

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 27th day of ^{April} March, 2000

Original Application No. 498 of 1999

Distt-Allahabad

CORAM:-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiuddin, J.M.

Arun Mahadu Choudhary,
S/o Shri Mahadu Pandu Choudhary,
R/o Quarter No. RB-1-12B, Railway Colony,
Jasra Distt-Allahabad.

(Sri Rakesh Verma, Advocate)

..... Applicant

Versus

1. Union of India through the General Manager, Central Railway, Chatrapati Shivaji Terminus, Mumbai.
2. The Divisional Railway Manager (P) Central Railway, Jabalpur.

(Sri Prashat Mathur, Advocate)

..... Respondents

O R D E R

By Hon'ble Mr. Rafiuddin, J.M.

The applicant has challenged the validity of the order dated 8-4-1999 issued by the Divisional Railway Manager (P) Respondent No.2, Jabalpur addressed to the Secretary, National Railway Mazdoor Union, Manikpur Branch, By the said letter respondent no.2 informed the said Union that the selection held for the post of Junior Engineer Grade II has been cancelled for certain irregularities found in the selection process. It was also intimated that a fresh notification shall be issued for filling the up the aforesaid post.

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2. The applicant was initially appointed as Electric Signal Maintainer Grade III through direct recruitment on 12-6-1985 in the pay scale of Rs.3050-4590 and was posted at Damo in Central Railway in Jhansi Division. In due course the applicant came to be promoted to the post of Electric Signal Maintainer Grade I in the year 1990 in the pay scale of Rs.4500-7000. The next higher post to which the applicant can be promoted is the post of Signal Inspector Grade III in the revised pay scale of Rs.5000-8000. This post has now been redesignated as Junior Engineer (Signal) Grade II in the same pay scale. The post of Junior Engineer (Signal) is a selection post and the vacancies are to be filled up as per the provision of Para 147 of the Railway Establishment Manual Volume I, which provides that 40% posts are to be filled up by direct recruitment through the Railway Recruitment Board. 20% posts are to be filled up by induction of Intermediate Apprentice from amongst maintainer possessing the qualification of Matriculation with three years service and below 40 years of age. Remaining 40% posts are by promotion by selection from maintainers in the immediate lower grade.

3. The case of the applicant is that he has been working in the capacity of Electric Signal Maintainer Grade I, which is the next lower grade Rs.4500-7000 and as such he is eligible for selection to the post of Junior Engineer (Signal) Grade II.

4. Two posts of Junior Engineer (Signal) Grade II meant for the general candidates fallen vacant in 40% promotion quota. Accordingly, to fill up the aforesaid two posts respondent no.2 initiated the selection process and names of eligible persons were called for to appear in the written test vide letter dated 23-11-1998. The written test was to be held on 12-12-1998. A list of 26 eligible persons

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including the applicant was sent to the respondent no.2. The applicant appeared in the written test held on 12-12-1998 alongwith other candidates. The result after written test was declared on 13-1-1999 and the applicant was declared pass in the written test. A copy of the letter dated 13-1-1999 has been annexed as Annexure-A-III. Thereafter the applicant appeared in interview on 22-1-1999 and a final panel was published by respondent no.2 vide letter dated 5-2-1999 and the applicant was declared successful and was found suitable for appointment to the post of Junior Engineer (Signal) Grade II. A copy of the panel has also been annexed as Annexure-A-4. The applicant claims that the panel was duly approved by the competent authority and he was promoted to the post of Junior Engineer(Signal) Grade II in pursuance of the aforesaid selection vide Office Order No.11/1999 dated 8-2-1999 passed by the respondent no.2, a copy of which is annexure-A-V. The applicant was accordingly posted as Junior Engineer(Signal) Grade II at Jasra against a clear vacant post. The applicant also took over the charge of the post at Jasra on 25-2-1999 and since then he has been working there without any interference. A copy of the joining report dated 25-2-1999 is annexed as Annexure-A-VI.

5. Respondent no.2 has, however, suddenly by means of the impugned letter dated 8-4-1999 has cancelled selection as a result the applicant is to be reverted from the post of Junior Engineer Grade II. The selection is alleged to have been cancelled on the ground of some irregularities having been committed by the respondents while making selection. The applicant has contended that since he has been duly empanelled after selection and has been duly promoted to the higher post, he cannot be reverted in such an illegal and arbitrary manner without giving him show cause notice.

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The panel was duly approved by the competent authority i.e. by the respondent no.1, the General Manager, Central Railway. The same authority cannot cancel the panel and it is only the next higher authority who can cancel the panel. Hence, the cancellation of the selection by respondent no.1 is without jurisdiction and is illegal. The cancellation of selection is also against the Rules because as per Para 219 (i) of the Railway Establishment Manual, Volume I, the panel once approved should normally not be cancelled or amended, and in case if procedural irregularities or defects are detected and it is considered to cancel the panel or amend such panel, it should be done only after obtaining the approval of the authority next higher than the one that approved the panel. The respondent no.2 has not obtained the approval for cancelling of the selection from the respondent no.2. The applicant has also stated that there was no procedural irregularities in the constitution of the Selection Board.

