

Reserved
(On 11.03.2014)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Dated : This the 10th day of April 2014

Original Application No. 719 of 2004

Hon'ble Mr. Shashi Prakash, Member (A)
Hon'ble Dr. Murtaza Ali, Member (J)

Vijendra Kumar, S/o Kanhai Lal, Senior-Most Senior Technician Diesel Mechanical Fitter, R/o Railway Quarter No. 456 B, New Model Colony, DPOH, N.E. Railway, Izzatnagar, Bareilly.

. . . Applicant

By Adv: Shri Sudama Ram

V E R S U S

1. Union of India, through Secretary, Ministry of Railways, Government of India, New Delhi.
2. General Manager, North Eastern Railway, Gorakhpur.
3. Divisional Railway Manager, North Eastern Railway, Izzatnagar, Bareilly.
4. Chief Workshop Manager (Personnel)/Mukhay Karkhana Prabandhak (Karmik), North Eastern Railway, Izzatnagar, Bareilly.
5. Raj Kumar, S/o Tulsi Ram, Senior Technician/Diesel Mechanical Fitter, in the Office of Diesel POH Workshop, North Eastern Railway, Izzatnagar, Bareilly.

. . . Respondents

By Adv : Shri K.P. Singh & Shri S.K. Om

O R D E R

By Hon'ble Dr. Murtaza Ali, Member (J)

Through this OA, filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant has sought the following main reliefs:

- a. to set aside/quash order dated 10.02.2003 and 22.04.2004 both passed by respondent No. 4 in toto and with cost throughout.

for

- b. to direct the respondents No. 1 to 4 forthwith promote the applicant on the post of Junior Engineer-II (Mechanical) with all consequential benefit of the said post, the same become first due to him and grant such other and further relief as may be permissible in law.**

2. The brief facts of the case are that the applicant was confirmed on the post of Technical Diesel Mechanical Fitter in the pay scale of Rs. 5000 - 8000 vide order dated 31.01.2000. The single post of Junior Engineer (Mechanical) Grade II, earlier called as Charge-man, was notified by respondent No. 4 for being filled up by promotion and the applicant appeared in written test held on 11.09.2002 and declared successful vide order dated 26.10.2002. The interview was held on 05.11.2002, but without showing any reason, the respondent No. 4 cancelled the whole proceedings vide order dated 10.02.2003 (Annexure No. 1). The respondent No. 4 again notified one post of Jr. Engineer to be filled up by promotion and the applicant again appeared in written examination held on 17.04.2003 and it is alleged that the interview which was scheduled for 08.05.2003, was deferred on the administrative dictates of Shri R.K.M. Passi, Dy. C.M.E. N.E.R. Izzatnagar, Bareilly. The respondent No. 4 again cancelled the proceedings of selection vide order dated 22.04.2004 (Annexure No. 2) relying on the orders of Railway Board dated 06.01.2004 and 09.10.2004 which were said to be not relevant in the present case. The applicant also filed representation

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dated 19.04.2004 which has not yet been disposed of by respondent No. 4.

3. In the counter affidavit filed on behalf of the respondents No. 1 to 4 it has been stated that a single vacancy of Jr. Engineer Gr. II was notified vide letter dated 06.09.2002 and a written examination was held on 11.10.2002 (wrongly stated as 11.09.2002) and following two candidates were found suitable for viva-voce test:

- i. Shri Vijendra Kumar (applicant)
- ii. Shri Raj Kumar (Respondent No. 5)

4. The viva-voce test was held on 05.11.2012 and the proceedings of Selection Committee was submitted before Competent Authority i.e. Chief Workshop Engineer, Gorakhpur and on his order all the proceedings of the said selection was cancelled and the vacancy of Jr. Engineer Gr. II was again notified vide order dated 10.02.2003. The written examination was again held on 17.04.2003 in which only applicant was found suitable for viva-voce test, which was scheduled to take place on 08.05.2003. The viva-voce test was further postponed due to investigation of complaint of Shri Raj Kumar who could not qualify the written test. In the meantime the Railway Board issued circulars dated 09.10.2003 and 06.01.2004 regarding cadre restructuring and as per Railway Board's above circulars, those selections, which were not finalized would have to be cancelled and accordingly the

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selection of Jr. Engineer Gr. II was cancelled by Chief Workshop Manager (P), N.E.R., Izzatnagar, Bareilly. It has further been stated that the applicant is not confirmed Technical Diesel Mechanical Fitter but he has been promoted as Sr. Technical Diesel Mechanical Fitter w.e.f. 31.01.2000.

