

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW

Original Application No. 519/2010 A.W. O.A.No.251/2011

Order Reserved on 11.5.2015

Order Pronounced 26-05-2015

HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

(O.A.No. 519/2010)

Rajendra Kumar Shukla aged about 48 years son of Sri Shatruhan Lal resident of 441/RN/224, Rastogi Nagar, Balaganj, Lucknow (Ticket No. 187-J)

Applicant

By Advocate: Sri Praveen Kumar

VERSUS

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Works Manager, Loco Workshop, Northern Railway, Charbagh, Lucknow
3. Deputy Chief Electrical Engineer (W), Loco Workshop, Northern Railway, Charbagh, Lucknow.

Respondents

By Advocate:- Sri S.Verma

(O.A. No. 251/2011)

Jai Prakash Sharma aged about 48 years son of Sri Bhagwati Prasad, resident of II-55 D, CPH, Railway Colony, Alambagh, Lucknow.

Applicant

By Advocate: Sri Praveen Kumar

VERSUS

1. The Chairman, Railway Board, New Delhi.
2. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
3. The Chief Works Manager, Loco Workshop, Northern Railway, Charbagh, Lucknow
4. Senior Section Engineer, Loco Workshop, Northern Railway, Charbagh, Lucknow.

Respondents

By Advocate:- Sri S.Verma

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Applications are preferred by the applicant u/s

19 of the AT Act with the following reliefs:-

(Relief prayed in O.A.No. 519/2010)

- i) to consider relaxation of age bar for at least two examination for the post of JE-II with all consequential benefits and to quash the impugned P.S. No. 13715 contained as Annexure No. A-7 to this O.A.
- ii) to allow the applicant to appear and participate in the examination for the post of JE II Intermediate Apprentice Under 25% quota in pursuance of Notification dated 27.9.2010 contained as Annexure No.A-1 to this O.A. with all consequential benefits.
- iii) any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
- iv) cost of the present case.

(Relief prayed in O.A.No. 251/2011)

- i) to quash the impugned rejection order dated 4.5.2011 and P.S. No. 13715 contained as Annexure No. A-2 and A-7 to this O.A.
- ii) to quash the impugned notification dated 14.07.2010 to the extent it restrains the applicant from participating in the examination scheduled to be held for the post of JE-IOI under 25% quota.
- iii) to consider relaxation of age bar for at least two examination for the post of JE-II with all consequential benefits
- iv) to allow the applicant to appear and participate in the examination for the post of JE II Intermediate Apprentice Under 25% quota in pursuance of Notification dated 14.7.2010 contained as Annexure No.A-1 to this O.A. with all consequential benefits.
- v) any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
- vi) cost of the present case.

O.A. 251 of 2011

The present O.A. is preferred with a prayer to quash the impugned rejection order dated 4.5.2011 and PS No. 13715 as contained in Annexure -2 and A-7 to the O.A. as well as the applicant has also prayed for quashing of the notification dated 14.7.2010 to the extend it restrains the applicant from participating in the examination scheduled to be held for

the post of JE-II under 25% quota and also to consider relaxation of age bar for the post of JE-II Intermediate Apprentice Mechanic under 25% quota in pursuance of Notification date 14.7.2010 as contained in Annexure No. A-1 to this O.A. with all consequential benefits.

2. By virtue of an order dated 4.5.2011, the representation of the applicant dated 1.8.2010 was accordingly rejected in which it is indicated that there is no provision for including the name of the applicant in the eligibility list and also for consideration of his case under the notice dated 14.7.2010. Apart from this, it is also argued that right since 2003, the respondents issued the notifications, but none of the selection was finalized on account of one reason or the other and finally when the notification dated 14.7.2010 was issued, the applicant became over age as such, the applicant cannot be held responsible for the same as such, he is entitled to get the relief as claimed for.

O.A. No. 519 of 2010

3. In the present O.A., the applicant has prayed for issuing a direction to the respondents to consider relaxation of age bar in the examination for the post of JE-II with all consequential benefits and also prayed for quashing of the impugned PS No. 13715 as contained in Annexure No. A-7 to this O.A. and allow the applicant to appear and participate in the examination for the post of JE-II Intermediate Apprentice Mechanic under 25% quota in pursuance of Notification dated 27.9.2010 with all consequential benefits.

4. In the instant case, the applicant was initially appointed by the respondents in the year 1987 on the post of Khallasi and subsequently, he was promoted on the post of Technician Grade III after completing training for a period of two years and again in the year 1998, he was promoted on the post of Technician-Grade-I and now the applicant is claiming promotion on the basis of selection for the post of JE-II under 25% quota.