6. The respondents in their counter affidavit had contested the claim of the applicant on the ground that the panel has been cancelled because the candidate does not fulfil the qualification for the post in question. The decision to cancel the panel has been taken by the competent authority as there were certain discrepancies apparent on the face of record of the selection process. Therefore, there was no other option but to pass the impugned order with the stipulation that a fresh notification will be issued for holding selection against 40% departmental quota. The applicant does not fulfil the requisite qualification as prescribed in the notification and his repatriation to his original post does not amount to reversion. The applicant is merely an Intermediate in Science and does not fulfil the requisite qualification as prescribed under Rule 147 which inter alia requires

that the candidates are to be selected on the basis of 40% promotion quota should have diploma in Electrical, Mechanical or Electrical or Telecommunication Engineering or equivalent to B.Sc. (Physics). It has also been claimed by the respondents that the power for selection and cancellation of the panel is vested in respondent no.1 as Para 219 of the Sub Clause (1) of the IREM. The applicant having not basic qualification for consideration of his candidature for the post in question, has not vested legal right for the post in question.

7. It has also been stated in respect of the selection in question that the Railway Board as a remedial measure to remove/avoid stagnation in Electrical Signal Maintainers has given one time relaxation in pursuance of the demand made by the departmental council to fill up the post in question from skilled artisans MSM/ESM who fulfil the requisite conditions vide notification dated 25-9-1998 and the provisions contained in Para 147 of the Indian Railway Establishment Manual Vol I (EREM Vol I for short).

8. We have heard counsel for both the parties and perused the pleadings on record carefully.

9. It is not in dispute that the procedure for filling up the vacancy in the category of Signal Inspection Gde III now redesignated as Junior Engineer (Signal) Grade II is prescribed in Para 147 of IREM Vol I which is extracted as under :-

"147.(1) The vacancies in the category of Signal Inspectors Grade III in scale Rs.1400-2300 will be filled as under:-

- (i) 40% by direct recruitment through the Railway Recruitment Boards.
- (ii) 20% by induction of Intermediate Apprentices from amongst Maintainers possessing the qualification of Matriculation with three years service and below 45 years of age; and

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(iii) 40% by promotion by selection from Maintainers in the immediate lower grade.

(2) Qualification etc. for direct recruitment are as under :-

(i) Educational: Diploma in Mechanical/Electrical/Electronics/Telecommunication Engineering or equivalent or B.Sc. (Physics) or equivalent.

(ii) Age : Between 18 to 28 years.

(iii) Training & Stipend : Training : Two years Stipend 1320/30-1350. The training will be as per schedule laid down in Bd's letter No.E(NG)II/80/RR-1/39 dt.31-1-1981."

10. The perusal of the aforesaid Rule clearly indicates that the qualification for departmental candidates and for direct recruits have been separately mentioned. The Para (2) of Rule 147 clearly lays down essential educational qualification for direct recruitment as ^{only} ~~prescribed~~ diploma in Mechanical/Electrical/Electronics or Telecommunication or its equivalent or (B.Sc.(Physics)). However, no such qualification is prescribed for deptt. candidates. In the present case it is now doubt correct that the applicant does not possess educational qualification as required for direct recruit but the respondents have not challenged the applicant being qualified for his selection as departmental candidates in terms of Rule 147(1) cited above.

11. However, the case of the respondents is that the Railway Board as one time concession of the direct recruit vacancies added to the 20% quota of vacancies as mentioned in Para 147 (1)(ii) of IREM Vol 10 and the present selection has been carried out vide letter No.E.(NG/I-96/PM-6/8 dated 24-6-1988. A copy of the said letter is available on record as Annexure-CA-2.

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12. It has been contended that the present selection has been held in pursuance of the aforesaid letter of the Railway Board and since 40% vacancies to be filled up from direct recruitment have been added hence the educational qualification of possessing diploma in certain engineering branch or Graduation in Science with Physics is essential qualification for a candidate to appear in the selection. The applicant admittedly having no such qualification hence he is not eligible for the selection and his selection has been cancelled, on this ground.

13. In order to appreciate this contention of the respondents, it is necessary to reproduce the aforesaid Railway Board Letter which is as under:-

GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF RAILWAYS/ RAIL MANTRALAYA
(RAILWAY BOARD)

No.E (NG) I-96/PM6/8

New Delhi, dated 24.6.98

The General Manager (P)
All Indian Railways and
Production Units.
(As per standard list)

Sub:- Stagnation of Electric Signal
Maintainers-Remedial measures.

