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O.A No.640 of 2009

S.N.Dalai & Ors

.... Applicants

Vs

Union of India & Ors.

.... Respondents

Order dated -19-04-2011

C O R A M

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (ADMN.)

AND

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

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To fill up 26 vacancies of JE-II (Track Machine) in the scale of Rs.5000-8000/-, a Notification dated 31-03-2008 was issued by the CPO/BBS against LDCE (25%) quota. As per the schedule, written examination was held on 20-09-2008. The Applicants participated at the selection. The result of the Written Test was declared on 18.11.2008. All the Applicants were declared to have 'passed'. The CPO, ECoRly,BBSR, called for the ACRs and vigilance clearance certificate from the concerned authority under whom the qualified candidates were working. Thereafter, vide Memorandum No. ECoR/Pers/13/TM/Selection/JE-II/LDCE/10 dated 20-10-2009 (Annexure-A/11) the Respondents cancelled the selection held on 20-09-2008 to the post of JE-II (Track Machine), pursuant to the Notification dated 31-03-2008 and the same was intimated to the Applicant in Annexure-A/12. Being aggrieved by the order of cancellation of the selection, 16(sixteen) candidates



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who are at present working as Technician-I/TM in various places under the E.Co.Railway and declared to have passed in the test have challenged the Memorandum No. ECoR/Pers/13/TM/Selection/JE-II/LDCE/10 dated 20-10-2009 (Annexure-A/11) in which the selection made in response to the Notification dated 31-03-2008 for the post of JE-II (Track Machine) was cancelled and intimated to the Applicant in letter under Annexure-A/12 dated 21.10.2009 have prayed to quash the impugned orders under Annexure-A/11 & A/12 and to direct the Respondents to form the panel of 26 JE-II TM in the scale of Rs.5000-8000'- (Vth PC)/Rs.9300-34800 GP Rs.4200/-(VIth PC) as per Notification dated 31.3.2008 (Annexure-A/1) issued by the Chief Personnel Officer, ECoRly, Bhubaneswar.

2. The free and fair conduct of the selection, eligibility of the applicants to appear at the test conducted for the post of JE-II (Track Machine) and that the applicants have been declared pass are not in dispute by the Respondents in their counter or reply to the rejoinder filed in this case. But the reason of cancellation of the selection after empanelment of the Applicants, as stated by the Respondents, in their counter is that consequent upon implementation of the recommendations of the VIth CP, in some cases two existing grades have been merged into one Grade Pay or

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9 posts were upgraded and merged with higher grade posts thereby the existing channel of promotion of the staff such as JE-II (TM) in scale of Rs.5000-8000/-(Pre-revised) has been upgraded and merged with JE -I TM in scale of Rs.5500-9000/- (pre-revised) into a single Grade Pay to Rs.4,200/-. In furtherance thereto, RBE No. 127/2008 (Annexure-R/1) was circulated by the Railway Board restricting the selection/suitability test in merged and upgraded posts till further orders. Subsequently RBE No. 70/2009 (Annexure-R/2) was issued by the Railway Board wherein it was stipulated that action on selection already in process should be stayed and the existing panels/suitability list published should not be operated. Soon after issuance of Annexure-1&2, the Railway Board has issued another RBE No. 161/2009 (Annexure-R/3) wherein it was stated for implementation of the recommendation of the VIth CPC in the case of merged grades and revised classification and mode of filling up of those posts as on 31.8.2009. Hence Annexures-A/1&A/2 were issued.

3. We have considered the rival submission of the parties and perused the materials placed on record. According to the Applicants' Counsel cancellation of the empanelment is the byproduct of misrepresentation/misinterpretation of the Railway Board's instruction stated above. The Railway Board circular in

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which merger has been provided does not speak of the post for which the applicants were empanelled. In this connection, Applicants' Counsel took us through the RBEs in Annexures-A/1, A/2 & A/3 to state that RBE No. 127/08 provides 'promotions within the merged grades (i.e. from the lower grade to next higher grade of 5th CPC scales) or within up-graded and merged in higher grade pay, should not be made herein after till further orders' and RBE No.70(para-2) provides "where merger of scales is not involved and a grade in the existing scale has been replaced by grade pay, promotions may continue to be made in accordance with the existing classification". But the posts of JE II TM in scale of Rs.5000-8000/- & JE I (TM) in scale of Rs.5500-9000/- were merged with scale of Rs.9300-34800/- + GP Rs.4200/- in 6th CPC whereas the Applicants are Technician I in scale of Rs.5200-20200 + GP Rs.2800/- and their promotions to merged grades of Rs.9300-34800+GP Rs.4200/- in 6th CPC was not restricted by the Railway Board in any of its circular. Promotion within the Grade (not 'to the grade') was restricted. The Respondents have confused "within the grade" and 'to the grade'. Hence the cancellation in Annexure-A/11&12 being illegal, arbitrary and not bona fide exercise of power are liable to be set aside.

