

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
LUCKNOW BENCH,  
LUCKNOW.**

**Original Application No. 324 of 2007**

Reserved on 3.2.2014

Pronounced on 1st February, 2014

*April J. Chandra*

**Hon'ble Ms. Jayati Chandra, Member-A**  
**Hon'ble Mr. M. Nagarajan, Member-J**

Asutosh Pal, aged about 38 years, S/o Sri Bobinda Chandra Pal, R/o B-142/4, RDSO Colony, Post Office Manak Nagar, District Lucknow presently posted on the post of Junior Engineer-I (Design)/MP (VDG)

.....Applicant

By Advocate : Sri A.K. Srivastava

Versus.

1. The Union of India through Director General, Research Designs & Standards Organisation, Lucknow
2. The Secretary, Railway Board, Rail Bhawan, New Delhi.
3. The Joint Director, Administration-III, Research Designs & Standards Organization, Lucknow.
4. Sri Pankaj Saxena, officiating SE (Design)/MP, RDSO, Lucknow, R/o A-29/1 RDSO Colony, Post Office Manak Nagar, Lucknow.
5. Sri N.K. Bhalla, officiating SE (Design)/MP, RDSO, Lucknow, R/o C-67/1, RDSO Colony, Post Office Manak Nagar, Lucknow.

.....Respondents.

By Advocate : Sri N. Nath

**ORDER**

**Per Ms. Jayati Chandra, Member (A)**

The applicant has filed this Original Application under Section 19 of Administrative Tribunals Act, 1985 seeking the following relief(s):-

- (i) *an order or direction setting aside the order impugned dated 20.11.2006 passed by the Opposite party no.3 and order dated 3.5.2007 passed by the Opposite party no.1 rejecting the representation dated 6.10.2006 as well as appeal/review dated 28.12.2006 which are contained as Annexure nos. 1 & 2 to this Original Application.*
- (ii) *An order or direction directing the Opposite parties to reconsider the case of the applicant being Outstanding candidates in view of the provisions define in the Railway Board's letter No. E(NG)1-76/PMI/142 dated*

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*27/30.10.1979 which is still applicable as well as taking into consideration the provisions of para 11.5.2 of Guidelines no. (E)1/98/PMI/17 dated 20.10.99 which was formulated for eligibility for empanelment as provided in para 219 of the IREM which is amended from time to time and also considered the case of application for promotion to the post of Section Engineer (Design)/M.P. with all consequential benefit from the date 23.9.2006.*

(iii) .....

2. The facts, as disclosed in the O.A., are that the applicant was initially appointed to the post of JDA/JE-II (D) in the pay scale of Rs. 5000-8000/- since 10.4.1997. A notification was issued on 22.11.2005 for filling up the post of Section Engineer (Design)/M.P. in the pay scale of Rs. 6500-10500/- through departmental selection. The numbers of posts available were five for General candidates and one for Scheduled Caste. As per notice pasted on the Notice Board on 12.6.2006 (Annexure-3), 15 persons (being three times of the declared vacancy) were shown as being eligible to participate in the departmental selection. The name of the applicant was at sl. No. 13. The written test was held on 22.6.2006. The result of the selection was declared on 23.8.2006 (Annexure-4) in which following officers were declared as successful (i) Sri N.K. Bhalla; (ii) Sri Pawanjeet Singh; (iii) Sri Kailash Chander; (iv) Sri Pankaj Saxena; and (v) Sri Ram Kumar etc. The applicant was aggrieved by the result as he had got 82% in the written test and was eligible for being considered under the provisions available in the IREM Manual 219(J) read with Railway Board's order dated 28.5.1972. The said O.M. provides the following :-

*"The names of selected candidates should be arranged in order of seniority, but those <sup>Section 219</sup> security 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."*

3. The applicant has placed reliance on Board's letter No. E(NG)1-76/PMI/142 dated 27/30.10.1979 regarding the placement of persons who are given the benefit of their outstanding result on the basis of IREM Para 219 (J). This letter provides a model for fixation of placement of such persons. The

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applicant based on the model calculations should be placed at sl. No.5 below Sri Ram Singh who would be placed at sl. No.4 in place of Sri Pankaj Saxena who would be <sup>superseded by</sup> ~~suspended~~ by both Ram Singh and applicant.

