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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO. 368/2005

Date of Order : This is the 31st day of December, 2007.

CORAM :

HON'BLE MR. N.D. RAGHAVAN, VICE CHAIRMAN

HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER

Giri Raj Meena S/o Shri Bajrang Lal Meena, Aged about 39 years, Resident of C/o Shri Kailash Chand Meena, Sadulgunj Mohalla, Near Dhola Maru Hotel, Bikaner, District Bikaner (Rajasthan). Presently, working on the post of Technician Grade - II, under Senior Sectional Engineer (C&W), North Western Railway, Bikaner, District Jodhpur (Raj.).

By Mr. S.K. Malik, Advocate, for applicant.

.....Applicant.

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur (Rajasthan).
2. The Divisional Railway Manager, North Western Railway, Bikaner Division, Bikaner (Rajasthan).
3. The Divisional Personnel Officer, North Western Railway, Bikaner Division, Bikaner (Rajasthan).
4. Sh. Mahindra Lal Sharma Technician Grade - I, C/o Senior Sectional Engineer, (C&W) North Western Railway, Suratgarh District Sri - Ganganagar (Raj).
5. Sh. Anil Ahmed S/o Shri Abdul Sattar, resident of L.N.T. Road, Hedary Masjid Gangashahar, Bikaner, presently working as JE - II Gr. II (C&W), Suratgarh.
6. Sh. Arvind Sharma S/o Shri Madan Lal Sharma, resident of 184, Marudhar Nagar, Nagneji Temple, Bikaner, presently working as JE Gr. II (C&W), Sadulpur.

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7. Sh. Anand Krishan Sharma S/o Shri Hari Kishan Sharma Resident of Mangla Bhawan, Gali No. 1, Rampura Lalgarh, Bikaner, presently working as JE Gr. II (C&W), Sriganganagar.
8. Sh. Hanuman Das S/o Shri Ballu Ram, resident of Jiya Bhawan, Opp. Nathussar Gate, Bikaner, presently working as JE Gr. II (C&W), Sri- Ganganagar.
9. Sh. Jeevan Ram S/o Shri Kana Ram resident of Railway Colony, Sadulpur, presently working as JE Gr. II (C&W), Sadulpur.
10. Sh. Raj. Kumar S/o Shri Bhanwar Lal, resident of Balaji Complex, Near Railway Station, Sriganganagar, presently working as JE Gr.-II (C&W), Sriganganagar.

By Mr. Manoj Bhandari, Advocate, for respondents No. 1 to 3.

By Mr. D.S Soda, Advocate, proxy counsel for

Mr. Kuldeep Mathur, Advocate, for respondent No. 4.

Mr. Nitin Trivedi, Advocate, for respondents No. 5 to 10.

....Respondents.

ORDER

[PER R.R. BHANDARI]



Shri Giriraj Meena, the applicant, preferred OA No. 368/2005 under Section 19 of the Administrative Tribunals Act, 1985 mainly on the following reliefs :

“(a) By an appropriate order, writ or directions, impugned order dated 23 Dec. 2005 (Annexure A/1), passed by Respondent No.3, be declared illegal and be quashed and set-aside by this Hon’ble Tribunal as if the same was never passed.

“(b) By an appropriate, writ, order or direction, respondents may be directed to act upon the panel dated 24 March, 2005 (Annexure A/5) and the same may be treated as final for all purposes.

“(c) By an appropriate writ, order or direction, respondents may be directed to promote the applicant on the post of Junior Engineer – II against Intermediate Quota w.e.f. the date the persons

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placed in the panel dated 24 March 2005 (Annexure A/5) are promoted with all consequential benefits."

2. A brief matrix of the case is as follows :-

The respondents vide Annex.A/2 dated 18.7.2003 invited applications for seven posts (all unreserved) for the post of Junior Engineer – II (JE-II) under 25% Intermediate Quota in the pay scale of Rs. 5000-8000 (RP) from Skilled Artisans fulfilling three conditions viz. (i) Educational Qualification – Metric (ii) Three Years service as Skilled Artisan and (iii) Age - less than 45 years.

Promotions to JE-II is through three channels viz. (i) 25% selection through Intermediate Quota and (ii) 25% selection through Promotee Quota and (iii) remaining through other channels.

