

Reserved

(On 21.02.2013)

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Dated : This the 21<sup>th</sup> day of March, 2013

Original Application No. 539 of 2008

Hon'ble Ms. Jayati Chandra, Member (A)  
Hon'ble Ms. Jasmine Ahmed, Member (J)

O.P. Saran, S/o Shri Ram Sanehi, R/o Quarter No. 347-A, Diesel Locomotive Works Colony, Varanasi. Presently working as Section Engineer (Plant Maintenance Shop), DLW, Varanasi.

. . . Applicant

By Adv : Shri S.K. Om

**V E R S U S**

1. Union of India through General Manager, Diesel Locomotive Works, Varanasi.
2. Chief Personnel Officer, Diesel Locomotive Works, Varanasi.
3. Chief Mechanical Engineer, Diesel Locomotive Works, Varanasi.
4. Ram Avadh, working as Section Engineer (Central Maintenance Shop), Diesel Locomotive Works, Varanasi.
5. Manoj Kumar, working as Works Manager, Plant Maintenance, Diesel Locomotive Works, Varanasi.
6. Arun Kumar, working as Section Engineer, Plant Maintenance, Diesel Locomotive Works, Varanasi.

. . . Respondents

By Adv: Shri P.N. Rai

**O R D E R**

By Hon'ble Ms. Jayati Chandra Member (A)

Instant OA has been filed by the applicant under Section 19 of the A.T. Act, 1985 with the following reliefs:

"i. issue a writ order or direction in the nature of certiorari quashing the order dated 10.2.2007, 28.04.2007 and 24.05.2007 passed by respondents.

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- ii. issue a writ order or direction in the nature of mandamus commanding the respondents to restore the seniority position of the petitioner as per the panel dated 13.6.2001 quo respondent No. 4, 5 & 6.
- iii. issue any other writ order or direction which this Hon'ble Court may deem fit and Proper under the circumstances of the case.
- iv. the cost of the present petition may be awarded in favour of the petitioner.
- v. to issue, writ order or direction in the nature of certiorari quashing the order dated 29.10.2007, passed by Railway Board (Annexure CA-2)."

2. The facts of the case are that the applicant was working as Chargeman w.e.f. 30.12.1996 and was thereafter posted in Millrite trade of Mechanical Engineer. A notification for filling up of 07 posts (05 posts for General category and 1 post for SC and 1 post for ST Candidates) of Section Engineer in the Grade of Rs. 6500 - 10500 was issued on 01.03.2001 (Annexure A-1). A list of eligible candidates in the zone of consideration was issued by respondents (Annexure A-2). The applicant was placed at Sl. No. 2 amongst the list of eligible S.C. candidates.

3. However, as per the combined seniority list of Junior Engineer (Millrite trade) dated 31.10.1998, his name was at Sl. No. 11, between Shri V.P. Singh at Sl. No. 10 and Shri R.S. Siddique at Sl. No. 12 (Annexure A-3). No reliance is placed on this document as the names of candidates have been wiped out and hence unreadable.

4. A written test and viva-voce were conducted in continuation of the notification dated 01.03.2001 and

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the result was declared on 24.05.2001 in which the name of the applicant was placed at Sl. No. 2 (Annexure A-5). A panel of Section Engineers with the name of the applicant at Sl. No. 2 was declared on 13.06.2001 (Annexure A-6 & A-9). In that list the respondents No. 4, 5 and 6 were all placed below him.

5. On a representation made by respondents No. 4 & 6 the respondents issued a show cause notice dated 23.01.2007 by which the applicant learnt that there was a proposal to revise his seniority displacing him from his 2<sup>nd</sup> position in the list dated 13.06.2001 and putting him last, below the Respondents No. 4 to 6 who from the last 5½ years were below him (Annexure A-7). The reasons for the proposed amendment was that he had been selected on the basis of relaxed standard. He sought some clarification regarding the marks achieved by all the candidates in order to properly reply to the notice but the respondents revised the list dated 10.02.2007. The applicant was placed below respondents No. 4, 5 & 6 in the revised list. The applicant gave representation against the order, but they were rejected.

6. The applicant has challenged the impugned order dated 10.02.2007, the rejection order dated 28.04.2007 and the second rejection advice dated 24.05.2007 on the following grounds:

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a. The reversion of the seniority has been done after nearly 06 years without giving him an opportunity to rebut the proposed amendment.