4. The applicant had given his representation to the Director General, RDSO being respondent no. 3 by his representation dated 6.10.2006 (Annexure no.6) quoting of the relevant orders governing the issue. However, his representation was rejected by the impugned order dated 3.5.2007 (Annexure no.2).

3. The respondents have filed their response. They have admitted that the position of the rule in so far as the provisions of IREM Manual I is concerned in which there is a provision of outstanding persons (persons getting 80% + marks) being allowed to supersede 50% of persons senior to them. They have also admitted that the applicant achieved 80 plus marks. Two persons senior to him namely S/Sri Pawanjeet Singh and Ram Kumar had also achieved outstanding merit and were allowed to supersede 50% of their seniors in accordance with the provisions of para 219 (J) of IREM. The next person to be promoted on account of outstanding result would have been the applicant, but he could not be accommodated as number of vacancies was five. They have admitted that 15 persons were eligible against five vacancies. However, in spite of willingness to appear in the written test, Sri Mahadeo Prasad and Smt. Kanta Joshi figuring at sl. Nos. 1 and 3 respectively, in the seniority list of eligible candidates did not appear in the said selection. After evaluation of answer-sheets, 12 un-reserved and 01 ST candidates were found eligible on the basis of marks obtained by them in the written test and review of service records/ confidential reports. In the second round of assessment S/Sri Pawan Jeet Singh, Ram Kumar Ashutosh Pal and the applicant were classified as 'outstanding'. Infact the following is the position of the candidates as per the result of final selection procedure is over:-

1.	N.K. Bhalla	Fit
2.	Kailash Chander	Fit
3.	Pawan Jeet Singh	Outstanding
4.	Pankaj Saxena	Fit
5.	Ranjan Srivastava	Fit

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6.	Sanjay Sharma	Fit
7.	A.K. Bharti	Fit
8.	Ram Kumar	Outstanding
9.	Ved Prakash	Fit
10.	Ashutosh Pal	Outstanding
11.	Surojeet Dutta	Fit
12.	A.K. Rai	Fit
13.	Sanjay Kumar Singh (ST)	Fit

Accordingly, the final list against five vacancies are S/Sri N.K. Bhalla, Pramjeet Singh (outstanding), Kailash Chandra, Pankaj Saxena and Ram Kumar (outstanding).

4. Notices were issued to private respondent nos. 4 and 5 by order dated 7.8.2007 to appear. As the notices issued to them were not returned back un-served and as such vide order dated 13.11.2007 the services on the private respondents was deemed to be sufficient. Neither nobody has appeared on their behalf nor Counter Reply has been filed so far. The learned counsel for official respondents has placed reliance on the decision rendered by Hon'ble Supreme Court in the case of J.S. Yadav Vs. State of U.P. & Others reported in (2011) 2 SCC (L&S) 140 and have pleaded that the private respondents were required to be heard. However, as sufficient opportunity was given to private respondents there is no flaw in deciding this case.

5. The applicant has filed Rejoinder refuting the statements made by the respondents in their Counter Reply and reiterating the averments made in the Original Application and clearly reiterating that the mistake in placement of the outstanding candidates have arisen due to mis-interpretation of the provisions of para 219 (J) of IREM read Railway Board's letter no. E(NG)I-72/PMI-1-15 dated 21.8.1972 in which it was provided that the entire field of eligibility including those who may not have been appeared in the examination and or declared unfit should have been taken for determining the appropriate place in the seniority list and supersession of 50% of their senior by each outstanding candidate. Infact he has filed a copy of the letter written by the respondents whereby a reference was made by Director General (Admn.) to the Secretary, Railway Board on this issue as there was some doubts in the mind of the respondents as to what constitute

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this "field of eligibility for purpose of supersession. These doubts have been framed as follows:-

- a. *Whether the above provision is applicable in respect of all these who are in the field of eligibility and called for written test.*
- b. *Whether the above provision is applicable only for those candidates who have appeared in written examination.*
- c. *Whether the above provision is applicable in respect of only those candidates who qualified the written test."*

According to the applicant, although no reply was filed from the Secretary, Railway Board, there is no requirement of getting any reply as the controversy should not have been arisen in the first place. The contents of the letter dated 27/30.10.1979 is unequivocal and clear especially with its model calculation sheet. The said letter provides that those persons achieving 80% or more marks will be classified as 'outstanding' and place in the panel in order of seniority and the seniors allowing them to supersede not more than 50% of the total field of eligibility. The 'eligibility' in this case had been indicated by the respondents in their initial notice dated 20.6.2006 in which name of 15 persons, in order of seniority, were shown as eligible. There is no provision for considering only those persons who actually appeared as constituting the 'field eligibility.'

