

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

O.A.No.120/11 & MA 02/12

OA No. 121/11 & MA No. 05/12

OA No. 122/11 & MA No. 07/2012

Jodhpur, this the 30th April, 2013.

[Reserved on 17.04.2013]

CORAM:

Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J)

Hon'ble Ms. Meenakshi Hooja, Member (A)

Tagat Singh Chauhan S/o Late Shri Hem Singh Chauhan, aged about 56 years, Tartoli, Abu Road, at present employed on the post of Technician-I (Ancillary Group) in Dieselshed, Abu Road, NWR.

..Applicant in OA No. 120/2011.

1. Kishan Gopal Jha S/o Shri Shyam Sundar Jha aged about 58 years, R/o Plot No. 99, Shyam Niwas, Dieselshed Road, Gandhinagar, Abu Road, at present employed on the post of Tech.-I Diesel Mech. in Dieselshed at Abu Road, NWR.
2. Deva Ram S/o Shri Lakhmaji aged about 58 years, R/o Santpur, Abu Road at present employed on the post of Tech.-I, Diesel Mech. in Dieselshed at Abu Road, NWR.
3. Laxman Lal S/o Shri Vardhaji aged about 54 years, R/o Behind Gandhinagar Post Office, Abu Road, at present employed on the post of Tech.-I Diesel Mech. In Diesel Shed at Abu Road, NWR.
4. Om Prakash S/o Shri Khem Chand aged about 56 years, R/o Luniyapura, Abu Road, at present employed on the post of Tech.I Diesel Mech. in Diesel Shed at Abu Road, NWR.

..Applicants in OA No. 121/2011.

1. Chhagan Lal Meena S/o Shri Vardhaji aged about 57 years R/o Juni Kharari Sadar Bazar, Abu Road at present employed on the post of Tech.-I D/Elect. In Diesel Shed at Abu Road, NWR.
2. Prem Chand Patharia S/o Shri Johri Lal aged about 55 years, R/o Plot No. 19, Gandhinagar, Abu Road at present employed on the post of Tech.-I D/Elect. in Diesel Shed at Abu Road, NWR.

..Applicants in OA No. 122/2011.

(Through Adv. J.K. Mishra)

Versus

1. Union of India through General Manager, North Western Railway, Headquarters Jaipur Zone, Chainpura, Jagatpura, Jaipur, Rajasthan.
2. The Chairman, Railway Board, Rail Bhawan, New Delhi.

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3. Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer.

4. Senior Divisional Mechanical Engineer (Diesel), North Western Railway, Abu Road. Respondents.

(Through Adv. Mr. Salil Trivedi)

**ORDER
[K.C.JOSHI, JUDICIAL MEMBER]**

All the three applications contain similar controversy to be adjudicated by this Tribunal, and as the facts and the relief prayed for by the applicants is also common in nature, therefore, all the three applications are being disposed of by this common order. The applicants have prayed in the respective OAs that the Railway Board's Circular No. 31/2005 of 22.02.2005 be declared as unconstitutional so far as it is inconsistent to the provisions of Para 215 of IREM Vol. I and the same may be struck down to that extent and promotions be accorded to the applicants on the basis of the panel issued by the respondents, along with all consequential benefits.



OA NO. 120/2011

2. The applicant Tagat Singh Chauhan was initially appointed to the post of Khalasi in Diesel Shed at Abu Road on 14.04.1981. He earned his promotions and is holding the post of Technician Grade (Diesel/Ancillary) in the pay scale of Rs. 5200-20200 with Grade Pay of Rs. 2800/- The post of JE-II (Ancillary Group 'B') is filled in the ratio of 50:25:25 i.e. by direct recruitment, Direct appointment Ranker and by promotion from Rankers respectively and as per rules envisaged under Para 215 of Indian Railway Establishment Manual Vol.I. The