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4. On the other hand it was submitted by Mr. Panda, Respondents Counsel that the interpretation given by the Applicants to the RBEs is not correct. The CPO, ECoRly, BBS is bound to follow the instruction of the RBE. As the RBEs ex facie provide that in cases of two or more existing scales of pay A and B or A, B and C have been merged into a single grade pay X or where an existing scale pay A has been upgraded to allot the grade pay which has been allotted to existing next higher grade pay B in the hierarchy in such cases selections and promotion from the exiting lower scale to the existing higher scale should not be made. Promotions from exiting lower scales to the existing scale A should likewise cease. Further it was contended by Respondents' Counsel that paragraph 22 of the RBE No. 161/2009 clearly provides that only the promotions within and to merged grades were not to be affected while all other promotions were to be continued to be made as per existing classification. So it is not correct to say that promotion to the merged grade was not restricted by any of the Railway Circular. Accordingly, Respondents' Counsel while opposing the prayer of the Applicants has prayed for dismissal of this OA.

RBE No. 127/08 (Annexure-R/1) reads as under:

"As a result of acceptance of recommendations of 6th CPC in many cases two existing grades have been

merged in to one grade pay or posts have been upgraded and merged with higher grade thereby affecting the exiting channel of promotion of the staff. Accordingly the matter of promotion of non-gazetted staff within such merged or upgraded and merged within same grade pay posts has been considered and it has been decided that **promotions within the merged grades (i.e. from the lower grade to the next higher grade of 5th CPC scales) or within upgraded and merged in higher grade pay, should not be made herein after till further orders.**

2. However, this will not apply to the cases of promotion of running categories viz. Loco Pilots and Guards as well as horizontal promotions, wherein the existing channel of promotion will continue till further orders."

RBE No.70/2009 (Annexure-R/2) reads as under:

"In continuation of this Ministry's letter of even number dt. 23.09.2008, it is clarified that in cases where two or more existing scales of pay 'A' and 'B' or 'A', 'B' and 'C' have been merged into a single grade pay 'X' or where an existing scale say 'A' has been upgraded to allot the grade pay, which has been allotted to existing next higher grades say 'B' in the hierarchy, in such cases selections and promotion from the existing lower scale to the existing higher scale(s) , should not be made. Promotions from exiting lower scales to the existing scale 'A' should likewise cease. Further in such cases action on selections etc. already in process should be stayed and the panels/suitability list already existing should also not be operated.

2. **Where merger of scales is not involved and a grade in the existing scale has been replaced by grade pay, promotions may continue to be made in accordance with the existing classification.**

3. However, this will not apply to the case of promotion of running categories viz. Loco Pilots and Guards, wherein the existing channel of promotion will continue till further orders. It is also clarified that the promotion to the post of Technicians/MCM/Sr. Supervisors (P.Way) etc. which have also been allotted the grade pay Rs.4200/- should not be treated as

37 merged with JE-II/JE-I and promotion to the post of Technicians in Grade Pay Rs.4200 may continue to be made as per existing classification. However, promotion from Technicians/MCM/Sr. Supervisor(P.Way) etc to the posts of JE-II/JE-I which have also been allotted Grade Pay Rs 4200, should not be made."

RBE No.161/08 (Annexure-R/3) reads as under:

"Reference this Ministry's letter of even number dt. 23.09.2008 and 24.04.2009 on the above subject.

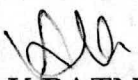
2.2. Promotions to the posts carrying the Grade Pay below Rs.4200 shall continue to be made as per existing procedure, since Railways/Pus have already been advised vide this Ministry's letter of even number dt. 23.09.2008 and clarified vide letter dt.24.04.2009 that only the promotions **within and to merged grades** were not to be effected, while all other promotions were to be continued to be made as per existing classification."


5. We have heard the submissions of the parties with reference to the provisions made in RBEs in Annexures-A/1, A/2 & A/3, quoted above. We may state that law is well settled that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Further, it is well settled law that

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the scope or the intention of legislation cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless, it is necessary to do so to prevent a provision from being unintelligible absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. There cannot be any doubt that the Circulars issued by the Railway Board are statutory in nature. At first blush on the entire issue, it seems balance is in favour of the Applicants but for the strong rebuttal of the Respondents, the matter needs clarification by the author of the RBEs especially when it is trite law that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct. Hence the Respondent No.2 (Secretary, Railway Board, Rail Bhawan, New Delhi, PIN 110 001) is hereby directed to examine whether the order of cancellation of the empanelment under Annexure-A/11 is sustainable in the face of the provision made in the RBEs with reference to the law stated above and pass a reasoned order within a period of 60(sixty) days from the date of

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receipt of copy of this order. In view of the above, it is directed that any selection to fill up the post in question shall be governed by the decision of the Respondent No.2, after the examination as directed above. With the above observation and direction, this OA stands disposed of. There shall be no order as to costs.


(A.K.PATNAIK)
Member (Judicial)


(C.R.MOHAPATRA)
Member (Admn.)