

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No. O.A.390 of 2011

A.W.

Original Application No. 410 of 2011

Order Reserved on 6.10.2015.

Order Pronounced on 29-10-2015

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

O.A. No. 390 of 2011

1. Sunil Kumar, aged about 34 years, son of Late Shri Ram Lakhan, Resident of Village Sabripur Post Surianwa District Sant Ravi Das Nagar (Bhadonhi) (U.P.)
2. Rakesh Kumar, aged about 33 years, son of Late Shri Jagdish, resident of MN-59 Inderpari Manas Nagar.

Applicants

By Advocate Sri Praveen Kumar.

VERSUS

1. Union of India through General Manager, Northern Railway, Baorda House, New Delhi.
2. The Chairman, Railway Board New Delhi.
3. The Divisional Railway Manager, Northern Railway, Lucknow.
4. The Senior Divisional Personnel Officer, Northern Railway, Lucknow.

Respondents

By Advocate Sri S. Verma

O.A. No. 410 of 2011

1. K.K. Ekka, aged about 40 years, son of Shri B.B. Ekka, Resident of 567/137, Anand Nagar, Charbagh, Lucknow.
2. Mahesh Toppo, aged about 42 years, son of Shri Ghonyan, resident of 567/184-Kha Anand Nagar, Charbagh, Lucknow.

Applicants

By Advocate Sri Praveen Kumar.

VERSUS

1. Union of India through General Manager, Northern Railway, Baorda House, New Delhi.
2. The Chairman, Railway Board New Delhi.
3. The Divisional Railway Manager, Northern Railway, Lucknow.

4. The Senior Divisional Personnel Officer, Northern Railway, Lucknow.

Respondents

By Advocate Sri S. Verma

ORDER

HON'BLE MR. NAVNEET KUMAR, MEMBER(J)

The relief claim in O.A. No. 390 of 2011 is as under:-

(i) To quash the impugned order dated 29.7.2011 and notification dated 8.2.2010 along with Railway Board Order dated 12.8.2002 to the effect it affects the applicants and provides 10+2 with science stream as eligibility criteria for the post of JE-II contained as Annexure No. A-1 and A-2 to this OA with all consequential benefits.

(2) To consider the applicants for promotion on the post of JE-II with all consequential and attending benefits while providing them the benefits as have been granted to other selected candidates and place the applicants at appropriate place in seniority list for the post of JE-II.

(3) To release arrears of pay of the promoted post for the period, the applicants are restrained from performing the duties of higher post i.e. JE-II.

(4) Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.

(5) Cost of the present case.

O.A. No. 410 of 2011

2. The relief claim in O.A. No. 410 of 2011 is as under:-

(i) To quash the impugned order dated 29.7.2011 and notification dated 8.2.2010 along with Railway Board Order dated 12.8.2002 to the effect it affects the applicants and provides 10+2 with science stream as eligibility criteria for the post of JE-II contained as Annexure No. A-1 and A-2 to this OA with all consequential benefits.

(2) To consider the applicants for promotion on the post of JE-II with all consequential and attending benefits while providing them the benefits as have been granted to other selected candidates and place the applicants at appropriate place in seniority list for the post of JE-II.

(3) To release arrears of pay of the promoted post for the period, the applicants are restrained from performing the duties of higher post i.e. JE-II.

(4) Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.

(5) Cost of the present case.