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respondents issued a Notification on 27.03.2008 for filling up one unreserved post of J.E. (Ancillary Group) against 25% ranker promotee quota vacancies. It is pleaded that six persons holding the feeder post of Technician-I and Sr. Technician were called for selection test. There was also a waiting list of one candidate only since no other candidate was available. One Shri Lal Ram Pragya who was Technician – I (Diesel) [Ancillary Group 'B'] was declared passed in the same and was accordingly promoted as JE-II 'D' (Ancillary Group 'B') vide Annex.A/5 dated 17.11.2008. Further the respondent No. 3 issued another Notification vide letter dated 16.11.2010 for filling one general vacancy of JE-II (Diesel Ancillary Group 'B') against 25% ranker promotee quota. Thereupon three Technicians Grade-I (Diesel Ancillary Group 'B') were called to undertake the selection tests and two persons were kept in the waiting list. Applicant of this OA was at placed Sl.No. 3 in A list. It is further averred that no one holding the feeder post of Sr. Technician in Diesel Ancillary Group 'B' were available for promotion under the quota. The applicant along with three others appeared in the tests and passed the same and the name of applicant appears in the selection panel dated 01.02.2011 (Annex.A/7).

3. Thereafter, instead of getting a promotion order for which the applicant was hopeful, a notice dated 15.04.2011 for making representation against the proposed cancellation of selection panel was issued. A selection panel was also prepared for filling up the post of JE-II (Diesel/Elect) and (Diesel/Maint) and the selected candidates therein have also been issued similar cyclostyled notices. The said selection



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was said to be against the provisions of Railway Board Circular dated 22.02.2005 and the Technicians Grade-I have been said to be as not eligible for the selection test, and promotion. The applicant filed his representation on 19.04.2011 vide Annex.A/8 but to no avail.

4. The learned counsel for the applicant argued that the Circular dated 22.02.2005 of the Railway Board RBE No. 31/2005 was never given effect to, at least at Abu Road and the selections were held for JE-II in pay scale of Rs. 5000-8000 only against the 25% ranker promotee quota vacancies in D/Ancillary Groups as well as in the Mechanical and Electrical groups. That promotions were required to be made from a feeder grade to the next higher grade as per Para 215 of IREM-I but, the aforesaid Circular of 22.02.2005 envisages that persons holding the post of Senior Technician in pay scale of Rs. 5000-8000 only will be the eligible for consideration of promotion to the post of JE -II which is in same grade. It was submitted that there is an ambiguity and the Circular is inconsistent to the main provisions envisaged in Para 215 of the IREM Vol.I. It was contended that normally failed candidates approach this Tribunal but, in the instant case, despite passing the selection test applicant is being compelled to knock the doors of this Court. The applicant would have expected some favourable decision on his representation but the respondent No. 3 informed that the selection panel is going to be cancelled as the relevant Circular of the Railway Board has not been followed. The applicant is being deprived of his due promotion due to some



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extraneous reasons and therefore, he has approached the Tribunal
praying for the following reliefs:

- (i) *"That impugned circular RBE No. 31/2005 dt. 22.2.2005, (Annexure A-1) issued by the 2nd respondent, may be declared as unconstitutional so far it is inconsistent to the provisions of Para 215 of IREM-I and the same may be struck down to that extent.*
- (ii) *That the respondents may be directed to accord promotion to the post of JE-II (Diesel/Elect) to the applicant on the basis of select panel dated 1.2.2011 (A/7) and applicant allowed with all consequential benefits. The impugned notice dated 15.4.2011 (Annexure A/2) and any consequential adverse order, if passed, on his representation i.e. cancelling the select panel dated 1.2.2011, may also be quashed.*
- (ii) *That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.*
- (iii) *That the costs of this application may be awarded."*

OA NO. 121/2011

5. The applicants have challenged the inaction of the respondents on the same facts and law, therefore, all the applicants are allowed to join in one O.A. Applicants of this O.A. (Kishan Gopal Jha and four Ors.) had joined the Railways during 1979 and 1981 and lastly promoted as Technician Grade-I (D/Mech) and are presently working at Abu Road under the North Western Railway.

