to quote rule 168(4):

- "(ii) 33-1/3% by promotion of staff in the lower grade of JCMAs in scale Rs.1320-2040. The non-science graduate JCMAs will be eligible for being considered for promotion subject to their passing a test, a common question paper for which will be set by R.D.S.O., (Railway Boards letter No. E(NG)I/84/PM7-63 (JCM) dated 6.11.1985).
- (iii) Qualification etc. for direct recruitment to the post of CMA in scale Rs.1400-2300 are as under :
 - (a) Educational : Degree in Metallurgy/Chemical Engineering or M.Sc.Degree in Chemistry/ Applied Chemistry.
 - (b) Age : Between 22 and 30 years.
 - (c) Training : One year.
 - (d) Stipend : Rs.1400/- "

The bare perusal of rule shows that qualifications for direct recruitment to the post of CMA in the scale of 1400-2300 was as under :

Educational degree in Metallurgy/Chemical engineering or M.A.C. Degree in Chemistry/Applied Chemistry. Therefore, it is clear that even as per the statutory rules the requirement for the post of CMA itself was a degree either in Metallurgy or Chemical Engineering or MAC Degree in Chemistry. Even though for the post of JCMA the non-science graduate was to be considered eligible if he had passed a test. A common question



for which was to be set by R.D.S.O. vide Railway Board's letter dated 06.11.1995. Meaning there-by that this relaxation was to be available only till the post of JCMA and not for the further post. In fact what qualifications ^{are} required for a particular post is ^{an arena} ~~in arena~~ which is ~~post~~ to be decided by the expert bodies or the department concerned as they alone ~~know~~ which educational qualification is required for a particular post. Therefore, when the Railway Board decided in the PNM meeting with All India Railway Federation that for the post of Lab Superintendent's qualification ^{of} ~~is~~ graduation with science is absolutely necessary, we can not even sit and discuss on the point whether it would be necessary in DLW or not or whether it would be only in the open line, because according to us, the post of Lab superintendent would be one whether it be in Unit A or B unless it is shown to be in different categories by statutory rules itself. In the instant case applicant's counsel has not been able to show us any statutory rules to suggest that the posts of Lab Assistant in D.L.W. and open line are separate or independent ^{of} ~~to~~ each other. Counsel for the applicant did ^{submit} ~~commit~~ that he had made an averment which has not been ^{reverted} ~~reverted~~ by the respondents, but the fact remains that there is no such categorisation shown by the applicant himself and since post of Lab Superintendent is ^{shown} ~~denied~~ in the rules as well as in the Railway Board's letter, ^{as one,} ~~therefore,~~ we do not agree with the contention raised by the applicant's counsel that the letter dt. 04.07.1999 would not be applicable in D.L.W..

16. Applicant's next contention ^{is} ~~that~~ since he was allowed to appear in the year 1992, 1997 and 1998, ~~thus,~~ he could not be denied the same right in the year 2000-2001 is not sustainable in law because if under some wrong impression, the respondents were permitting non-science graduates as well, for the post of C.M.S. Grade II it does not mean that it gives any right to the applicant to always appear for the said post, ~~when~~ever, the notification is so issued. After all, it is settled by now, that a mistake can always be rectified. Admittedly, applicant

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was allowed to appear in the year 1992, 1997 and 1999 and even in the year 2000 by virtue of the interim orders passed by this Tribunal, but he could not qualify in this test. Therefore, applicant was given full opportunity and if he wanted he could have taken the benefit of said mistake. But, unfortunately, ~~respondents~~ ^{applicant} in spite of availing the opportunity could not qualify in the test. Therefore, the contention raised by the applicant is not sustainable in law and the same is rejected.

17. Applicant's counsel next suggested that since applicant had been promoted on the post of CMS Grade II on ad hoc basis and he continued to work there without any complaint for good 3 or 4 years that itself was ~~a proof~~ ^{a proof} that applicant was fully eligible and could take the responsibility of the higher post. On this aspect the law is well settled that ad hoc promotion given only as ^a stop-gap arrangement does not give any right to the person, who is so promoted, to continue on the said post because it is not given after due selection but is given as per the seniority in the lower Grade. In the instant case, respondents have explained that the post of CMS Grade II had become available as the incumbent of same ^{was} promoted to the next higher post and since applicant was ^{the} senior most CMA and till such time they were not aware about the qualification issued by the Railway Board, therefore, looking at his seniority, he was given ad hoc promotion to the post of CMS Grade II. This ad hoc promotion does not vest a right to the applicant to claim that he should be considered for promotion as this was only stop-gap arrangement. Accordingly, this contention is also rejected.

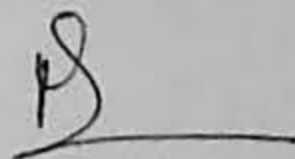
18. As far as Akhilesh Kumar is concerned, applicant has not said categorically that he was a non science graduate. On the contrary, it has been said in a ^{subtle} ~~stated~~ manner that he ^{did} ~~was~~ not belong to PCM Group of science. Since, this averment is not clear, therefore, applicant does not get any advantage of this explanation. even on the ground of discrimination.

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19. Coming to the next contention, applicant had submitted that Railway Board can not supersede the statutory rules. We have already referred to in the initial paragraphs that graduation with science was a must even at the level of CMA. Under what circumstances applicant was promoted as CMA is not known to us and we do not ^{even wish to go} into that ^{aspect} because that might affect the applicant adversely, which we ~~do~~ not wish to happen at this stage. Therefore, we make it clear that applicant's appointment as CMA should not be touched at all by the respondents now, as he had been promoted as CMA on ad hoc basis in the year 1986 and was regularised ^{also thereafter} in the year 1992 as per the respondents' own averments as well. Nonetheless, we can not ignore the statutory rules where degree in science was said to be a must for the post of CMA and even the Railway Board had taken a decision with further clarification ~~at~~ by saying that for the post of Lab. Superintendent, only science graduate will be considered. We do not think that it would be amounting to superseding ^{as} the statutory rules ~~and~~ clarification can always be given by the Railway Board. It is not the case of the applicant that non-science graduates were allowed to appear for the said post, therefore, the contention of discrimination is not made out and the same is accordingly dismissed.

20. In view of the above discussions, since admittedly, applicant is not a science graduate and the basic educational qualification required for the post of CMS Grade II was a science graduate, which was very much mentioned in the notification dated 14.3.2000 as well as 02.02.2001 and applicant has not challenged those conditions set out in the notification, definitely applicant would not be entitled to be called for the selections to the post of CMS Grade II.

21. In view of the above discussions, we do not find any merit in the O.A.. The same is accordingly dismissed with no order as to costs. Respondents are directed to declare the results and to take the follow up action immediately as the



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are

rights of those who selected in the said selection are
unnecessarily being delayed.



Member J



Member A

Brijesh/-