3. Both the O.As involves similar set of issue. It is to be pointed out that the respondents issued a notification for filling up the post of Junior Engineer-II against 25% quota and in the said notification, 15 posts were advertised. Out of 15 posts, 11 were reserved for General category, 3 were reserved for SC and one was reserved to ST category. The applicant applied in pursuance of the said notification. As per the said notification, the candidates must have possessed ITI and 10+2 with Science Stream. Consequently, the respondents issued an order dated 3.5.2010 and also published a list indicating the reasons for rejection of the applications of some of the candidates and the name of the applicants finds place in the list of eligible candidates. Those whose names were rejected, preferred O.A. No. 253 of 2010 before this Tribunal in which, it

is directed that the applicant shall be allowed provisionally to appear in the examination. However, the names of applicants figured in the list of eligible candidates and thereafter the examination scheduled is to be held in pursuance of the notification dated 8.2.2010 which was postponed and thereafter, after a period of one year, the date of examination has been indicated as 16.7.2011. But subsequently, the applicants were shocked to know about the result dated 29.7.2011 though they were declared as successful, but their names have been left out in the list. The respondents treated the applicants as if the applicant have not completed three years service, have put them at par and with the category of item B like the applicants of O.A. No. 253 of 2010.

4. The learned counsel for the applicant also relied upon circular of the Railway Board through which it is indicated that the candidates who were appointee of prior to 12.8.2002 will be eligible to appear without insisting upon the changed educational qualification for two consecutive examination as has also been incorporated vide notice dated 25.2.2010 and the three years residuary service is to be seen at the time of cut off date mentioned in the notification for holding examination and not prior to that date.

5. The learned counsel for the applicant has also indicated that earlier applicants were allowed to appear in one examination held in the year 2006 without insisting upon the changed educational qualification. Apart from this, it is also argued by the learned counsel for the applicant that one Sri Vijay Kumar Meena, who is also similar circumstanced and have also not completed three years of service as per the cut off date but was not only allowed to appear and also succeeded in the examination and was promoted on the post in question. The learned counsel for the applicant has also relied upon certain decisions of the Hon'ble Apex Court in the case of **Mrs Rekha Chaturvedi Vs. University of Rajasthan and others** reported in 1993 (1) SC SLJ-429, Shankar

Kumar Mandal Vs. State of Bihar reported in 2003 (2) SC SLJ-35 and has indicted that the Hon'ble Apex Court in the aforesaid judgments has categorically indicated that the eligibility is to be seen on the cut of date mentioned in the advertisement/notification for selection. The learned counsel for the applicant also relied upon a decision of **Indian Railway Construction Co. Limited Vs. Ajay Kumar reported in 2003 (2) SC SLJ 109** and the case of **Prakash Ratan Sinha Vs. State of Bihar reported in 2010 (1) SCC (L&S) 443** and has indicted that any action/policy decision which is illogical or irrational is open for judicial review.

6. On behalf of the respondents, reply is filed and through reply, it is indicated that the applicants challenges the Railway Board circular dated 12.8.2002 and said challenge is totally wrong, misplaced and baseless for the reasons that under Paragraph 123 of the Indian Railway Establishment Code, Volume-I, the Railway Board has full powers to frame rules of general application to Group 'C' and Group 'D' staff in respect of appointment, selection or promotion and other conditions of service including that of prescribing eligibility conditions like requirement of minimum qualification, age limit and experience and procedure to be followed etc. considering the nature of job, job requirements and other parameters, which is also the sole prerogative of the employer and is not open to challenge for judicial review. 25 % Intermediate Apprentice Quota, was not taken randomly or without any basis or reasons, but on the basis of the report and recommendations of the Railway Safety Review Committee keeping in view the safety concern. Not only this, the learned counsel for the respondents has also indicated that the Railway Board Circular dated 12.8.2002 has been further modified by means of a circular dated 23.6.2003. The respondents have also indicated the avenue of channel of promotion prior to 1.11.2003 and has also argued that the post of JE-II being in Safety Category, it is necessarily to be filled by selection on competitive