6. The respondent No. 3 issued a letter Annex.A/4 dated 21.07.2007 for filling 7 vacancies of JE (D/Mech) against 25% ranker promotee quota vacancies. 27 persons in the feeder category of Technicians /Sr. Technicians were called to undertake the selection test. There was a waiting list of 18 candidates also. The post of Senior Technician incidentally carries the same scale of pay of Rs. 5000-8000 but it is considered as the feeder post for promotion to the post of JE-II. 7 candidates passed the test and were empanelled as well as promoted



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 vide letter dated 12.12.2007 at Annex.A/5. The 3rd respondent issued an another Notification for filling up 7 vacancies (1 SC, 2 ST and 4 General) for the post of JE-II (Diesel/Mech) against 25% ranker promotee quota vacancies vide letter dated 27.08.2010. 39 candidates holding the post of Sr. Technician / Technician Grade-I (D/Mech) were called to undertake the selection tests and 26 persons were kept in waiting list. The names of applicants find place at Sl. No. 4 of list B, and 39, 29 and 30 of List A respectively. Some names were removed due to refusal and some were included in their place vide letter dated 12.10.2010 as at Annex.A/7.

7. The applicants appeared in the selection test and did well. They along with two other Sr. Technician Grade-I D/Mech. passed the same and their names have been placed on the select panel at Sl Nos. 6, 5, 3 and 4 issued vide letter dated 27.01.2011. Thus, it appears that only six persons could pass in the selection and had been empanelled against 9 vacancies. That all the selected candidates for the post of JE-II (D/Mech) have been issued notices dated 15.04.2011 for making representation against the proposed cancellation of the selection panel vide Annex.A/2. Applicants submitted their representation. Rest of the contents as mentioned in the OA 120/2011 are the same in this O.A. also.

OA No. 122/2011

8. This application has been moved by two applicants as the cause of action and the relief prayed by them is same, therefore, they have prayed to allow to join in one O.A. Applicant No. 1 was appointed as Artisan Khallasi (Mech) in Diesel Shed at Abu Road on 11.3.76

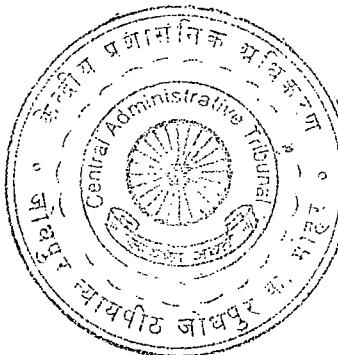


whereas, applicant No. 2 was appointed as Electric Khallasi on 20.2.1979 and they earned their promotion(s) and are presently holding the post of Technician Grade – I (Diesel/Elect.) and posted in Diesel Shed at Abu Road, North Western Railway. It is stated that the general rule for calling the candidates for selection has been envisaged in Para 215 of the IREM Vol.I and staff in the immediate lower grade with a minimum of two years service in that grade will be eligible for promotion, unless a longer length of service in the lower grade has been stipulated as a condition of eligibility for promotion in a particular category. The respondent No. 3 vide letter dated 7/13.8.2008 called for filling up two unreserved posts of JE (D/Elect). Six persons holding the feeder post of Technicians and Senior Technicians were called to undertake the selection test, as per the rules in force. There was also a waiting list for equal number of candidates. The post of Senior Technician incidentally carries a scale of pay of Rs. 5000-8000 but it is considered as the feeder post for promotion to the post of JE-II. However, none could pass the test as per vide letter dated 13.03.2009. Thereafter the same respondent issued Notification vide Annex.A/6 dated 31.08.2010 calling for applications for filling 7 posts (one for SC, two for ST and four for General) in the pay scale of Rs. 9300-34800 Grade Pay 4200/- against 25% ranker promotee quota. 21 candidates holding the post of Sr. Technicians / Technicians Grade-I were called to undertake the selection tests and 10 persons were kept in waiting list. The name of applicant No. 1 was included at Sl. No. 18 of List 'A' and 2nd applicant was placed at Sl. No. 2 of the Waiting list 'B'. Both the applicants appeared in the selection test and passed the same and their



