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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.**

Original Application No. 57/2006

Date of order: 15/11/2006

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER

Jagmohan Mittal S/o Suraj Bhan Mittal, age about 41 yrs., at present working as Junior Engineer-I, Diesel Shed, Bhagat Ki Kothi, Northern Western Railways, Jodhpur. R/o 1-A, 29 Kudi Bhagtasani Housing Board, Jodhpur.

....Applicant.

Mr. Girish Joshi, counsel for the applicant.

VERSUS

1. Union of India through - The General Manager, Northern-Western Railway, GM Office, NWR, Jaipur.
2. Divisional Railway Manager, Northern-Western Railway, DRM Office, Jodhpur.
3. Senior Divisional Personnel Officer, Northern-Western Railway, DRM Office, Jodhpur.
4. Assistant Personnel Officer, Northern-Western Railways, DRM Office, Jodhpur.
5. Kuldeep Kumar Dogra, JE-I / Diesel Mechanic in Diesel Shed, Bhagat Ki Kothi, Northern - Western Railway, Jodhpur, R/o 4111, Railway Colony, Bhagat Ki Kothi, Jodhpur.

.....Respondents.

Mr. Salil Trivedi: Counsel for the respondents No. 1 to 4.
None is present on behalf of the respondent No. 5.

ORDER

(By Mr. R.R. Bhandari, Admy. Member)

In this Original Application, the applicant has prayed for quashing and setting aside the orders passed by the North Western Railway, dated 07.03.2006 and 10.03.2006, Annexure A/4 and A/5, respectively. These orders refer to an interim panel for Section Engineer in grade 6500-10500, wherein Shri Kuldeep Kumar Dogra has been placed on panel and shown as 'Outstanding'. The counsel for the applicant argued that an 'Outstanding' person securing above 80% marks in the selection can only supercede less than 50% of his seniors

from the list of eligible candidates called for the selection. The learned counsel cited Railway Boards Instructions (Annexure A/8), reproduced below: -

"Copy of Railway Board's letter No. E (NG) I-79/PM1/275 dt. 11.10.79.

Sub:- Formation of panels - Order of placement of candidates on the panel.

It has been brought to the notice of the Ministry of Railways that a uniform procedure is not being followed on the Indian Railways for placing the candidates on the panel after selections held for general posts which are filled outside the normal channels of promotion in accordance with Rule 216 (g) of IREM. On some Railways the names are being placed accordingly to the merit order of the candidates while on others the selected candidates are placed in order of their seniority.

The Ministry of Railways wish to clarify that as provided in Rule 216 (g) of IREM in all such selections, the names of the selected candidates should be arranged in order of seniority but those securing 80% or more marks will be classified as "Outstanding" and placed at the top in the order of their inter-se-seniority. However, the candidates classified as outstanding should not be allowed to supersede more than 50 per cent of the total filled of eligibility as laid down in Board's letter No. E (NG) I-76/PM 1/142 dt. 25-7-79."


[perhaps erroneously mentioned in the Board's letter, it should be 'field of eligibility' instead of filled of eligibility].

The methodology of application of these instructions were elaborated in Railway Board's subsequent letter no. E(NG)I-76 PM1/142 dated 27.10.79 kept at Annex. A/9.

2. Learned counsel for the respondents argued that the seniority list has been prepared as per the Railway Board's Circulars mentioned above and kept at Annexure A/8 and A/9. This argument has also been covered in their written reply to the Original Application in para 10.

3. Annexure A/1 is the letter of DRM/NWR, dated 16/12/2005. For 4 posts (3 unreserved and 1SC) of Section Engineer (6500-10,500), 12 persons were called for the selection. The names are in the following order:-



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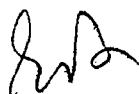
1. Sh. Dwarka Prasad (SC)
2. Sh. Giriraj Bihari Mathur
3. Sh. Magan Raj Mathur
4. Sh. Jagmohan Mittal
5. Sh. Bhanwar Lal Chodhary
6. Sh. Pramod Rai
7. Sh. Ram Charan Singh
8. Sh. Kuldeep Kumar Dogra
9. Shri Vivek (SC)
10. Sh. Ratan Singh
11. Sh. Jai Singh
12. Sh. Gulab Chand (SC)

It would be noted that Shri Kuldeep Kumar Dogra is at position No. 8, thus there are 7 persons above him. If he is considered as 'Outstanding', as per Railway Board's letter cited above, he cannot be allowed to supersede more than 50 percent of the persons above him as in the total field of eligibility. Since there are 7 persons above him, he can supersede to a maximum extent of 3 positions. His position can improve to position no. 5 from position no. 8. And this is the maximum extent.

From the above, Shri Jagmohan Mittal will remain above Shri Kuldeep Kumar Dogra, provided Shri Jagmohan Mittal is also found suitable in the selection.

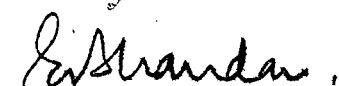
4. We are unable to countenance the defence version of the respondents as set out in para 10 of their written reply which appears to be erroneous and improbable. In the Railway Board's letter quoted by them, the person appearing at the 24th position, was declared 'Outstanding' and was assigned 13th position (and not 11th as mentioned by the respondent) and he was not placed on the panel of selected candidates. When questioned, the learned counsel for respondents could not give any satisfactory answer.

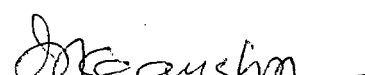
5. Shri Jagmohan Mittal was found suitable in written test as per DRM/NWR/Jodhpur's letter of 3/2/2006 and was to be checked only for



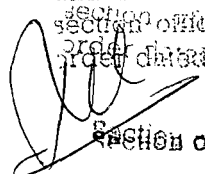
paper screening. At no stage the respondents mentioned that the applicant did not qualify in the paper screening/final selection; rather during hearing it came to light that there was no dispute on this point and the applicant was not empanelled only because of wrong marching of the said outstanding candidate. If that be so, had the name private respondents not been interpolated at Sl. No. 3, the name of applicant would have been there at his place. Therefore, the impugned orders dated 7.3.2006 (A/4) and 10.3.2006 (A/5), can not be sustained in the eye of law.

6. In view of what has been said and discussed above, we find ample force in this Original Application and the same merits acceptance. The same stands allowed accordingly. The impugned order dated 7.3.2006 (A/4) and 10.3.2006 (A/5) are hereby quashed to the extent they relate to insertion of name of respondent No. 5 and direct the official respondents to substitute the name of the applicant vice him in both the said orders. The applicant shall be entitled to all consequential benefits. This order shall be complied within a period of two months from the date of receipt of a copy of the same. No costs.


(R R Bhandari)
Admv. Member


(J K Kaushik)
Judl. Member

Kumawat

Part II and III destroyed
in my presence on 11/4/14
under the supervision of
section officer (A) as per
order dated 31/10/14

Section officer (Record)

R.C.
front/solid fixed
Punit
16/11/06

R/C
जगमोहन मिश्र