5. In this case also, the respondents issued the advertisement right since 2003 and for the one reason or the other, the same was cancelled

and finally the respondents have issued the advertisement on 27.9.2010 and now the applicant became overage. He submitted that he may be given the benefit of allowing him to appear in the examination. The learned counsel for the applicant has also relied upon two decisions of the coordinate benches of the Tribunal, one passed by the Principal Bench and another passed by the Chandigarh Bench and has indicated that similar issue is adjudicated by the coordinate benches as such, the same benefit may be extended to the applicants as well.

6. On behalf of the respondents detailed reply in both the cases are filed through which, it is indicated that prior to 1.11.2003, the channel of promotion in artisan category were Technician Grade -III to Technician Grade-II to and thereafter to Technician Grade-I and this was subsequently divided among the Mistry and Master Craftsman and after 1.11.2003, the channel of promotion in artisan category posts is Technician Grade -III then Technician Grade -II and thereafter Technician Grade-I and thereafter Master Craftsman and thereafter the post of JE-II in the Pay Band Rs. 9300-3400+Grade Pay Rs. 4200/- technical supervisor post in Safety Category and to be filled up 50% by direct recruitment, 25% by Limited Departmental Competitive Selection and 25% promotion by way of selection from MCM. Since the post of JE-II is Safety Category, therefore, it is required to be filled up on competitive basis by way of positive act of selection. The selection against JE II Intermediate Apprentice Mechanic under 25% Quota being on the basis of Limited Departmental Competitive Selection, the eligibility condition for the candidates to appear in the said selection prescribed by the Railway Board and the minimum age which was 45 years earlier, was raised to 47 years vide Railway Board's letter dated 9th June 2010 circulated vide Northern Railway Printed Serial No. 13715.

7. The learned counsel for the respondent has categorically indicated that since upper age limit is 47 years and the applicant has already crossed the said age, as such, he is not entitled for being

considered for selection to the post of JE II Intermediate Apprentice Mechanic under 25 % quota.

8. On behalf of the applicant, rejoinder is filed and through rejoinder mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied.

9. Heard the learned counsel for the parties and perused the record.

10. The applicants are working with the respondents organization and they are aggrieved by the notifications dated 14.7.2010 as well as 27.9.2010 respectively in respect of the 25% Intermediate Apprentice Quota for selection to the post of JE-II. The learned counsel for the applicant has categorically indicated this fact that initially the respondents issued the advertisement for filling up the said post in the year 2003 which was subsequently cancelled on account of certain reason in which the maximum age limit as on 1.10.2003 was 45 years. Subsequently, in 2007, another notification was issued.

11. Not only this, the respondents have again issued a notification dated 10.12.2007 and the said notification was also subsequently cancelled by the authorities. It is brought to the notice of the Bench that finally, in 2010, a notification has been issued for filling up the post of JE-II Intermediate Apprentice under 25 % quota. It is also indicated by the learned counsel for the applicant that the applicant earlier filed an O.A. 454 of 2010 and the said O.A. was decided by the Tribunal with a direction to the respondents to consider the representation of the applicant. The respondents decided the representation and has indicated that they have enhanced age limit from 45 years to 47 years and finally the respondents have issued the notification dated 2010 through which the respondents decided to fill up the vacancies. Apart from this, it is also to be indicated that the applicant could not appear in the examination as no selection came to be held for a period of 7 years and the applicants are presently over age.

12. The uncontroverted scenario would indicate that it is the official respondents who for one or the other reason did not hold the competitive

exam. For that failure on the part of the competent authority for whatever reason the applicants cannot be made to suffer.

13. It is also to be pointed out that the post of JE-II is to be filled up from amongst the eligible candidates on the basis of examination comprising of two stages, Written test followed by Assessment of records. The learned counsel for the respondents has categorically indicated that post of JE-II is a Safety Category post.

14. The Tribunal took up the matter for admission and vide order dated 15.6.2011, the applicant were provisionally permitted to appear in the examination in question subject to the decision of the O.A. The learned counsel for the applicant has categorically indicated that since the applicant has already appeared in the examination and there is no fault on the part of the applicant for not holding the examination by the respondents for a substantial period of time.

15. In any case, the concept of age bar can apply only in the case of fresh recruitments and not in the case of a departmental examination JE II Intermediate Apprentice Mechanic under 25 % quota, which is conducted for the process of internal promotions within the department from one post to another when the employee is well within the confines of the Department, and the time period as to when the employee has attained what age is known to respondent authorities themselves, and yet they delayed holding the examination, as such, the concept of age bar cannot be applied in the present case.

16. Hence, we are inclined to interfere in the present O.A. and the O.As are allowed the respondents are directed to declare the result of the applicants subject to other eligibility conditions apart from the age bar.

17. With the above observations, the O.As are allowed. No order as to costs.

Member (A)

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Navneet Kumar
Member (J)