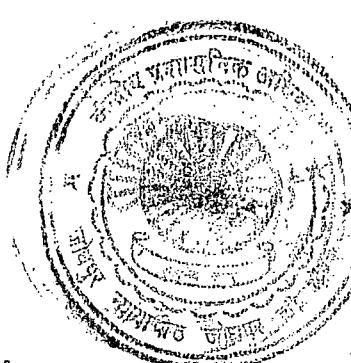
names have been placed at Sl. No. 4 and 5 respectively of the selection panel dated 27.01.2011 vide Annex.A/7. However, only five persons could pass in the selection and be empanelled against 7 vacancies. All the above selected and empanelled persons were issued a cyclostyled notices dated 15.04.2011 for making representation against the proposed cancellation of the selection panel vide Annex.A/2. It is pleaded in the OA that this action of the respondents is against the provisions of the Railway Board Circular of 22.02.2005 whereby the Technicians Grade-I have been said to be ineligible for undertaking the selection test. Thereupon, the applicants have filed their representation vide Annex.A/8. Rest of the facts are of the same nature as has been mentioned in the first OA i.e. OA No. 120/2011. The learned counsel for applicants submitted that once the applicants were allowed to appear in the selection test as per the norms in practice and respondents undertook the selection in view of the Notification and when similarly situated persons in the past were allowed to enjoy their promotions and are continuing to enjoy the same, the respondents are now estopped from changing their stand and applying different standards with the applicants and, therefore, the action of the respondents is ex facie illegal, arbitrary and discriminatory as well. It is further submitted that respondents cannot be permitted to blow hot and cold at the same time and in all, the impugned notice and/or any order thereof, deserves to be quashed by this Tribunal being violative of Articles 14 and 16 of the Constitution.

9. The respondents have filed their reply on similar lines in all the three OAs and stated that in view of the Railway Board's Circular letter



dated 22.02.2005 (Annex.A/1) the applicants were not eligible to appear in the selection of JE Grade-II (Diesel) because they were Technician Grade-I in the pay scale of Rs. 5200-20200 with Grade Pay of Rs. 2800/- whereas, the employees who are Master Craftsman / Mistry and Senior Technician with Grade Pay of Rs. 4200/- are eligible for appearing in the selection test for JE Grade – II (Diesel) by virtue of the provisions contained in Railway Board's Circular dated 22.02.2005. It is contended that the post of Technician Grade-I is not immediate lower grade to the post of JE Grade-II and, therefore, Para 215 of the IREM too is not applicable in the case in hand.

10. The respondents in para 4 of their reply pleaded that Annex.A/4 and A/5 were issued in complete contravention and ignoring the Railway Board's Circular dated 22.02.2005. It was further submitted that the issuance of the Circular dated 22.02.2005 was not in the knowledge of respondent No. 3 and 4 which resulted in issuance of Annexs. A/4 and A./5. The respondents further submitted that the Notification dated 16.11.2010 was also issued wrongly ignoring the Railway Board's Circular dated 22.02.2005. The office order dated 1.2.2011 is not the selection panel as claimed by the applicants but it is the result of the written examination of the selection for JE Grade-II. The respondents have considered the representations and replied that since the selection process undertaken was against the Railway Board's Circular dated 22.02.2005 wherein, Technician Grade-I are not eligible (the post on which admittedly the applicants are working) thus it was decided to cancel the selection process as the same was initiated



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ignoring the aforesaid Railway Board's Circular of February 2005. The Circular of 22.02.2005 is fully effective and applicable in the selection under dispute and ignorance and non-application of such circular does not make the applicants legally eligible. The respondents pleaded emphatically that the post of Technician Grade-I is not a feeder grade for selection of JE Grade-II. The Railway Board Circular of February 2005 on the subject is fully applicable. The respondents contended that the applicants have completely failed to establish as to what is the ambiguity in the Circular simply because the pay of Sr. Technician and JE Grade-II is same as one fails to understand as to how this can be an ambiguity. The promotion can take place in the same pay scale when the nature and duties of the promotional post are quite different to that of the post from which the selection is to take place. The respondents therefore prayed for rejection of the OAs with costs.

