

Reserved
(On 12.01.2015)

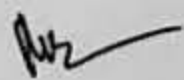
CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Dated: This the 5th day of February 2015

Original Application No. 267 of 2005

Hon'ble Mr. Shashi Prakash, Administrative Member
Hon'ble Dr. Murtaza Ali, Judicial Member


1. Ram Autar, S/o Shri Sita Ram, R/o Qr. No. B-9-A, South Colony, Bareilly Jn.
2. Ram Lal, S/o Shri Chheda, R/o 89-C, Loco Shed, Bareilly, North Colony, Bareilly Jn.
3. Mohammad Aiyub Khan, S/o Shri Mohd. Sayeed Khan, R/o Qr. No. G-13-A/C, Railway Colony, Northern Railway, Sitapur City.
4. Naresh Kumar, S/o Shri Sharda Charan, R/o C/o Shri B.K. Sharma, Nursir Marg, Chandausi, Moradabad.
5. Matbar Singh, S/o Shri Guman Singh, R/o T-59-B, Railway Colony, Dehradun.
6. Yashveer Singh, S/o Shri Jodha Singh, R/o Village Akka Raipur, P.O. Akka Belari, Moradabad.
7. Yaad Ram Singh, S/o Shri Beg Ram, Singh, R/o Vaishali Colony, Near Gandhi Vihar, Ghaziabad.
8. Rakshpal Singh, S/o Shri Kanhaiya Lal, R/o Qr. No. E-9-A, Railway Colony, Moradabad.
9. Amar Singh Verma, S/o Shri Jaipal Singh, R/o New Transit Camp B/A, Loco Colony, Northern Railway, Moradabad.
10. Suman, S/o Shri Raghubar Dayal, R/o Village Kaithala, p.O. Sitapur, Bulandshahar.
11. Pradeep Kumar, S/o Shri Mahesh Chandra, R/o T-3/C, Railway Colony, Court Dwar, District Pauri (Uttanchal).



12. Tika Ram, S/o Shri Jhajhan Lal, R/o Qr. No. T-25-C, West Railway Colony, Jwala Nagar Civil Lines, Rampur.
13. Jagdish, S/o Shri Sukhi Ram, R/o Mohalla Gaushala, Nai Basti, Munsif Road, Chandausi, Moradabad.
14. Pooran Mal, S/o Shri Phool Chandra, R/o Phoolwati Bhawan, House No. 212, Mohalla Kot, District Jaypee Nagar.
15. Khacharu Singh, S/o Shri Bansi Singh, R/o Ganghat Railway Colony, Bahjoi, Distt: Moradabad.
16. Hari Ram, S/o Shri Bulaki Ram, R/o Vishnu Vihar, Bahjoi Road, Chandausi, Moradabad.
17. Ram Manorath, S/o Ram Bharose, R/o Village Lambhua, Post Fatehpur Chaurasi, District Unnao.
18. Ganga Ram, S/o Shri Chheda, R/o Village Tarwa, Post Barva Sarsand, District Hardoi.
19. Ramesh Chand Yadav, S/o Shri Babu Lal Yadav, R/o Qr. No. OHE/G, Railway Colony, Sandila, District Hardoi.
20. Ram Kishor, S/o Shri Ayodhya Prasad, R/o Qr. No. T-32-A, Railway Colony, Bulandshahar.
21. Dharam Pal Singh, S/o Shri Yaad Ram Singh, R/o Village Faridpur, Post Rajatpur, Distarict Jaypee Nagar.
22. Pramod Kumar, S/o Shiv Badan Lal, R/o Mohalla Aman Jaijal Nagar, Distrcit Shahjahanpur.
23. Daya Ram, S/o late Mathura Prasad, R/o Mohalla B.B. Jai Hadfi Nagar, D.S. Printing Press, Shahjahanpur.
24. Sadanand, S/o Shri Pradesh Lal, R/o Post Rudrapur Tilhar, Distt: Shahjanapur.
25. Yashpal Singh, S/o Duli Singh, R/o Village Khandsal Jahardar, Post Hajipur Jamania, District Moradabad.
26. Manjrul Hasan, S/o Nafisul Hasan, R/o Qr. No. 8, Railway Training College, Chandausi.

. . . Applicants

By Adv: Shri T.S. Pandey



V E R S U S

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Moradabad Division, Moradabad.
3. Senior Divisional Personnel Officer, Northern Railway, Moradabad Division, Moradabad.
4. Superintending Engineer (Coordination), Northern Railway, Moradabad Division, Moradabad.