He was merely informed about the same and a decision was taken without hearing him out.

b. As per Railway Board's circulars dated 05.02.1969 (Annexure A-12). The relevant portion of the Rule is quoted below:

"2. (ii) A panel once approved should normally not be cancelled or amended. If it is found subsequently that there are procedural irregularities or other defects and it is considered necessary to cancel/amend such a panel, this should be done after obtaining the approval of the authority next higher than the one that approved the panel. A panel of divisionally controlled post approved by DRM can be amended by the Head of the department concerned. (R.B.'s Nos. E(NG) 167PMI/47 of 5.2.69 and E(NG) I-71PMI/149 of 18.2.72, Sl. No. NR4607 & 5589/ER7161 & 7917/SE32/69."

The original selection list was issued on behalf of General Manager (Mahaprabandhak) whereas the revised order dated 10.02.2007 was issued by the Dy. Chief Administrative Officer. Only the endorsement is signed "on behalf of the General Manager".

c. The settled seniority of 2001 has been disturbed in the year 2007 by an erroneous interpretation of RBE No. 97/1992. The said circular provides for giving the bottommost position to those SC/ST candidates who are brought into the zone of consideration for promotion on the basis of relaxed

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eligibility norms in order to fill up the reserved posts.

d. The applicant was considered against the one vacancy of SC as he was in the normal zone of consideration on the basis of his seniority. Further he had achieved the required standard for selection as prescribed in Circular dated 18.10.1973 (Annexure A-4) by which it is provided that an SC candidate who achieves 50% marks is deemed to be at par with general candidates. This circular has not been withdrawn by the RBE No. 97/1992 (supra).

7. Notices were issued to the private respondents No. 4 to 6. No un-served notice was received back. Counter Affidavit filed only by official respondents No. 1 to 3.

8. The respondents have upheld their action. They have stated that the post of Section Engineer in the pay scale of Rs. 6500 - 10,500 is a promotional post to which selection is made on the basis of a written examination, a personal interview and an assessment of their dossier.

9. As per the IREM Vol. I, revised edition 1989, para 219 (g) ii, is required candidates to obtain a

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minimum 30% professional ability and 60% marks on the aggregate. Four general candidates secured 60% marks, but the applicant was declared successful on the basis of relaxed marks. All 05 were placed on the list of selected candidates as per result dated 13.06.2001 in which the applicant was placed at Sl. No. 2. On a joint representation submitted by the Respondents No. 4 & 6. Shri Ram Avadh and Shri Arun Kumar on 19.04.2006 the matter was re-examined and the seniority position was corrected. The applicant was placed below all general candidates as his selection was on the basis of obtaining lesser marks than them.

10. The Railway Board vide its letter No. 89E(SCT)I/49/5(Pt.) (RBE No. 97/1992) dated 16.06.2009 (Annexure A-13) in para 3.1 (ii) provides that SC/ST candidates who find their place in the selected panel on the basis of relaxed norms, should be placed below persons who had reached the minimum works. Hence the placement of successful candidates as per the list of 13.06.2001 was corrected after providing opportunity to the applicant to submit his objection by letter dated 23.01.2007 (Annexure A-7).

11. They have further stated that the applicant was given an opportunity to represent against the proposed amendment by their letter dated 28.04.2007 (Annexure A-11). In para 208.3 of IREM Vol. I it has been provided that representation against selections should

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be dealt with on merits without restriction of any time limit to their submission. Para 208.3 of IREM Vol. I, which reads as under:

**"208.3 Representation against selection - Representations against selection should be dealt with on merits without restriction of any time limit for their submission."**

12. They have also said that the factual position was seen by the General Manager. Further it was also examined by the Railway Board who by its letter No. 2007-E(SCT)II/3/87 dated 29.10.2007 (Annexure CA-1) has advised that the matter of seniority of applicant was examined and in the Board and the action taken by the DLW, Varanasi (respondents) in this cases is in keeping with extant instructions contained in para 3.1.(ii) of Board's letter No. 89-E(SCT)I/49/5(Pt) dated 16.06.1992.

13. We have heard Shri S.K. Om, learned counsel for the applicant and Shri P.N. Rai, learned counsel for the respondents and perused the entire facts of the case. It is an admitted fact that the list was prepared by order dated 10.02.2007 wherein the names of the following candidates appeared in sequence as given below:

Sl. No.	Name	Sl. No.
1.	Shri B.P. Singh	09442
2.	Shri O.P. Saran (SC)	10623
3.	Shri Ram Avadh	03362
4.	Shri Manoj Kumar	10991
5.	Shri Arun Kumar	11083

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14. This list was allowed to continue for nearly five years. The respondents have entertained the representation from two of the persons in the select list i.e. Shri Ram Avadh and Shri Arun Kumar in April 2006 and reopened the issue. It is nowhere averred that during any time between June 2001 and April 2006 the matter of seniority was agitated by any one. The respondents have justified their action on the ground that they gave opportunity to the applicant to make his submission. But their action is certainly arbitrary in that they failed to appreciate the fact that the applicant had merely sought some information by letter dated 31.01.2004. The seniority list was rectified by their notification No. D.Ra.Ka(P)/29/8/75E/Sas. Laa.E /Yaa dated 10.02.2007 (Annexure A-9) under the signature of Dy. Chief Personnel Officer.