The applicant applied and appeared for the selections under the 25% Intermediate Quota for the post of JE-II wherein, he qualified in the written examination and was also called for viva voce test. There were ten candidates in all who were interviewed by a Selection Board consisting of Divisional Mechanical Engineer (C&W), Divisional Mechanical Engineer (P) and the Divisional Personnel Officer, Bikaner. The respondents submitted a photo copy of the selection proceedings indicating the marks obtained by each of these ten candidates. All the ten candidates who appeared in the interview were passed by the Selection Board and their marks are tabulated below with the



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name, designation, station, various marks, total and remarks as under :-

S.No.	Name	Desig	Station	A	B	C	D	E	Remarks
1.	Sh. Prem Rattan 'M'	Tech-II	LGH	25.20	13	21	16	75.2	Passed
2.	Sh. Mahenderlal Sharma	Tech-II	SOG	21.35	14	18	14	67.35	Passed
3.	Sh. Jeewan Ram 'K'	Tech-II	LGH	21.00	10	16	14	61.00	Passed
4.	Sh. Anil Ahmed 'A'	Tech-II	LGH	23.80	13	16	16	68.80	Passed
5.	Sh. Raj Kumar 'B'	Tech-II	BKN	22.05	13	19	12	66.05	Passed
6.	Sh. Anand Krishan 'H'	Tech-II	LGH	23.80	12	19	12	66.80	Passed
7.	Sh. Hanuman Dass'	Tech-II	BKN	23.45	13	18	12	66.45	Passed
8.	Sh. Arvind Sharma 'M'	Tech-II	BKN	21.00	12	19	12	64.00	Passed
9.	Sh. Giriraj Meena 'M'	Tech-II	BKN	21.70	10	18	12	61.70	Passed
10.	Sh. Rajender Sharma 'R'	Tech-III	BKN	21.70	09	20	11.50	62.20	Passed



(A) Written Test - Maximum Marks = 35

(B) Viva Voce - Maximum Marks = 15

(C) Personality, Address, Leadership, Academic, Tech.

Qualification = Maximum Marks = 30

(D) Record of Service = Maximum Marks = 20

(E) Total Marks

The selection committee vide their noting dated 19.3.2004, mentioned as below :-

..... The marks obtained by each candidate are tabulated at S.No. 49. As a result of marks obtained in entire selection proceeding all 10 employees have secured 60% and more marks in the professional ability as well as on aggregate but there are 7 vacancies for general candidate therefore the following 7 employee except item no. 1 & 2 S/Sh. Prem Ratan & Mahendra Lal because they are also

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selected on the panel of J.E.-II (C&W) PQ quota grade 5000-8000 (RP) so that remaining seven in order of seniority are found eligible for the post of J.E.-II (C&W) against intermediate quota grade Rs. 5000-8000 (RP) as per instruction contained in PS 11712.

1. Sh. Jeewan Ram 'K' Tech.-II/LGH
2. Sh. Anil Ahamed 'A' Tech.-II/LGH
3. Sh. Raj Kumar 'B' Tech.-II/BKN
4. Sh. Anand Krishan 'H' Tech.-II/LGH
5. Sh. Hanuman Dass 'B' Tech.-II/BKN
6. Sh. Arvind Sharma 'M' Tech.-II/BKN
7. Sh. Giriraj Meena 'M' Tech.-II/BKN

As per D&AR/SPE/Vig. Clearance placed at S.No. 48 there is no D&AR/SPE/Vig case for major penalty pending against these above named employee. Therefore ADRM is requested to kindly accord his approval for above recommendation and empanelment of above 7 employee on the provisional panel of J.E.-II (C&W) grade Rs. 5000-8000 (RP) against intermediate apprentice quota.

The panel shall be provisional subject to final come of court cases pending in various courts on reservation issue, and any other unforeseen circumstances as the case may be.

Submitted please."



3. Respondents also issued a provisional panel as per the above noting vide their order dated 24.3.2004 at Annex. A/5.
4. Simultaneously, respondents also issued a panel for 25% promotee quota kept at Annex.A/6, in which the name of Shri Prem Ratan Meena as well as Shri Mahendra Lal Sharma appeared at Sl. Nos. 6 and 7. From this, it can be seen that out of ten candidates called and found suitable for 25% Intermediate

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Quota, the first two got their names appearing in the panel of promotee quota while Sl. Nos. 3 to 9 including the applicant Shri Giriraj Meena, appeared in the panel of intermediate quota.

5. Subsequent to this, it is noted that one Shri Shyam Babu, challenged the panel of promotee quota before this very Bench by impleading Shri Mahendra Lal Sharma (respondent No. 4) in this O.A. Shri Sharma, was selected for Intermediate quota as well as in the promotee quota. Since Shri Shyam Babu claimed seniority above Shri Mahendra Lal Sharma, the respondents examined the matter de novo and revised the panel. Shri Sharma's (respondent No. 4) name was deleted from the panel of promotee quota vide order dated 18.01.2005 (Annex.A/7). As Shri Mahendra Lal Sharma, was also selected in the intermediate quota, his name was interpolated in the Intermediate quota panel by issuing a revised panel kept at Annex. A/1. This is also the impugned order dated 23.12.2005 in this O.A.

