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

ORIGINAL APPLICATION NO.183/2006

Date of Order:25.08.2010

**HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER
HON'BLE Mr. V.K. KAPOOR, ADMINISTRATIVE MEMBER**

Balbeer Singh S/o late Shri Jagan Ram Singh, by caste Balmiki, aged about 44 years, R/o Ward No.37, Gandhi Nagar, Near Indian Oil Depot, Hanuman Garh Junction. At present working on the post of Technician Gr.I, in the Carriage and Wagon Department, North Western Railway, Hanuman Garh.

....Applicant

Mr. Nitin Trivedi, counsel for applicant.

VERSUS



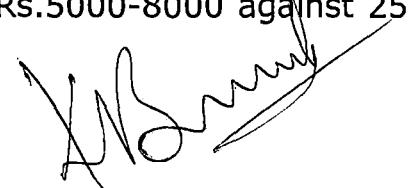
1. Union of India, through General Manager, Head quarter Building, North Western Railway, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Bikaner.
3. Divisional Personal Officer, North Western Railway, Bikaner.
4. Assistant Personal Officer, North Western Railway, Bikaner.
5. Shri Prem Ratan, at present working as J.En.II Lal Garh Railway Station, Carriage & Wagon Department, North Western Railway, Bikaner.
6. Shri Raghuveer Singh, at present working as J.En.II Suratgarh Railway Station, Carriage & Wagon Department, North Western Railway, Suratgarh.

.....Respondents

Mr. Vinay Jain, Counsel for respondents.

**ORDER (ORAL)
(Per Hon'ble Dr. K.B. Suresh, Judicial Member)**

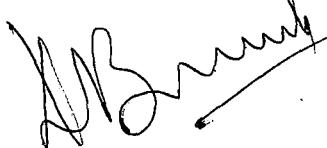
The applicant has come before us for redressal of the grievance that he applied in pursuance of the advertisement dated 14th July, 2003 for the purpose of selection to the post of Junior Engineer Gr.II in Carriage and Wagon Department in the pay scale of Rs.5000-8000 against 25% promotional quota and he came out



successful in the written test as per result declared vide order dated 17th February, 2004. His name figures at Sl. No. 8 for the purpose of appearing for the interview which was to be held later on. But when the list of selected candidates was published on 24.3.2004, the applicant's name was not there. Applicant had come to this Court with this grievance.

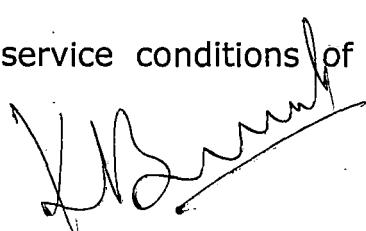
2. The respondent would say that the selection to the post of Junior Engineer II is made on the basis of overall marks i.e. written test, viva voce, seniority etc. and infact the selection are made on the basis of marks obtained in all these spheres and not on the basis of written test or seniority alone.

3. The applicant would rely on amended para 215 of the Indian Railway Establishment Manual Vol.I (1989 Edition) which would state that selection post shall be filled by a positive act of selection made by Selection Boards, from amongst the staff eligible for selection. The positive act of selection shall consist of only written test to assess the professional ability of the candidates, for which reasonably advance notice should be given. The respondents would claim that the applicant would come under the pre-amended para 215 and hence, the applicant case was not considered in the light of the amended sub clause (a) of the para 215 IREM which was issued on 07.08.2003, therefore, the respondents would contend that the position as existing prior to the amendment has to be taken into account to determine the rights available to the parties. But the applicant would canvass the view that the matter related to qualificatory bench mark which is available for selection



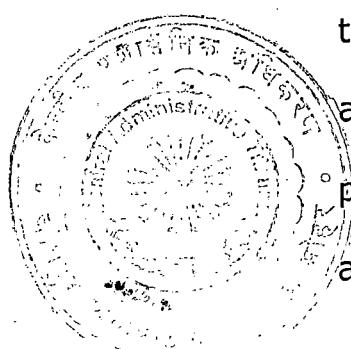
process which of course has been discussed at various levels in official hierarchy long before this order was issued. On the other hand, the applicant would also contend that change in amendment in para 215 of IREM cannot be put against the applicant by the concerning authority by saying that notification for filling up the post has issued a few days prior to that. He would say that on the basis of notification written test was conducted on 11.01.2004 i.e. almost one year after IREM was amended. The Selection took place on 24.03.2004 and the respondents would even thus say that the applicant was governed by the unamended para 215 of IREM. Even though, the notification perse will not take away the right of the applicant even if it was issued a few days prior. It is also true that the railway has a right to change the qualificatory bench mark or cancel the notification itself. Therefore the intention for the amendment has to be taken into account and especially since it is the direct result of many Apex Court Judgments on the issue.

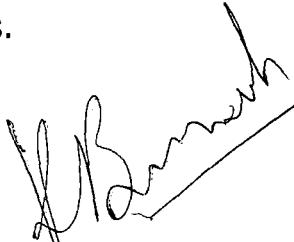
4. The learned counsel for the respondents invited our attention to a ruling of the Hon'ble Apex Court in the case of K.A. Nagamani vs. Indian Airlines & Ors. reported in (2009) 5 SCC 515, inter alia, it states that parties participation in selection process without any demur or protest cannot be permitted later on to question the process relying on Section 115 of Evidence Act, 1872. Relying the on the above decision, the learned counsel for the respondents submitted that the applicant is estopped from questioning the selection. But we are of the view that the rule of estoppel cannot be made applicable in the instant case. The IREM regulates the service conditions of an employee. If the Railways issued



relaxation on cogent grounds, then they can also issue the methodology of selection to written test also. A written test was a better qualificatory bench mark ^a then viva voce and on this ground we do not accept the view of the respondents. Once the Railway Board has decided on a particular modality, the spirit of such chance should permeate the entire process.

5. We are inclined to agree with the applicant. Therefore, in consequence the applicant is entitled to promotion which he has claimed. The respondents are directed to reconsider the case of the applicant in the light of amended para 215 of IREM and pass an appropriate order. The respondents are also directed to inform the persons aggrieved by this changed position. OA is allowed as above to the limited extent. No order as to costs.


Kapoor
(V.K. KAPOOR)
Administrative Member


(Dr. K.B. SURESH)
Judicial Member

/Rss/

दिनांक ३/२/१८ के अनुसार
प्रैरी ब्यूरो ११/११/६
को १००-११ रुपये रुपये ।

क्रमांक ३/२/१८
कोन्फ्रिन्ड प्रैरी ब्यूरो के अनुसार
होम्युर न्यायालय, चौथापुर