... Respondents

By Adv: Shri K.P. Singh

ORDER

By Hon'ble Dr. Murtaza Ali, Judicial Member

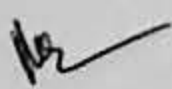
Through this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants seek to quash the order dated 23.12.2004 passed by respondent No. 1 and also to direct the respondents to declare the panel for promotion of Permanent Way Mistry in the scale of Rs. 4500 – 7000 prepared in pursuance of notification dated 31.01.2002.

2. Shorn off unnecessary details, the brief facts of the case, as stated in the OA, are that the applicants are working on the posts of Trackman/Mate/R.G. Gate Keeper/Trolley man etc. and in pursuance of notification dated 31.01.2002 (Annexure No. 2), they alongwith 213 other candidates applied for the posts of Permanent Way Mistry under 25% Departmental Quota for promotion. After



scrutiny of application forms, the respondent No. 2 issued a list of eligible candidates vide order dated 04.10.2002 (Annexure No. 3). The respondent No. 2 postponed the written test scheduled to be held on 27.10.2002 to 10.11.2002 vide order dated 13.10.2002 and further postponed the written test vide order dated 27.11.2002 which was finally held on 15.12.2002. 34 candidates out of 229 were declared successful vide order dated 17.01.2003 (Annexure No. 6). The applicants as well as other successful candidates appeared in the interview held on 04.02.2003, but final result was not declared and the whole selection process was cancelled by respondent No. 2 vide order dated 30.07.2003. The said cancellation order dated 30.07.2003 was challenged in OA Nos. 1018/03, 1044/03, 1388/03, 488/04 & 197/04 and the Tribunal quashed the said cancellation order vide a common order dated 21.04.2004 (Annexure No. 12). The respondent No. 1 has again cancelled the entire selection by the impugned order dated 23.12.2004 (Annexure No. 1) and did not abide with the directions issued in the above referred OAs and passed discriminatory order which is also barred by principles of estoppel.

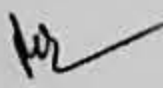
3. In the counter reply filed on behalf of respondents, it has been admitted that a selection process was initiated to fill up 16 posts in the category of Permanent Way Mistry in the Grade of Rs. 4500 - 7000 against 25% L.D.C.E. quota. On the basis of written



test held on 15.12.2002, 34 candidates were found eligible for interview which was held on 04/05.02.2003. It has been further stated that some procedural irregularities in the selection process were noticed by the competent authority who cancelled the entire selection. The General Manager, Northern Railway, New Delhi issued the guidelines on 18.03.1988 for filling up the posts of Permanent Way Mistry which provided that all Keymen and Gangmen shall be first considered for promotion as Permanent Way Mistry and if sufficient number of suitable persons are not available, the selection may be resorted to Gangmen according to seniority without restricting the selection to Matriculate Gangmen. The impugned order dated 23.12.2004 has been passed in accordance with the provision of Para 219 (K) of IREM which is a reasoned and speaking order and it is the prerogative of the examining body to cancel the process of selection.

4. Heard Shri T.S. Pandey, learned counsel for the applicant and Shri K.P. Singh, learned counsel for the respondents and perused the entire record.

5. From perusal of records it is evident that a notification dated 31.01.2002 (Annexure No. 2) was issued by D.R.M., Moradabad inviting applications from all Gangmen, Keymen and Mate etc. who were matriculate and possessed experience of regular service



for promotion on the posts of Permanent Way Mistry. Again a notification dated 04.10.2002 (Annexure No. 3) was issued by Divisional Railway Manager, Moradabad for filling up 16 posts of Permanent Way Mistry by promotion and a list of 229 employees (Gangmen, Keymen, Gatemen, Trollymen etc.) was also enclosed who were found eligible for appearing in the written examination to be held on 27.10.2002. The written examination was subsequently postponed and finally held on 15.12.2002. The interview of 34 successful candidates was held on 04.02.2003. The whole selection process was cancelled by the Divisional Railway Manager, Moradabad vide order dated 30.07.2003 against which 05 OAs (OA Nos. 1018/03, 1044/03, 1388/03, 488/04 & 197/04) were filed and the Tribunal quashed the said cancellation order dated 21.04.2004 (Annexure no. 9) and passed the following order: -

"In the facts and circumstances and our aforesaid discussions we hold that order dated 30.07.2003 passed by respondent no. 3 is cryptic, non-speaking and is without jurisdiction and, therefore, it is quashed. However, it is open for the respondent no. 3 to refer the matter to the General Manager in terms of Para 219 (K) of IREM. The present petitions are allowed."