6. The applicant made a representation against this order vide his application at Annex.A/9. He also approached this Bench and the matter was heard on 30.12.2005, wherein, this Tribunal stayed the operation of the impugned order dated 23.12.2005. After issue of the panel on 23.12.2005, the respondents also issued transfer/promotion orders vide order No. T-3/941 E dated 30-12-2005 kept at MA/1 in M.A. no. 91/2006 for intermediate quota. It appears that this order was issued on the same date on which the Tribunal issued orders for stay and, therefore, it could



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be that it was a simultaneous issue of the two orders.

Subsequent to this, respondents vide their order dated 7.8.2006 (kept at Annex. MA/2 in MA No. 91/2006), issued orders that in compliance of this Tribunal's order dated 30.12.2005, the revised panel of J.E.-II (C&W) Grade Rs. 5000-8000 (intermediate quota) shall remain unoperated and promotion orders issued vide their Office Order dated 30.12.2005 shall also remain unoperated, till further orders.

The order of 7.8.2006 meant reversion for other six persons of Intermediate quota promoted vide Annex. MA/1 (Annex. To MA No. 91/2006) dated 30.12.2005. They filed an M.A. No. 91/2006 in O.A. No. 368/2005 and requested for modification of the interim order dated 30.12.2005 passed by this Tribunal. They also made Shri Mahendra Lal Sharma as one of the respondents in the said M.A. This M.A. was disposed of by a Division Bench of this Tribunal on 14.9.2006 by giving a detailed order which is reproduced below :-



"We find that interim relief was granted by taking into consideration that some grave irregularity has been committed by issuance of the impugned order by adding the name of the private respondent No. 4 without indicating any reason despite the fact that in the earlier panel, later's name was not there. It is clarified that while passing the said interim order, it was never intended that the respondents are required to react in such a manner. The natural corollary that when the order Annex.A/1 has been stayed, the earlier panel dated 24.3.2004 (Annex.A/5) would be operative/revived and the position was required to be accordingly maintained/regulated. The orders is accordingly clarified and the respondents may reconcile the matter accordingly. The M.A. stands disposed of."

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7. The official respondents filed a D.B. (Civil) Writ Petition No. 6228/2006 in the High Court against the order of this Bench. The Hon'ble High Court passed interim orders dated 6.11.2006 as below :-

"Issue notice. Service on respondent no.1 whom service is dispensed with while Shri Kuldeep Mathur accepts notice on behalf of respondent no.3. Requisites for service be filed within one week for the remaining respondents. In order to expedite disposal of the writ petition, liberty is given to the petitioners to service notice 'dasti', in addition to usual mode of service.

Also issue notice in the stay matter.

Till further orders and subject to objections which may be filed by the respondents, order of the Tribunal dated 14.9.2006 in M.A. no. 91/2006 (in OA No. 368/2005) shall remain stayed. Further, implementation of the panel dated 23.12.2005 shall be subject to result of the original application.

Pendency of this case will not stand in way of disposal of the Original Application by the Tribunal."



The stay was made absolute by way of another order of Hon'ble High Court dated 28.3.2007.

8. It, thus, meant that the Tribunal's order dated 14.9.2006 in M.A. No. 91/2006 remained stayed and the implementation of the panel dated 23.12.2005 would be subject to the result of the O.A.

9. The matter was argued at length by the counsels of the applicant and the respondents. The respondents submitted photo copies of the entire selection proceedings including the noting of

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the various officers which have been taken on record. It was quite clear that in the selection list of intermediate quota, name of Shri Giriraj Meena featured at Sl. No. 9. The I.R.E.M., Vol. I, Para 219, gives procedure to be adopted by the selection board. Attention was drawn to Para 219 (j) of the Manual, which is reproduced below :

"The names of selected candidates should be arranged in order of seniority but those securing a total of more than 80% marks will be classed as outstanding and placed in the panel appropriately in order of their seniority allowing them to supersede not more than 50% of total field of eligibility".

10. By application of the above referred Para, it is quite clear that none of the ten selected candidates could supersede anyone. Since all the candidates have secured more than 60% marks, the panel is to be prepared based on their seniority. The provisional panel issued by the respondents vide Annex. A/5 dated 24.3.2004 followed this rule. Shri Giriraj Meena's (applicant's) name appeared at Sl. No. 7 in the list though, he was at 9th place amongst the candidates called and passed in the interview. His name appeared on this panel because the first two candidates viz., Shri Prem Ratan and Shri Mahendra Lal Sharma, got their names in another panel meant for promotee quota (kept at Annex.A/6). Later, because of some other representations, Shri Mahendra Lal Sharma's name was deleted from the promotee quota panel and a revised panel was issued now kept at Annex. A/1. We find no infirmity in the impugned



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order as it is as per Para 219 of the I.R.E.M. We have also gone through all the documents and records submitted by the applicants as well as the respondents and the documents produced later by the respondents now taken on record. The impugned order was issued to empanel Shri Mahendra Lal Sharma in the Intermediate Quota deleting his name from the promotee quota and, therefore, corrections were made. However, this meant deletion of the name of the applicant and thus a reason for the O.A.