5. In the counter affidavit filed on behalf of respondent No. 5 it has been stated that he performed well in written examination as well as in viva-voce test and a panel was prepared and sent for approval to Chief Works Engineer, N.E.R., Gorakhpur. He had reasons to believe that he must have been empanelled for the said post, but the Chief Works Engineer was interested in the empanelment of the petitioner, so he cancelled the selection vide order dated 10.02.2003 and also ordered to conduct the whole exercise again. It has been alleged that C.W.E. had no jurisdiction to cancel such selection in terms of para 229K of I.R.E.M. It has also been submitted that the answering respondent made a representation dated 20.02.2003 to General Manager against the said order dated 10.02.2003, but he did not pay any heed and a written examination was again conducted on 17.04.2003 and when respondents acted in suspicious manner then he made a representation dated 06.05.2003 to C.W.E. to conduct an inquiry in the selection. In the meantime the result of written examination declared on 06.05.2003 in which he qualified the selection but he could not

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be empanelled due to his lower seniority. It has been alleged that it was not proper to postpone the viva-voce test scheduled to be held on 08.05.2003 on the ground of a complaint filed by a candidate who had failed in the written examination held on 17.04.2003 and the delay in holding the interview was occasioned due to malafide intention of the respondents to somehow deny the promotion of the applicant and favour respondent No. 5.

6. Heard Shri Sudama Ram, learned counsel for the applicant. No one appeared on behalf of respondents on 11.02.2014 though the learned counsel for respondents No. 1 to 4 Shri K.P. Singh was present when this case was partly heard on 20.01.2014. We have also gone through the record of the case.

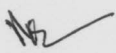
7. The learned counsel for the applicant has argued that in pursuance of notification dated 06.09.2002 for selection of one post of general category of Junior Engineer Grade II, the applicant alongwith 03 candidates appeared in the written test held on 11.10.2002. The applicant and Raj Kumar (respondent No. 5) were declared successful and both appeared in the viva-voce test held on 05.11.2002, but the above selection proceedings was cancelled vide impugned order dated 10.02.2003 without assigning any reason. It has also been submitted that a fresh notification was issued and a written test was again held on

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17.04.2003 and the applicant was again declared successful in the written examination and 08.05.2003 was fixed for holding viva-voce, but no viva-voce was held on the date fixed and whole selection proceedings was wrongly cancelled vide impugned order dated 22.04.2004.

8. The learned counsel for the applicant has further argued that there was no provision to hold viva-voce for direct recruitment to the post of Junior Engineer Grade II in view of Railway Board's circular dated 18.03.1999 and vide circular dated 07.08.2003 the Railway Board has also eliminated viva-voce in departmental selection of Junior Engineers. The respondents No. 1 to 4 kept the selection proceedings pending and did not declare the panel of the applicant to the post of Junior Engineer Grade II on the basis of result of final written test held on 17.04.2003 in which the applicant was again qualified. It has further been argued that instead of declaring the result/panel the whole selection proceedings were cancelled by order dated 20.04.2004 in the garb of Railway Board's instructions dated 09.10.2004 and 06.01.2004 but these circulars are not applicable in the present case since the selection stood finalized on the basis of merit position in the written test.

9. It is an admitted fact that a notification dated 06.09.2002 was issued for holding selection of single



vacancy of Junior Engineer Grade II and a written examination was held on 11.09.2002 in which the applicant and respondent No. 5 were found suitable for viva-voce test. It is also an admitted fact that the viva-voce test was conducted on 05.11.2002 and proceeding of Selection Committee was submitted before competent authority i.e. Chief Workshop Engineer, Gorakhpur who instead of giving approval, quashed the whole Selection Proceedings vide order dated 10.02.2003 (Annexure No. 1) and also ordered to initiate fresh proceedings for selection/promotion of said post. The learned counsel for the applicant relied on a decision dated 21.03.2001 of Central Administrative Tribunal, Allahabad Bench ~~on 21.03.2001~~ in **OA No. 359/01 - Praphat Mohan Saxena and others vs. Union of India and others** and has contended that no reason whatsoever was given by the respondent No. 4 in his order dated 10.02.2003 for cancellation of proceeding of selection and, therefore, the impugned order is liable to be quashed. The facts of the above case was that a notification was issued to select Commercial Apprentices through Limited Departmental Competitive Examination and a written test was held in which the applicant was found successful and he was called for interview but the entire selection process was cancelled without disclosing any cogent reason and the Tribunal found the decision of cancelling the entire selection was totally uncalled for and arbitrary. The operative order of said judgment was