6. In compliance of said order the matter was referred to the General Manager by the Divisional Railway Manager and the General Manager passed the impugned order dated 23.12.2004 (Annexure No. 1) and upheld the cancellation order passed by the

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Divisional Railway Manager, Moradabad after giving detailed reasons.

7. This Tribunal considered the grounds/reasons given under the impugned order and found the impugned order of cancellation of selection process by the General Manager in accordance with provisions of law and the instructions laid down on the subject and the OA was accordingly dismissed vide order dated 31.05.2006. Aggrieved by the said order, 22 applicants filed Writ Petition No. 43249 of 2006 which was dismissed as withdrawn with the liberty to file Review Application. The applicants filed Review Application No. 55/06 which was allowed vide order dated 13.01.2009 and the order of the Tribunal dated 31.05.2006 passed in this OA was recalled and instant OA No. 267/05 was restored to its original number. The said OA was reheard and allowed vide order dated 18.02.2009 and the impugned order dated 23.12.2004 was set aside and the respondents were directed to give effect to the select panel to the extent of available vacancies at relevant time against promotional quota and the applicants were further made entitled to all consequential benefits.

8. Aggrieved by the said order the respondents filed Civil Misc. Writ Petition No. 47440 of 2009 which was allowed on 19.02.2013



(Annexure No. 1 to the MA No. 1027/13) with the following observations:

"In view of the aforesaid the Tribunal has committed an error in allowing the Original Application and in giving direction to the respondents to give effect to the select panel with all consequential benefits i.e. notional seniority, pensionary benefits etc.

Accordingly this petition succeeds and is allowed. The impugned judgment of the Tribunal dated 18.2.2009 (annexure no.1 to the writ petition) is hereby quashed.

Matter is remitted to the Tribunal for revival of the Original Application to be considered and decided afresh, in accordance with law within shortest possible time.

It is made clear that any observation if it has come in favour/against either of the parties then that will not be treated to be binding and the consideration by the Tribunal will be its independent exercise."

9. At the outset, the learned counsel for the applicants contended that the Tribunal should not look into the order dated 19.02.2013 passed by Hon'ble Division Bench of Allahabad High Court in Civil Misc. Writ Petition No. 47440 of 2009 as the Hon'ble High Court has wrongly treated the said selection process under Limited Departmental Competitive Examination (LDCE) against direct recruitment quota whereas, the said selection process was initiated for promotion amongst Gangmen, Keymen, Mate etc. He has also contended that all the case laws referred and relied upon in the said judgment relate to the process of direct recruitment. He

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has also drawn our attention on the last para of said order of Hon'ble High Court in which it has been made clear that any observation if it has come in favour/against either of the parties then that will not be treated to be binding and the consideration by the Tribunal will be its independent exercise. Relying on the said observation of the Hon'ble High Court it has been argued that the order of Hon'ble High Court is not binding on this Tribunal and the Tribunal should take an independent view in the matter.

10. Para 143 (1) and (2) of Indian Railway Establishment Manual, Vol I lay down the following qualifications for filling up the vacancies in the category of Permanent Way Mistry:-

"143 (1) The vacancies in the category of Permanent Way Mistry in scale of Rs. 1400 - 2300/- will be filled as under:

(i) 50% by direct recruitment through Railway Recruitment Boards and

(ii) 50% by promotion by seniority-cum-suitability through a written suitability test.

(2) Qualifications etc. for direct recruitment are as under

(i) Educational: (10+2) with Science and Maths Diploma holders in Civil/Mechanical/ Electrical Engineering also be eligible.

(ii) Age : Between 18 to 20 years

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(iii) Training & Stipend : They will be on training for a period upto one year on a stipend Rs. 1400/-.

(3) Channel of promotion / Higher Grades : They are eligible for selection to the post of PWI scale Rs. 1400 - 2300 and further as per para 143.

"Note: Out of direct recruitment quota of 50% of the vacancies, 25% will be filled through a limited Deptt. Examination from amongst Gangmen and Keymen who have the qualifications of 10+2 with Science and Maths and have put in a minimum of three years regular service....."