11. Applicants have filed a rejoinder with the prayer to take the same on record, and the same is allowed. In the rejoinder the applicants have specifically narrated that the Circular of May 2005 was actually sent to the Ajmer Division only vide Headquarters NWR letter dated 15/03/2011 and it was circulated by the Ajmer Division vide letter dated 30.03.2011. On the other hand, the Notification for organising selection was issued on 31.08.2010, and in this view of the matter, the rule existing on that date would apply and the Circular of 22.05.2005 would have no application at all up to the date of its publication i.e. 30.03.2011. The applicants therefore, prayed for acceptance of the Original Applications with costs.

12. We have heard the learned counsel for both the parties and perused the entire records.

13. In OA Nos. 121 and 122 of 2011, the applicants have prayed to file a joint application. For the reasons stated in the applications, their request is accepted.

14. The counsel for the applicants contended that Annex.A/1 RBE 31/2005 dated 22.02.2005 issued by the Railway Board is inconsistent to the provisions of Rule 215 of the IREM Vol. I, therefore, it is unconstitutional because an administrative order cannot be issued which is inconsistent to the Rules. The administrative orders can supplement the rules but, any inconsistency to the rules make the administrative order illegal and against the provisions of law, therefore, Annex.A/1 requires to be quashed by this Tribunal on this ground itself.

15. Per contra, the counsel for the respondents contended that Para 215 of the IREM Vol. I and the Circular issued by the Railway Board vide RBE No. 31/2005 dated 22.02.2005 (Annex.A/1) cannot be said to be inconsistent as there is no contradiction. The Circular of 22.02.2005 clarifies and lays down the promotion channels to the post of JE-II and Senior Technicians.

16. The counsel for the respondents further contended that a person who is lower in pay scale or equivalent pay scale can be considered for promotion and in support of his argument he has relied upon the judgment of the Hon'ble Apex Court in *Tarsem Singh and another Vs. State of Punjab and Ors.* reported in AIR 1995 SC 384 wherein, in



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 which para No. 9 it has been held that promotion as understood in the service law jurisprudence means advancement in rank, grade or both. Promotion is always a step towards advancement to a higher position, grade or honour and it was held in Para No. 9 that "therefore, only those ministerial employees are eligible for promotion under Rule 8 (1) (a) (i) who are in the pay scale which is equal or lower than the pay scale of the post of Labour Inspector.

17. We have considered the rival contentions of both the parties and also perused Para 215 and the relevant provisions of RBE 31/2005. For the sake of convenience, we are reproducing relevant extracts of Para 215 of IREM Volume – I and the relevant provisions of RBE Circular 31/2005 as under :-

Para 215 IREM Volume – I.

"215. (a) Selection post shall be filled by a positive act of selection made with the help of Selection Boards from amongst the staff eligible for selection. The positive act of selection may consist of a written test and / or viva-voce test; in every case viva-voce being a must. The staff in the immediate lower grade with a minimum of 2 years service in that grade will only be eligible for promotion. The service for this purpose will include service if any, rendered on ad hoc basis followed by regular service without break. The condition of two years service should stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration."

Relevant provision of RBE Circular 31/2005 dated 22.02.2005.