15. The respondents have not denied that the power to revising the seniority lies with the General Manager. They have simply stated that they did not think it necessary to obtain the approval of the Competent Authority i.e. General Manager since it did not involve persons other than those who are already in the earlier list and as it was issued strictly as per rule/guidelines issued by the Railway Board. The relevant portion of the CA is quoted below:

"..... It is further stated that the order dated 10.02.2007 has been issued strictly as per rule/guidelines, issued by Railway Board. Further it is submitted that reply dated 28.04.2007 (Annexure 15 to O.A.) given to applicant is itself very much clear.

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However, the matter was seen by the General Manager....."

16. If the respondents were totally confident about their authority and the correctness of their decision it is not clear what was the need for the matter to be "seen" by the General Manager? There is a lot of difference between "approval" and "seen". No administrative officer can presume to exercise the authority that is vested in another authority, even if, the correctness of the decision is not debated. In the exigencies of a situation, the junior officer may take a decision, but that decision has to be got ratified through ex post facto approval by the Competent Authority. Merely "showing" a decision is nothing but an attempt at involving the General Manager without disclosing full facts to him.

17. The respondents have further tried to validate their decision by quoting Railway Board letter No. 2007-E(SCT)II/3/87 dated 29.10.2007. Again if the legality of the decision was maintained by merely "showing" it to the General Manager, where was the need to go to the Railway Board? Moreover, it is not at all clear that what was the proposal that was got endorsed by the Railway Board as the respondents have provided any copy of their letter dated 12.10.2007 on which endorsement was sought.

18. Coming further on the merit, the respondents have placed their reliance on the Railway Board's Circular

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No. 97/1992 dated 16.06.1992. Specially para 3.1 (i) & (ii) which is quoted below:

"(i) The panel of candidates may be formed as per existing procedure. In non-safety categories in case adequate number of SC/ST candidates are not available as per general merit in the panel to fill the reserved posts, additional SC/ST candidates to the extent of deficiency may be placed on the panel applying the specified relaxed standard, and if still the reserved quota unfilled, further SC/ST candidates may be considered for ad-hoc promotion under the best amongst the failed policy.

(ii) It is also clarified that SC/ST candidates who find place on relaxed norms or under the best amongst failed policy should be placed below those who have qualified with the general standard."

The said circular has to be read in its entirety.

19. The said circular of the Railway Board it appears has been passed for the purpose of filling up reserved vacancies including backlog vacancies. It seeks to lay down a uniform policy to be followed by all Zonal Railways to ensure that the reserved seats for SC/ST are filled up.

20. Point 3 of the circular emerges out of points 2 which deals with the zone of consideration and the mechanism of expanding it for filling up vacancies. Moreover, the relaxation etc. is to be given "in case of adequate numbers are not available". In this case the applicant came into the zone consideration automatically on the basis of his seniority. The respondents have not stated anywhere that the applicant lacked the seniority and he was brought in

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the field of eligibility by using provision of 2.1 (ii) & (iii).

21. The case of the respondents is that the applicant got less marks than the general candidates, therefore, he should be placed below the general candidates. They have not disclosed any circular/rules etc. which lays down a common "general standard" in terms of marks attained in written test, viva-voce and assessment of records. The circular No. 97/1992 is totally silent on the issue of numerical standard for all candidates (general and SC/ST).

22. It is clear from the list of eligible candidates at Annexure A-2d that the applicant Shri O.P. Saran was one amongst three S.C. candidates and his name was placed at Sl. No. 2. There is nothing to show that he was brought into the eligibility list through a relaxation of standard in terms of para 2.1 (ii) & (iii) of RBE Circular 97/1992. In fact there is a separate waiting list which includes the names of two candidates belonging to SC category. It is also not the case that the name of applicant was included in the selection panel under the "best amongst the failed policy" as the result dated 31.10.1998 categorically lists out the names of successful candidates.

23. Therefore, in our view the candidate cannot be placed below all candidates either on the basis of

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relaxed norms or under the best amongst the failed candidates.

23. In view of the discussion made above, the OA succeeds. The impugned orders dated 28.04.2007 and 24.05.2007 are hereby quashed. The seniority of the applicant as per panel dated 13.06.2001 is restored. No costs.

*Jasmeen Ahluwalia*

Member (J)

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Member (A)