11. The learned counsel for the applicant cited the following cases in support of his arguments :-

1996 Vol. 8 SCC 266

M. Ramjayram Vs. G.M., S.C.Railway and others.

ATJ 2004 ATD 361

Decided on 24.3.2004 **Bharat Lal and Ors. Vs. UOI & Others** by CAT, Jodhpur Bench.

2000 SCC (L&S) 317

AMS Shushant and Others Vs. M. Sujata and Ors.

1998 SCC (L&S) 1124

K. Vijay Laxmi Vs. UOI & Others.

12. The learned counsel for applicant strongly averred that the applicant should have been given a chance before his name

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was taken out from the panel. He has also mentioned that applicant was trained and thus, after training respondents' cannot remove his name from the panel as it would be against the principles of natural justice. Further, the learned counsel mentioned that respondents' action were arbitrary and that the private respondent No. 4 was favoured by the action of the respondents.

13. In their averments, the learned counsel for the respondents mentioned that the respondents made a mistake and the same was rectified by deleting the name of Shri Mahendra Lal Sharma from the panel of promotee quota kept at Annex. A/6 and interpolating his name in the panel of intermediate quota by issuing the impugned order at Annex. A/1. This was all done in good faith. The learned counsel for respondents cited the following cases in support of his contention(s) :-

N. Mohanan vs. State of Kerala and ors. [AIR 1997 SC 1896]

14. We have gone through the various cases pointed out by the learned counsels of both the parties. A brief discussion of these cases and their relevance to this particular OA follows :

1996 (8) SCC 266 - **M. Ramjayaram Vs. G.M., S.C.**

Railway and others and ATD 2004 ATD 361- Bharat Lal and Ors. Vs. UOI & Others, deal with selection and



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specifically bring out the marks given for seniority. We have also gone through the selection papers. The I.R.E.M., Volume - I, in its Para 219 (g) allotted maximum marks of 15 for seniority. This was later modified and at present no marks are allotted for seniority. After going through the records of this selection and the detailed marks quoted in earlier para, it is observed that in this selection, no marks have been allotted for seniority and, therefore, no irregularity has been committed.

2000 SCC (L&S) 317-**A M S Shushant and Others Vs.**

M. Sujata and Ors. and -1998 SCC (L&S) 1124 -**K. Vijay**

Laxmi Vs. UOI & Others; these two cases are for giving an opportunity to the affected party and for showing the relevant documents to the concerned party before their names are deleted from the panel / selection list. We have gone through the selection procedure and as averred by the respondents, it is quite clear that Shri Giri Raj Meena's name appeared in the provisional panel correctly. However, due to inclusion of a person senior to him in the panel, his name got deleted. Since the panel was provisional, we feel that correction of the panel was in order. As far as the documents relating to the selection process, we have gone through them and are of the opinion that the mistake in framing out the panel for Intermediate Quota was not



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intentional and as soon as it came to the notice of the respondents, it was corrected. There was no mala fide in the respondents action.

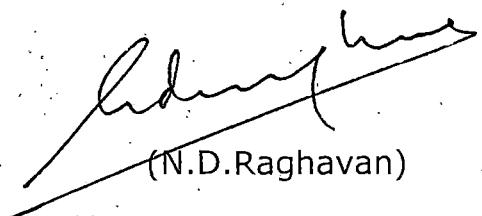
We have also gone through the AIR 1997 SC (L&S) 1896 -

N. Mohanan Vs. State of Kerala and Ors. referred by the learned counsel for respondents and here, the Apex Court had confirmed the High Court's judgement in a case where services of a temporary employee was terminated on the availability of a candidate recruited through service commission. In this O.A., the name of the applicant was deleted when a senior person became eligible/empanelled.

15. In view of the above discussion, we find that the impugned order is as per the relevant rules. The O.A. is thus dismissed. No orders as to costs.


(R.R.Bhandari)

Admvt Member


(N.D.Raghavan)

Vice Chairman

jrm

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Reiy case
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S.K. Mallick
4/11/08 Adm

R/C
Reiy case
10/11/08

Per - K. Meethan
Adm.

~~R/C~~
~~for S. M. T. (NISAR)~~
~~08/11/08~~