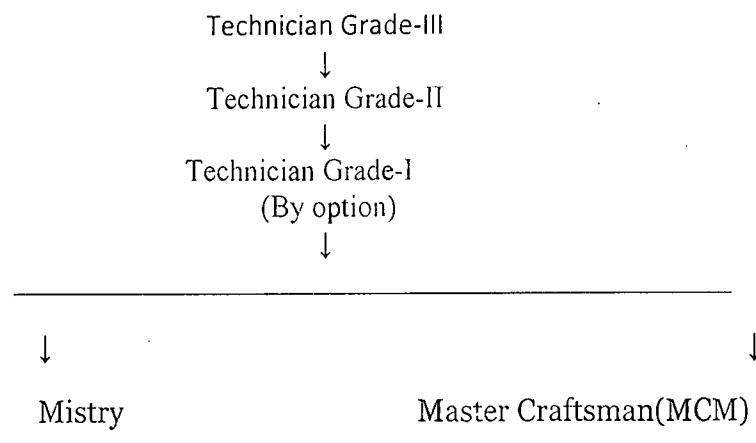
basis by way of positive act of selection. Apart from this, it is also argued by the learned counsel for the respondents that the selection against 25 % Intermediate Apprentice Quota (JE-II) being on the basis of Limited Departmental Competitive Selection, the eligibility condition for the candidates to appear in the said selection prescribed by the Railway Board is that they must at least be Technician Grade III with minimum 3 years working experience in that post with 10+ 2 Science Stream educational qualification or must have passed ITI/Act Apprenticeship, with maximum age limit 47 years. The said age limit was enhanced 45 to 47 vide Railway Board Circular dated 9th June 2010.

7. 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. Once again, the learned counsel for the applicant has taken a plea that that applicants were regularly appointed well before introduction of circular dated 12.8.2002, therefore they are entitled to be granted the benefits of exemption as was granted earlier in the first examination and on the said basis, one Sri Vijay Kumar Meena has been selected and promoted accordingly.

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

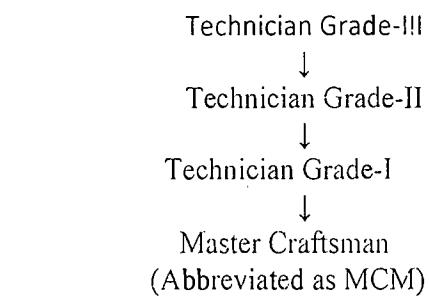
9. All the applicants were appointed with the respondents much prior to 12.8.2002 and all of them are educationally qualified and matriculated. The respondents issued a notification on 8.2.2010 by which the post of JE II/C&W against 25 % IA Quota was notified. After the issuance of the said notification, another notice/letter was issued on 25.2.2010 by which, it was provided that employee with pre-revised educational qualification i.e. matriculation will be given two chances in two selections in pursuance of circular dated 23.6.2003. Apart from this, it is provided that those who are working prior to 12.8.2002 as Skilled Artisan now known as Technician-II and for two selections, proposed to be held after 23.6.2003, would be allowed to participate with pre-revised

educational qualification. The avenue of channel of promotion in Artisan category posts prior to 1.11.2003 is as under:-

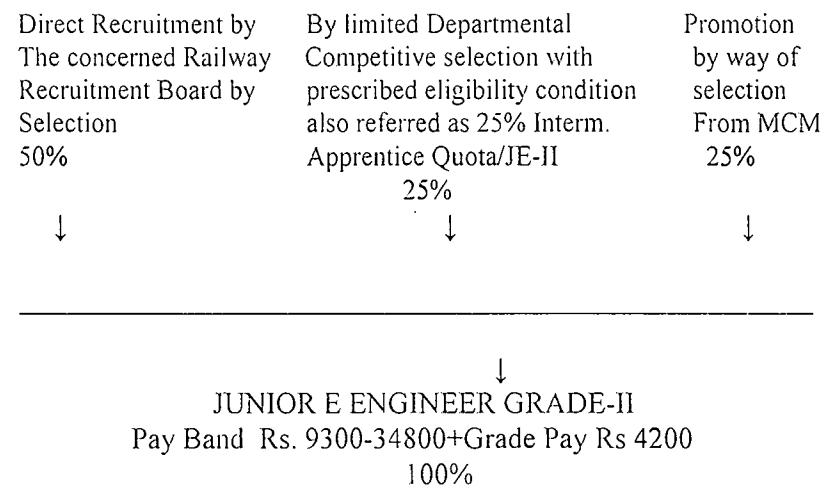


This category was
Upgraded as Junior Engineer
-II(JE-II) with effect from 0.1.11.2003.