"3. It has now been decided as under :-

i. The post of MCM (redesignated as Sr. Technician) in the scale of pay Rs. 5000-8000 will no longer be personal to Technician Gr. I but will constitute a part of the regular hierarchy in the artisan cadre thereby making it as a normal / functional channel of promotion for Technician Grade I. Accordingly, the Railways should review the existing duties and responsibilities of Sr. Technicians and prescribe additional duties and responsibilities which are of greater importance than those of existing Sr. Technicians (MCMs) and Artisans Gr.I,

ii. The post of Sr. Technician will be filled from amongst Technician Gr.-I on the basis of seniority-cum-suitability,

iii. The post of JE-II earmarked for promotion by selection will be filled from amongst Sr. Technicians in identical grade Rs. 5000-8000 subject to the condition that the existing Technician Grade-I as may be senior to those fitted as Sr. Technician as per procedure in force upto now will also be considered for selection for promotion as JE-II,

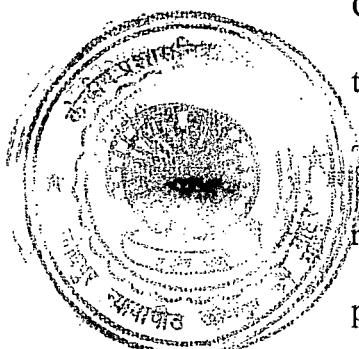


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iv. Sr. Technicians on their promotion as JE-II though in the identical scale of pay may be allowed the benefit of fixation of pay under Rule 1313 FR 22 (I) (a) (I) R-II (erstwhile FR 22C),

v. The work of Sr. Technicians in grade Rs. 5000-8000 will be supervised by JE Grade - I scale Rs. 5500-9000 instead of JE-II scale Rs. 5000-8000.

18. Vide Para No. 3 of the RBE Circular 31/2005, the Railway Board has restructured the entire cadre and further in Clause (v) of Para No. 3 they have ordered that the work of Senior Technicians in the grade Rs. 5000-8000 will be supervised by Junior Engineer Grade-I Scale Rs. 5500-9000 instead of Junior Engineer Grade-II scale of Rs. 5000-8000. A perusal of RBE 31/2005 and Para 215 of the IREM Vol. I, shows that there is no inconsistency in both the provisions and the RBE Circular No. 31/2005 is only restructuring of a post of the Senior Technicians and Technician Grade I and the post of Junior Engineer Grade-II and further the supervisory powers have been conferred upon the Junior Engineer Grade-I having the pay scale of Rs. 5500-9000. The Hon'ble Apex Court in the judgment cited by the counsel for the respondents has held that even the equal pay scales persons can be promoted in the same scale, therefore, Annex.A/1 cannot be said to be inconsistent to the rules. The counsel for the applicants contention and argument that in earlier years the promotions were made while ignoring the RBE No. 31/2005 (and that this fact has also been admitted in the reply of the respondent department) and so the examination under challenge cannot be allowed to be cancelled mainly on the ground that the compliance of RBE Circular No. 31/2005 has not been made during the course of promotion process, lacks merit and cannot be accepted because it is a settled principle of law that illegality cannot be



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allowed to be perpetuated; if earlier examinations have been held while ignoring the RBE Circular No. 31/2005 on the ground that it was not within the knowledge of the department, it is not a valid ground to allow the illegality to perpetuate indefinitely. In our considered view when the examinations were held while ignoring the existing circulars of the Railway Board they can be cancelled by the department and it is further held that the Annex.A/1 cannot be said to be in consistent with Para 215 of the IREM Manual Vol. I . Accordingly, the OA Nos. 120, 121 And 122 of 2011, filed by the applicants lack merit and are dismissed with no orders as to costs. In view of the discussions hereinabove made, the M.As No. 02/2012, 05/2012 and 07/2012 are also dismissed in the light of the judgment of the OAs.



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Before parting with the case, we would however like to add that the Respondent No. 2, i.e. Chairman, Railway Board, may ensure strict compliance of its circulars and orders to avoid such oversights, confusions leading to uncalled for administrative complexities and illegalities.

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(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER CERTIFIED TRUE COPY
Dated 15.5.2013.

Sal
(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

D.R. Shrivastava
द्रष्टव्य विभाग (प्रभ.)
Section Officer (Judi.)
द्रष्टव्य विभाग अधिकारी
Central Administrative Tribunal
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Delhi-110001, India

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