In terms of Para 147(1)(ii) of Indian Railway Establishment Manual, Volume-I 1989, 20% of the vacancies in the category of Junior Engineer (Signal) Grade II in the pay scale of Rs.5000-8000 (RSRP) are filled from amongst Maintainers including ESMs in filling the conditions stipulated therein.

2. Pursuant to a demand raised in the Department Council under the scheme of J.C.M. and the discussions in the meeting held on 26.12.97 and 7.1.98, the Ministry of Railways have decided that as a one time measure all the direct recruitment vacancies in the category of Jr. Engineer (Signal) Grade II after setting of the vacancies earmarked for being filled under the scheme of GDCE, may be added to 20% quota of vacancies

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mentioned above and filled accordingly.

Please acknowledge receipt.

Hindi version will follow.

Sd/-
(J.S. Gisain)
Joint Director Estt. (N.)
Railway Board.

It is evident that three things are explicit in this letter:-

- (i) One time remedial measure has been taken by the Railway Board in order to remove stagnation of electric signal maintainer.
- (ii) All the direct recruitment vacancies in the category of junior engineer (Signal Grade-2) have been permitted to be added to 20% quota vacancies.
- (iii) These vacancies are to be filled up according to selection prescribed for departmental candidates because it has been specially mentioned that such vacancies are to be filled 'accordingly'!

'Accordingly' in our view refers to the selection procedure prescribed for departmental candidates.

Therefore, it is not necessary for a candidate to possess educational qualification prescribed for direct recruitment. It would otherwise defeat the ~~objection~~ object of one time relaxation for removing the stagnation of promotion of electric signal maintainers.

The essential qualification and other conditions for departmental candidates are duly mentioned in para 147(i)(ii) i.e. the candidate should possess the qualification of matriculation with three years

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service and should be below 45 years of age and should be maintainer the immediate lower grade. It has not been disputed before us that the applicant possess these qualifications. Therefore, we do not find any justification to cancel the selection of the applicant merely because he does not possess the qualification of diploma in certain engineering branches mentioned in para 147(1)(iv) of I.R.E.M. volume I.

14. The learned counsel for the respondents has also contended that in the notification dated 25.9.98 (Annexure A) issued by the D.R.M. Jabalpur in pursuance of Railway Board letter dated 24th June 1998 referred to above essential qualification of possession diploma in certain Engineering Branches or Graduation in Science has been prescribed. In our opinion D.R.M. Jabalpur has no power to prescribe qualification for the candidates contrary to the provisions of para 147 read with para 124 of I.R.E.M. Even General Managers of Indian Railways have no power to frame rules in consistence with the rules made by the President or the Ministry of Railways. Thus the D.R.M. can not prescribe the qualification which are inconsistent with the Railway Board's letter in question. Even if such qualification has been prescribed by the D.R.M. Jabalpur the same is against the Rules 147 of I.R.E.M.(I).

15. We also find force in the arguments of learned counsel for the applicant that the panel in question has been cancelled by the D.R.M.

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Jabalpur who is not competent to do so. On this question Clause (L) of para 219 of I.R.E.M. Volume I is relevant which stipulates that a panel once approved, normally not be cancelled or amended and that if after the permission and announcement of the panel with the approval of the competent authority, it is found that there were procedural irregularities or other defects and it is considered necessary to cancel or amend such panel this should be done after obtaining the approval of the authority next higher than one that approves the panel.

16. In the present case it is alleged by the applicant that the panel in question was approved by the General Manager. The notification dated 5.2.99 (Annexure A) indicates that the panel has been approved by the competent authority on ^{notification} 4.2.99. This ~~order~~ has been issued from the office of D.R.M. Personnel Branch Jabalpur. It has been contended on behalf of the respondents that the competent authority to cancel the panel is the D.R.M. and accordingly the impugned order cancelling the panel has been passed by the D.R.M. This contention, however, has no force. The respondents for the reasons best known to them have not placed before us the copy of order dated 4.2.1999 through which it is claimed ^R ~~that~~ the panel in question approved. ^{was} In the absence of the aforesaid order before us, we are unable to ascertain the identity of the competent authority who approved the panel. It is also not understood as to how the D.R.M. Jabalpur

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is competent authority to cancel the panel as claimed by the respondents. In case the panel was approved by the D.R.M., the same should have been cancelled by the General Manager or in case, the panel was approved by the General Manager, the competent authority to cancel the same is the Railway Board as rightly contended by the learned counsel for the applicant. Thus in the absence of material before us we can not hold that it is the D.R.M. Jabalpur who is competent to cancel the panel. There is no material to presume the power of the D.R.M. to cancel the panel in question. Accordingly we hold that the panel has not been cancelled by the competent authority hence the order is liable to be quashed on this ground also.

17. In view of what has been discussed above we hold that the order dated 8.4.1999 (Annexure A-1) is liable to be quashed.

18. Consequently the O.A. is allowed. The order dated 8.4.99 (Annexure A-1) is quashed. No order as to costs.

Rajendra
Member (J.)

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Member (A.)