2.05. That after 0.1.11.2003, the avenue of channel of promotion (AVC) in artisan category posts is as under :-



2.06. That the post of Junior Engineer-II (abbreviated as JE-II) in pay band Rs. 9300-34800+Grade Pay Rs. 4200, is a technical supervisor post in Safety Category and filled up from the following sources-



10. It is also to be indicated that earlier for the post of JE-II under IA Quota 25%, the employees with matriculation were eligible to participate, but by means of Circular dated 12.8.2002, qualification was raised from matriculation to 10+2 with Science Stream. However, another circular dated 23.6.2003 was issued by which, two chances were provided to the employees with pre-revised educational qualification.

The learned counsel for the applicant also indicated that in pursuance of the notification dated 8.2.2010, an order dated 3.5.2010 was issued notifying the eligibility list. The candidates who were not declared eligible, preferred O.A. No. 253 of 2010 and by means of an order the applicants of the said O.A. participate in the examination and the name of the applicants have been figured, but with a specific note that since they had not completed 3 years services as on 12.8.2002 therefore, their name is being interpolated in list B after deleting their name from list A.

11. The learned counsel for the applicant has also vehemently argued and submitted that earlier the applicants were allowed to participate in the examination in the year 2005 along with one Sri Vijay Kumar Meena. However, none else, except Sri Meena was promoted as JE-II who has not completed three years service as on 12.8.2002 like the applicants. The learned counsel for the applicant has categorically indicated that raising all educational qualification under 25 % IA Quota from matriculation to 10 +2 science stream is irrational and illogical as for remaining 75%, there is no change in the educational qualification. Apart from this, while joining as Technician-III, the applicants had to undergo for three years training whereas, others, with ITI/Act Apprentices are required only 6 months training as per provisions contained in Para 159 of IREM. It is also indicted by the learned counsel for the applicant that in the year 2006 all the applicants were allowed to participate when circular dated 12.8.2002 as well as 23.6.2003 were inexistence. But since applicants could not qualify the selection therefore, they were not promoted where as one Shri Vijay Kumar Meena has been given promotion and the said three years is to be seen at the time of issuance of the notification.

12. As observed by the Hon'ble Apex Court in the case of **Mrs Rekha Chaturvedi Vs. University of Rajasthan and others (Supra)**, the Hon'ble Apex Court has been pleased to observe as under:-

"It must be remembered that when the advertisement/notification represents that the candidates must have the qualifications in question, with reference to the last date for making the applications or with reference to the specific date maintained for the purpose those who do not have such qualifications do not apply for the posts even though they are likely to acquire such qualifications and do acquire them after the said date.

13. As observed by the Hon'ble Apex Court in the case of **Shankar Kumar Mandal Vs. State of Bihar (Supra)**, the Hon'ble High Court has been pleased to observe as under:-

"On facts candidature was rejected on ground that they were over age on the date of initial appointment. But there was not concession that they were over age at the time of application. Direction given to reconsider their cases for appointment accordingly."