[Signature]

also circulated vide RBE No. 95/2002 dated 03.07.2002
for future compliance which reads as under:

"R.B.E. No. 95/2002

The Central Administrative Tribunal, Allahabad Bench in their order dated 21.03.2001 in OA No. 359/2001 have inter alia observed as under:

"We direct the office that a copy of this order shall be sent to the Chairman, Railway Board for consideration the necessary action in the matter, so that such arbitrary action may not be repeated in future. We suggest the Chairman, Railway Board that in such circumstances it may be made obligatory on the officers to disclose reasons in the order if cancellation of the selection is required."

1.1 A copy of the order is also enclosed for ready reference.

2. The Board desire that the directions of CAT, Allahabad Bench, may be noted for guidance in future."

10. It has also been argued that respondent No. 4 i.e. Chief Workshop Manager (Personnel), North Eastern Railway, Bareilly had also no authority to cancel the said selection in view of para 291 (k) of IREM Vol. I which reads as under:


"Para 219 (k) - The list will be put up to the competent authority for approval. Where the competent authority does not accept the recommendations of a Selection Board, the case could be referred to the General Manager, who may constitute a fresh Selection Board at a higher level, or issue such other orders as he considers appropriate."

11. It is provided in the said Para 219(K) that if the competent authority does not accept the recommendation of Selection Board the case could be referred to General Manager who may constitute a fresh

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selection Board at higher level or issue such orders as he considers appropriate. It has also been provided that a panel once approved should normally not be cancelled or amended. We find force in the contentions of learned counsel for the applicant and in our view the impugned order dated 10.02.2003 has been passed in gross violation of RBE No. 95/2002 dated 03.07.2002 as well as para 219 (k) of I.R.E.M Vol. I as no reason of canceling the whole selection was given and the matter was also not referred to higher authority if selection process was required cancellation.

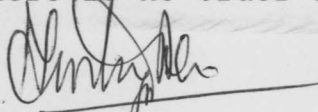
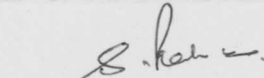
12. Learned counsel for the applicant has also drawn our attention on RBE No. 56/99 dated 18.03.1999 in which there was no provision for a viva-voce examination in selection of Junior Engineer held by Railway Recruitment Boards and again on RBE No. 137/2003 dated 07.08.2003 by which the same procedure was adopted/extended in the departmental selection which is also applicable in the present of case of promotion of Junior Engineers. It has been contended that since viva-voce (Interview) was eliminated for departmental promotion and, therefore, the applicant should have been declared promoted on the post of Junior Engineer on the basis of written examinations held on 11.10.2002 and 17.04.2003 and the circular dated 09.10.2004 and 06.01.2004 are not applicable in the present case. We find force in the contentions of learned counsel for the applicant that since the



requirement of interview was eliminated vide circular dated 07.08.2003 and in the written examination held earlier i.e. on 11.10.2002 and 17.04.2003, the applicant was found successful, therefore, the applicant was entitled for consideration of promotion for the post of Junior Engineer Grade II, irrespective of circulars dated 09.10.2004 and 06.01.2004 which pertain for restructuring of certain Group 'C' and 'D' cadres. These circulars provide that those selections which have not been finalized by 01.11.2003 should be cancelled/ abandoned. Since the selection of Junior Engineer Grade II is said to have been finalized after holding/declaring the result of written test it should be deemed to be final selection and only the formality to send the name of the applicant to the respondent No. 4 for approval was to be completed. In such an instance circulars dated 09.10.2004 and 06.01.2004 could not in any way impinge upon the said selection. In our opinion the impugned order dated 22.04.2004 passed by respondent No. 4 based upon circulars dated 09.10.2004 and 06.01.2004 are also liable to be quashed.

13. In view of the above discussions, the OA is allowed and the impugned orders dated 10.02.2003 & 22.04.2004 are quashed and the respondents are directed to consider the case of applicant for promotion on the post of Junior Engineer Grade II assuming that the impugned orders dated 10.02.2003 and

22.04.2004 were never passed, within a period of three months from the date of receipt of a certified copy of this order. There is no order as to costs.


Member (J)
Member (A)

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