

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Allahabad this the 2nd day of June, 2000.

Original Application no. 26 of 1999.

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

1. Fakharuddin Ansari,
S/o Shri Saifuddin Ansari,
Section Engineer Permanent Way, North Eastern
Railway Varanasi Division, Railway Station Rasara,
Distt. Ballia.

2 Masood Ahmad,
S/o Usuf,
Section Engineer Railpath North Eastern,
Railway Izzat Nagar Division, Hatras,
Railway Station Hathras city.

... Applicant.

C/A Shri B.C. Naik

Versus

1. Union of India through General Manager,
North Eastern Railway, Gorakhpur.

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2. General Manager (P), North Eastern Railway,
Gorakhpur.

3. Dy. Director of Establishment (G.P.),
Railway Boardda, New Delhi.

... Respondents

C/Rs Sri A.V. Srivastava.

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applicants have filed this on ...

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ORDER

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

Applicant two in number have filed this OA to permit them to appear in 30% LDCE for promotion to the post of Section Engineer Group 'B'.

2. The brief facts of the case are that the applicants were appointed as Section Engineer Track (P.W.-I) in N.E. Rly., Gorakhpur on 20.4.95 in the pay scale Rs. 2000 - 3200 which was revised subsequently as Rs. 6500 - 10500. The General Manager (P) N.E. Rly., vide notification dated 16/18.2.1998 invited application for 30% LDCE for promotion to the post of Assistant Engineer Group B. The eligibility for appearing in the aforesaid examination was fixed by Departmental concern, that employees holding the post in Group the minimum scale of Rs. 1400 or higher in Group 'C' with 5 years of of non fortuitous service in the grade will be eligible.

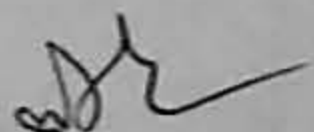
3. Since the applicant were appointed on 20.4.95 and as such they do not fulfil the aforesaid condition of 5 years of service and did not apply for appearing in the examination. The case of the applicant is that some of the employees who have been appointed with them in the same post have filed OA 1267 of 1998 in the C.A.T. Allahabad. The Tribunal vide order dated 23.11.98 permitted those applicants for appearing in the aforesaid examination. In compliance of the aforesaid orders dated 23.11.98, the Department concern permitted the applicants to appear in the aforesaid examination who had filed O.A. no. 1267 of 1998 before the C.A.T. Allahabad. The applicants have, therefore, made representations to Chief Personnel Officer, N.E. Rly., Gorakhpur requesting them to ^{permit them to} appear in the LDCE examination. No action has been taken so far on the aforesaid representation of the applicants. Aggrieved by this the applicants have filed this OA.

applicants have filed this OA seeking direction to the respondents to call the applicants for 30% LDCE for promotion to the post of Assistant Engineer (AEN) Gr. 'B' which was going to be held on 24.01.1999. He has also sought directions to cancel the LDCE for promotion to the post of AEN.

4. The respondents have contested the case and have stated that candidates who fulfil the eligibility condition as laid down in recruitment rules issued on 24.08.82 under Article 309 of the constitution, have been allowed to appear in the written examination for the post of AEN (Gr. B). They have further stated that the provisions where junior fulfils the minimum service condition is called in LDCE; senior do not fulfil the minimum service condition is called on the basis of junior, against 70% and not against 30% LDCE. As the applicants do not fulfil the eligibility condition for 30% they have rightly not applied and called. The applications are misconceived regarding applicability of para 203.1 and 203.2 of IREM which are not applicable in the case of LDCE against 30% vacancies.

5. Heard learned counsel for the rival contesting parties and perused the records.

6 Recruitment to the post of Assistant Engineer (Civil) is made under the provision of recruitment rules which were notified on 24.8.82 (Annexure CA-1). According to the column 11 of the recruitment rules, 75% of the vacancies shall



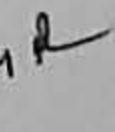
be filled by promotion through selection (which will include ordinarily a written test and also a viva-voce test) of the Ministerial Gr 'C' staff of the non-Civil Engineering Department. The selection will normally be made from Staff holding the posts in the grade the minimum of which is Rs. 425/- in 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 be held to be eligible notwithstanding 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.

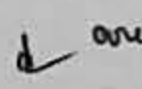
9. It is quite evident from the recruitment rules that the relevant provisions in case a junior employee is considered for selection by virtue of his satisfying the relevant minimum service conditions, all persons senior to him shall also be held to be eligible, is applicable only in the case of 75% 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

submitted by the learned counsel for the respondent. It is a

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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 and 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. 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 LDCEs. 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 satisfying the relevant minimum service condition is laid down only in respect of 70% selections. The provisions of para 203.2 of REM 

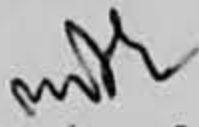
 are not applicable to LDCE for 30% of vacancies and also cannot have over-riding effect on the Recruitment Rules.

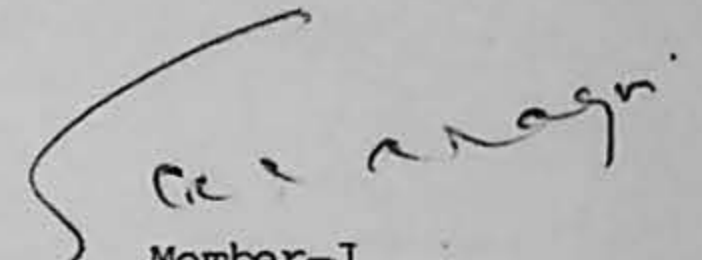


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11. In the light of the above discussion the OA is devoid of merit and is, therefore, dismissed accordingly.

12. There shall be no order as to costs.


Member-A


Member-J

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