11. It is pertinent to mention here that Railway Board vide its order dated 17.03.1989 also provided that all Keymen and Gangmen should first be considered for promotion as Permanent Way Mistries and only if sufficient number of suitable persons are not available out of the Keymen and Gangmen the selection may be restored to Gangmen according to seniority without restricting the selection to matriculate Gangmen.

12. Learned counsel for the respondents has submitted that the letter dated 31.01.2002 (Annexure No. 2) inviting applications from all Gangmen, Keymen, Mate who were matriculate and possessed experience of three years regular service, for inclusion of their names in the selection process of filling up ~~of~~ the post of Permanent Way Mistry against 25% quota through LCDE, was against the provisions of Rule 143 (1) of I.R.E.M. Vol. I. It has also been contended that for filling up 16 posts of Permanent Way

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Mistry, the Divisional Railway Manager, Moradabad, issued a notification dated 04.10.2002 (Annexure No. 3) mistakenly alongwith a list of eligible candidates for appearing in the written examination to be held on 27.10.2002 against 25% LDCE quota. It has further been submitted that the said 25% quota which was to be filled up through LDCE cannot be treated under promotional quota and Hon'ble High Court has rightly held that the selection process under LDCE was initiated against direct recruitment quota for filling up 16 vacancies of Permanent Way Mistry.

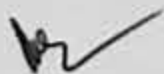
13. The controversy which is required to be resolved in this OA is whether filling up of 25% posts of Permanent Way Mistry under LDCE quota is in the category of promotional quota or under direct recruitment quota? From the perusal of Rule 143 (1) of IREM Vol. I and the note to this Rule, it is evident that promotion quota is only 50% and rest 50% posts of Permanent Way Mistry were to be filled up by direct recruitment. Under direct recruitment quota, 25% posts were to be filled through LDCE from amongst Gangmen and Keymen who possessed the qualifications of 10+2 with science and Maths and have put a minimum of 03 years regular Service and rest 25% posts were to be filled through Railway Recruitment Board. It has further been provided under Railway Board's letter dated 17.03.1989 that if sufficient number of suitable persons are not available out of Keymen and Gangmen, the selection may be

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resorted to seniority without restricting the selection to Matriculate Gangmen. The contentions raised on behalf of applicants that the selection in question was not under the quota of Direct Recruitment but for Promotional quota, cannot be accepted at all since the notifications dated 31.02.2002 and 04.10.2002 clearly reveal that the said selection was under 25% LDCE quota which was to be filled up through Direct Recruitment. Thus it is aptly clear that the selection in question for 25% posts through LDCE cannot be categorized under promotional quota of 50% and thus Hon'ble High Court has very rightly considered the said selection under direct recruitment quota.

14. From the perusal of notification dated 31.01.2002 (Annexure No. 2), it is evident that it was issued in gross violation of Rule 143 (1) of IREM Vol. I since it neither disclosed the number of vacancies to be filled up under 25% quota through LDCE nor mentioned the prescribed educational qualification i.e. 10+2 with Science and Math for appearing in the said examination but invited applications from all matriculate Gangmen, Keymen and Mates having 03 years experience of regular service. The main grounds given in cancellation order, are being summarized below:-

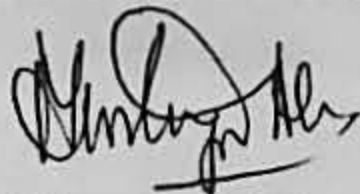
- i. No Top Sheet was prepared before issuing Notification
- ii. Proper assessment of vacancies was not done.

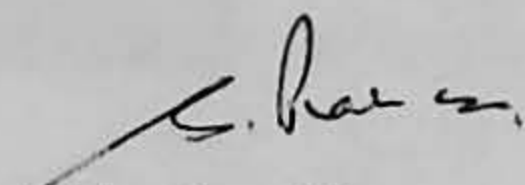


- iii. Ignoring the prescribed qualification i.e. 10+2 with Science and Math, applications were invited from Matriculates.
- iv. Applications should not have been called from Mates in the first instance.

15. We have given our thoughtful consideration on the grounds enumerated in the impugned cancellation order dated 23.12.2004 and found that a belated mistakes had been committed in issuing the notification dated 31.01.2002 which cannot be cured or severed at this belated stage. The order to cancel the said selection has rightly been issued.

16. For the reasons stated aforesaid, we do not find it to be a fit case for interference. The OA is devoid of any merit and is dismissed. There is no order as to costs.


Member (J)


Member (A)

/pc/