

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:363/2000

DATE OF DECISION: 10th January 2007

Shri D.M. Jadhav

Applicant.

Shri V.G. Rege

Advocate for  
Applicant.

Versus

Union of India and others

Respondents.

Shri V.D. Vadhavkar

Advocate for  
Respondents

CORAM

Hon'ble Shri Kuldip Singh, Member (J)

Hon'ble Ms. Shanta Shastry, Member (A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to  
other Benches of the Tribunal?

(3) Library.

*Kuldip*  
(Kuldip Singh)  
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:363.2000

the 16<sup>th</sup> day of JANUARY 2001

CORAM: Hon'ble Shri Kuldip Singh, Member (J)

Hon'ble Ms. Shanta Shastry, Member (A)

Dattatraya Manik Jadhav  
Residing at  
110/10, Railway Line,  
Kumar Chowk,  
Mulay Building, Solapur.

...Applicant.

By Advocate Shri V.G. Rege.

V/s

1. Union of India through  
The General Manager,  
Central Railway, Mumbai CSTM.
2. The Divisional Railway Manager  
Central Railway, Solapur.
3. The Chief Mechanical Engineer,  
Central Railway, Mumbai CSTM.
4. Shri D.V. Parpillewar
5. Shri Raju D. Bhosale

...Respondents.

By Advocate Shri V.D. Vadhavkar. for R 1 to 3.

None for R 4 and 5

O R D E R

{Per Shri Kuldip Singh, Member (J)}

The applicant who is working as C & W Painter Grade II is aggrieved of the order, Annexure A & B vide which respondent No.4 and 5 have been promoted as Junior Engineer.

2. Facts in brief are that the official respondents on 19.2.1999 vide Annexure C issued a circular for selection for the post of Junior Engineer II grade Rs. 5000 - 8000 against 25% quota amongst Artisans / Technicians as intermediate Junior Engineer.

*[Signature]*

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3. In pursuance of the same applicant and respondent No. 4 and 5 applied. All of them qualified written examination, but <sup>in the Viva Voce</sup> applicant failed, whereas respondent No. 4 and 5 were empanelled and were sent for training.

4. The applicant has alleged <sup>challenged before</sup> their selection on various grounds. But one of the grounds which is quite significant is that the respondent vide their letter Annexure E had given the field of consideration as under:

3. Field of consideration: Applications are invited from all eligible skilled Artisans of C & W Open line cadre (Mech. Deptt) of different trades <sup>of</sup> HSK I & II, Master Craftsman will however <sup>be</sup> eligible according to seniority of HS I in their own trade. The eligibility is as under:

- i) The employee must have passed SSC or equivalent examination.
- ii) The employee should have put three years non-fortuitous service as skilled Artisans.
- iii) The employee should not be more than 45 years.

5. The applicant contended that according to the above paragraph both respondent No. 4 and 5 could not have been selected as they had not put <sup>w</sup> <sub>it</sub> three years non-fortuitous service in C & W <sup>Ministry</sup> <sub>Raiways</sub>.

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6. To support his contention he further relied upon Railway Board's order RBE55/97 dated 17.4.1997 which is reproduced as under:

The question whether a Railay servant who joins another seniority unit on transfer on request on bottom seniority loses only his seniority or also service rendered in the previous unit, whether a minimum service condition is specified, has been considered by the Board in the light of a clarification sought for in this regard by one of the Railway Administrations.

It has been decided that since transfer of a Railway servant on request on bottom seniority takes place against direct recruitment quota, he should be treated as a direct recruit in the new seniority unit/cadre for the purpose of seniority and therefore the service rendered in the absorbing unit alone will count for eligibility whether a minimum length of service is specified as a condition for consideration for promotion including promotion to general selection posts.

Past cases decided otherwise need not be reopened.

7. The learned counsel for the applicant then submitted that in view of these instructions the Respondent No.4 and 5 could not be considered and had they been not there, the applicant would have been considered and selected.

8. In reply to this learned counsel for the respondents submitted that there is no question of selection of applicant since he could not qualify viva voce test. Whether the respondent No.4 and 5 were considered or not the applicant could not be empanelled since he did not qualify viva voce test. As such he prayed for dismissal of OA.

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9. We have gone through the record and have also examined the case very carefully.

10. The fact that respondent No.4 and 5 did not fulfill eligibility condition as per circular issued for holding the test is concerned that is not disputed particularly in view of the Railway Board's order No. 55/97. Thus the selection of respondent No.4 and 5 is irregular and against the instructions of the Railway Board. Hence the same cannot be sustained.

11. But at the same time the applicant cannot be declared to have passed the examination.

12. In view of these circumstances OA is partly allowed. The panel dated 16.4.1999 is hereby quashed and set aside. The Railway may hold the fresh selection as per rules and instructions on the subject.

Shanta &

(Ms. Shanta Shastry)  
Member(A)

Kuldip Singh

(Kuldip Singh)  
Member(J)

NS