6. We have heard the learned counsel for the parties and have perused the pleadings on record.

7. The Railway Board's circular under para 215 (c) of IREM provides that the eligible staff to the extent of three times of the number of vacancies is to be called on a selection. Eligible staff are those who have minimum the requisite qualifying service and are willing to appear for selection. Infact there is a provision under sub para (c) of para 215 of IREM whereby it has been provided that the persons who have expressed their unwillingness should not be reckoned for determining the field of eligibility. The respondents, by notification dated 12.6.2006 had declared 15 persons including the applicant as being in the field of eligibility. The first person in that list namely Sri Mahadeo Prasad and third

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person Smt. Kanta Joshi did not appear in the selection process. There is no statement with regard to the second person placed in the seniority list of eligible candidates that is Sri G.N. Joshi. The respondents have calculated the field of eligibility on the basis of those who actually appeared in the written test that is altogether 12 person. On scrutiny of para 219 (j) of IREM read with the guidelines as circulated by circular Dated 20.10.1999 as well as the circular dated 27/30.10.1979 mention the entirely field of eligibility. Infact the governing para 219 (J) of IREM has a provision for allowing 'outstanding' candidate to supersede 50% of total field of eligibility. Therefore, whether certain persons who chose not to appear in the examination (in the case of sl. Nos. 1 and 3) or who had been declared unfit (possibly in the case of sl. No. 2) have to be counted as having in the field of eligibility.

8. We, therefore, hold that the respondents have erred in interpreting the provisions of para 219 (J) of IREM. Consequently, the applicant is entitled to be declared successful in the selected held to fill up the five (general) posts of JEs in the year 2006.

9. However, based on the disclosure made by the respondents, we also find that there is no malafide or bias against the applicant. The respondents have promoted five persons namely S/Sri N.K. Bhalla, Pawanjeet Singh, Kailash Chander, Pankaj Saxena and Ram Kumar as per their interpretation of para 219 (J) of IREM. These persons have benefited by this error of interpretation which is in the nature of administrative error. This is an act, which is neither first, nor unknown to the department by order dated E(NG)(i)/76/PMI 2199 dated 31.5.1977. The respondents have admitted the following:-

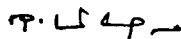
*" (a) where a person has not been promoted at all because of administrative error;*

It is also directed that such cases should be dealt with on merits. Staff who have not been promoted on administrative error, should on promotion, be assigned correct seniority vis-à-vis their juniors already working, irrespective of the date of promotion. Pay in the higher grade may be fixed proforma at the stage, which the employee would have reached, if he was promoted at the proper

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time. However, no arrears shall be paid, as he did not actually shoulder higher responsibility of the higher post. The five persons who have been promoted vide order dated 23.8.2006 and have worked as J.E. for more than six years now and have earned legitimate confidence in their placement. One of the basic requirements of efficient administration is sense of security with regard to their position in the organization. This is as important as the legitimate expectancy of an employee that he be rewarded for his merit and achievement. The two persons, who had gained in terms of their placement i.e. Sri Pawanjeet Singh and Ram Kumar have not agitated for any wrongful placement. The other person Sri Pankaj Saxena has not got the benefit of his placement on account of untoward favoutism shown to him. Therefore, in this case, in the face of an administrative error, we deem it just and proper that the list so declared by order dated 23.8.2006 is not interfered with. At the same time, in order to protect the interest of the applicant, we direct the respondents to grant notional promotion to the applicant from the date of promotion of Sri Ram Singh and actual promotion from the date of first available vacancy after 2006. The seniority of the applicant is to be fixed accordingly below Sri Ram Singh. The above exercise shall be completed within a period of four months from the date of receipt of copy of this order.

10. In view of the aforesaid, the O.A. stands allowed with no order as to costs.

  
**(M. Nagarajan)**  
**Member-J**  
 Girish/-

  
**(Ms Jayati Chandra)**  
**Member-A**