

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 657 OF 2000

Date of Decision: 22.6.2001

Shri Benjamin A. Rodrigues & 2 Ors Applicant(s)

Shri S.V. Marne. Advocate for Applicants

Versus

Union of India & 5 others .. Respondents

Shri V.S. Masurkar Advocate for Respondents 1 & 2
Shri G.S. Walia Advocate for Respondents 3 to 6

CORAM

HON'BLE SHRI JUSTICE ASHOK AGARWAL . CHAIRMAN

HON'BLE SMT. SHANTA SHASTRY .. MEMBER (A)

- (1) To be referred to the Reporter or not? /x
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

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(SMT. SHANTA SHASTRY)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 657 OF 2000

FRIDAY, THE 22ND DAY OF JUNE 2001

CORAM

HON'BLE SHRI JUSTICE ASHOK AGARWAL.
HON'BLE SMT. SHANTA SHASTRY.

... CHAIRMAN
... MEMBER (A)

1. Shri Benjamin A. Rodrigues,
working as Train Lighting
Supervisor,
Under the Sr. Section Engineer,
Electrical A/C Coaching
Central Railway,
Mumbai CST.
2. Shri P.P. Daahane,
Working as A/C Coach Mechanic
Under the Se. Section Engineer,
Electrical A/C Coaching,
Central Railway,
Mumbai CST.
3. Shri M.M. Coudhary,
working as HSK Gr.II,
Under the Sr. Section Engineer,
Electrical A/C Coaching,
Central Railway,
Mumbai CST.

... Applicants

By Advocate Shri S.V. Marne.

Versus

1. The Union of India, through
The General Manager,
Central Railway
Headquarters Office,
Mumbai CST,
Mumbai-400 001.
2. The Divisional Railway Manager,
Central Railway,
Mumbai Division, Mumbai CST,
Mumbai-400 001.
3. Shri M.Y. Shaik,
working as Electrical Supervisor
In the Office of the
Sr. Section Engineer (Electrical)
A/C Coaching, Mumbai CST,
Mumbai-400 001.

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4. Shri M.B. Pol,
working as Electrical Supervisor
In the Office of the
Sr. Section Engineer (Electrical)
A/C Coaching, Mumbai CST,
Mumbai-400 001.
5. Shri D.B. Patil,
Technician III (Fitter)
In the Office of the
Sr. Section Engineer
Train Lighting,
Mumbai-400 001.
6. Shri R.H. Shinde,
working as Electrical Supervisor
In the Office of the
Sr. Section Engineer
Train Lighting,
Mumbai-400 001. ... Respondents

By Advocate Shri V.S. Masurkar for R & R2
Advocate Shri G.S. Walia for R3 to R6.

O R D E R

Hon'ble Smt. Shanta Shastry.

.. Member (A)

A notification was issued by the Central Railway for selection to the post of JE II (Rankers) in the grade of Rs. 5000 - 8000 (RSRP) in electrical general service (TL/AC) group of Mumbai Division. The selection was held for 4 posts, 3 general and one for SC. Accordingly 4 candidates were selected vide order dated 28th August, 2000. applicants are aggrieved by this fact as according to them, the respondents have not followed the proper procedure in selection. In particular the applicants are assailing the respondents' action in non inclusion of seniority marks for selection.

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2. According to the respondents, the applicants failed in the viva-voce and therefore failed to score 60% aggregate marks in professional ability and therefore, no question of any marks for seniority and rightly applicants have not been selected.

3. The learned counsel for the applicant, however, has drawn our attention to the procedure prescribed for selection by the Railways in their Indian Railway Establishment Manual Volume-I para 219 (g). According to this, it has been laid down that selection should be made primarily on the basis of over all merit, but for the guideline of Selection Board, the factors to be taken into account and their relative weight are laid down below:-

	Maximum Marks	Qualifying Marks
(i) Professional ability	50	30
(ii) Personality, address, Leadership and academic qualification	20	-
(iii) A record of service	15	-
(iv) Seniority	15	-

15 marks are assigned for seniority. However, the respondents failed to take into consideration the 15 marks for seniority. According to the learned counsel for the applicants, this is a selection post for skilled

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category of persons and therefore, the marks of seniority should have been taken into consideration. The learned counsel for the private respondents as well as official respondents harp on the fact that this was a general selection. Arguments advanced are that had it been a normal selection, then for 4 vacancies, the number of persons eligible in the zone of consideration would have been 12 or at the most an additional 2 for the SC candidates. However, in this selection, it was thrown open to all from different categories from different departments and 39 eligible candidates were allowed to appear for the post. Therefore, they have followed the procedure of not considering any marks or giving any weight for seniority while carrying out the selection. In any case, the applicants failed in professional ability.