14. As observed by the Hon'ble Apex Court in the case of **Prakash Ratan Sinha vs. State of Bihar & Ors. (Supra)**, the Hon'ble Apex Court has been pleased to observe as under:-

"8. The decision that was questioned before the Court was an administrative decision having civil consequences and is alleged to have been taken without affording an opportunity of hearing to the appellant. The argument of the learned Counsel for the appellant, basically is that, the administrative decision taken by the respondents is unfair, unreasonable and in breach of principles of natural justice. The administrative decision taken by the respondents is within the realm of public law and therefore, the decision ought to have been taken in a fair and reasonable manner. This was more necessary because the action cancelling the promotion of the appellant had civil consequences in the sense that it not only puts an end to the right of the appellant and also his further career prospectus. Therefore, the respondents are under an obligation to take all decisions in a fair and lawful manner by adhering to the rules of natural justice. The law in this regard has been settled by several decisions of this Court. The principle that emerge from the decisions of this Court is that, if there is a power to decide and decide detrimentally to the prejudice of a person, duty to act

12. As observed by the Hon'ble Apex Court in the case of **Mrs Rekha Chaturvedi Vs. University of Rajasthan and others (Supra)**, the Hon'ble Apex Court has been pleased to observe as under:-

“It must be remembered that when the advertisement/notification represents that the candidates must have the qualifications in question, with reference to the last date for making the applications or with reference to the specific date maintained for the purpose those who do not have such qualifications do not apply for the posts even though they are likely to acquire such qualifications and do acquire them after the said date.

13. As observed by the Hon'ble Apex Court in the case of **Shankar Kumar Mandal Vs. State of Bihar (Supra)**, the Hon'ble High Court has been pleased to observe as under:-

“On facts candidature was rejected on ground that they were over age on the date of initial appointment. But there was not concession that they were over age at the time of application. Direction given to reconsider their cases for appointment accordingly.”

14. As observed by the Hon'ble Apex Court in the case of **Prakash Ratan Sinha vs. State of Bihar & Ors. (Supra)**, the Hon'ble Apex Court has been pleased to observe as under:-

“8. The decision that was questioned before the Court was an administrative decision having civil consequences and is alleged to have been taken without affording an opportunity of hearing to the appellant. The argument of the learned Counsel for the appellant, basically is that, the administrative decision taken by the respondents is unfair, unreasonable and in breach of principles of natural justice. The administrative decision taken by the respondents is within the realm of public law and therefore, the decision ought to have been taken in a fair and reasonable manner. This was more necessary because the action cancelling the promotion of the appellant had civil consequences in the sense that it not only puts an end to the right of the appellant and also his further career prospectus. Therefore, the respondents are under an obligation to take all decisions in a fair and lawful manner by adhering to the rules of natural justice. The law in this regard has been settled by several decisions of this Court. The principle that emerge from the decisions of this Court is that, if there is a power to decide and decide detrimentally to the prejudice of a person, duty to act

judicially is implicit in exercise of such a power and that the rule of natural justice operates in areas not covered by any law validly made. Corollary principles emanating from these cases are as to what particular rule of natural justice should apply to a given case must depend to an extent on the facts and circumstances of that case and that it is only where there is nothing in the statute to actually prohibit, the giving of an opportunity of being heard and on the other hand, the nature of the statutory duty imposed on the decision maker itself implies an obligation to hear before deciding. These cases have also observed, whenever an action of public body results in civil consequences for the person against whom the action is directed, the duty to act fairly can be presumed and in such a case, the administrative authority must give a proper opportunity of hearing to the affected person. This Court in Canara Bank's case (supra) has stated that "the adherence to principles of natural justice as recognized by all civilized states is of supreme importance or when a quasi judicial body embarks determining dispute between the parties, or any administrative action involving civil consequences is an issue. Even an administrative order, which involves civil consequence must be consisted with the rules of natural justice."

15. As observed by the Hon'ble Apex Court as well as on the basis of the facts of the case, we are inclined to interfere in the present O.A.. Accordingly the impugned orders dated 29.7.2011, notification dated 8.2.2010 and the notification dated 12.8.2002 are liable to be interfered with. The matter is remanded back to the authorities to reconsider the claim of the applicant for promotion to the post of JE-II including educational qualification as mentioned in the notification mentioned above.

16. With the above observations, OAs are allowed. No order as to costs.

Member (A)

vidya

Member (J)