4. The learned counsel for the private respondents also submit that the rules have been amended and now it is not necessary to include the marks for seniority for general posts. The applicants, however, reiterated that the post of JE not being a general post, but skilled category post has to be treated on a different footing and the seniority marks have to be given. They have not deleted the provisions of IREM Volume-I and therefore, the selection has to be held as void and set aside.

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Further arguments are advanced on both sides that the post is for general selection and not for normal selection and that is how in the notification dated 16.11.98 itself it has been clarified that it is for filling up of general selection post.

5. We have perused paras 219 (g) of IREM volume-I as well as the letter dated 16.11.98 (Exhibit R3). According to 219 (g) as has already been produced above, 50 marks are for professional ability which consists of written test as well as viva voce, the qualifying marks are 30. 20 marks are assigned for personality, address, leadership and academic qualification. 15 marks for the service record and 15 marks for seniority. As against these guidelines, in the letter dated 16.11.98, the procedure was revised, pursuant to the Hon'ble Supreme Court judgment dated 12.2.96 in M. Ramajayam Vs. General Manager, South Central Railway & Others (1996 (1) SC (SLC) 536) holding inter alia that in the impugned selection for appointment to the post of Law Assistant, it is illegal to award marks for seniority. Therefore, for the present selection, the marking system was modified as follows:

(1)

Professional ability consisting of written test	35 marks
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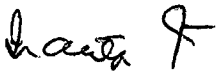
Viva voce	15 marks
Written Test	21 marks
Total qualifying marks	30/50 marks
(2)	
Personality, address, leadership academic / technical qualification	30 marks
Record of service	20 marks

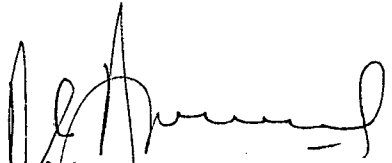
No marks are assigned for seniority. This, in our view, is a major deviation and it is the cause of the grievance of the applicants. The arguments of the learned counsel for the respondents are based on the hypothesis that the selection was a general selection and therefore, having followed the judgment of Supreme Court cited above, the respondents have rightly deleted the marks for seniority. Therefore, the moot point is only to see whether the particular post as claimed by the applicants is filled by way of normal selection or by way of general selection as stated by the respondents. In our considered view, any normal selection, normally those who belong to a particular department or a profession/ cadre are to be considered for promotion. No doubt, we find that these candidates who were eligible to appear for the selection belong to different place, but they belong to the General Electrical Service. Thus, it is one common service and therefore, the selection should have been a normal selection. Just because the respondents opened it up

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for a large number of candidates instead of the ratio fixed for calling of candidates it does not mean that this is not a normal selection. In our view it has to be held that this is a normal selection and therefore by not granting the seniority marks, the selection procedure has deviated from the main guidelines given in the IREM. We, therefore, feel that it calls for a fresh selection to be held as per the procedure in the IREM. In fact para 219 (g) in the Manual has not been cancelled or set aside. Therefore, it is very much in force and the respondents should have followed those guidelines. In the facts and circumstances of the case, we quash and set aside the panel declared by letter dated 28th August, 2000 and direct the respondents to conduct a fresh selection as per procedure laid down in para 219 (g) of the IREM Volume-I. No costs.


(SMT. SHANTA SHASTRY)
MEMBER (A)


(ASHOK AGARWAL)
CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH


C.P. No.117/2001
in OA No.657/2000

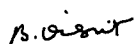
Dated: 5th march, 2002

It has been brought to our notice that High Court of Judicature at Bombay by order dated 19.12.2001 has granted interim stay in respect of our order dated 22.6.2001, which is subject matter of this C.P. The interim order has been passed in WP No.2475/2001 Shri M.Y.Shaikh and ors. Vs. Benjamin A.Rodrigues and ors. connected with WP No.2531/2001 Union of India Vs. Mr.Benjamin A.Rodrigues. As the said position is not in dispute, we are of the opinion that no contempt proceedings can be initiated against respondents at this stage in view of interim order of High Court. Thus, CP is liable to be dismissed under said circumstances but it is to be kept open for applicant to raise his grievance against respondents, if any, in case the interim stay is vacated or Writ Petition is decided in his favour.

The learned counsel for applicant has argued that if notice is not issued despite interim order of the High Court and CP is dismissed and proceedings are dropped then bar of limitation may be there. There is no force in this argument. The period between grant of interim order and its vacation can be excluded for computing limitation for initiating proceedings in such matters but, so far as the scope of power of this Tribunal is concerned, we cannot issue notice on CP as the High Court has already granted interim stay in respect of order.

Subject to above, the CP is dismissed at this stage.


(SMT. SHANTA SHASTRI)
MEMBER (A)


(BIRENDRA DIKSHIT)
VICE CHAIRMAN