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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.659 of 1995

DATE OF ORDER: 27th November, 1997

BETWEEN:

RAJAMALLU

.. APPLICANT

AND

1. The Divisional Railway Manager (P), BG,
South Central Railway,
Secunderabad,
2. The Sr. Personnel Officer,
S.C.Railway, Secunderabad,
3. The General Manager,
S.C.Railway,
Secunderabad.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.N.KRISHNA RAO

COUNSEL FOR THE RESPONDENTS: Mr.N.R.DEVARAJ, Sr.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGEMENT

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER(ADMN.)

Heard Mr.BSA Satyanarayana for Mr.N.Krishna Rao,
learned counsel for the applicant and Mr.N.R.Devaraj,
learned standing counsel for the respondents.

2. The applicant in this OA while working as Mason
Gr.II, a notification dated 15.9.94 was issued for

selection to the post of Works Maistry. In response to that notification, 45 employees including the applicant had volunteered. They were advised to appear for the written test to be held on 23.10.94 by the letter dated 10.10.94. The applicant's name appeared at Sl.No.16 in the above said letter. The proposed written test scheduled to be held on 23.10.94 was postponed by the order dated 21.10.94. When the matter stood thus, a fresh notification dated 21.4.95 was issued in supersession of the earlier notification dated 15.9.94 for selection to the post of Works Maistry in the Civil Engineering Department of the Railways. In that second notification, Artisan Gr.II in the scale of pay of Rs.1200-1800 was not included in the eligibility list. The applicant submits that his name was erroneously not included on the basis of some alleged meeting with the organised labour union on 30.3.94. He submits that he is eligible for appearing for the test even though he is Mason Gr.II in the scale of pay of Rs.1200-1800.

Ballast

3. In the meantime, ~~Builder~~ Train Checkers (BTCs) who are in the pay scale of Rs.950-1500 were allowed to sit for the examination. The applicant contends that the lower grade staff, namely, BTCs in the lower scale of Rs.950-1500 are allowed to sit for the examination whereas the applicant who is in the higher grade viz, Rs.1200-2040 was not allowed. Hence it is a case of discrimination. The applicant also submits that he has been asked to appear for the selection and that selection for unknown reasons has been cancelled and the respondents are estopped from cancelling the earlier selection when the date had already been fixed for the written test.

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4. This OA is filed praying to quash the impugned second notification dated 21.4.95 (Annexure at page 13 to the OA) by holding the same as illegal, arbitrary and against the guidelines issued by the Railway Board through the letter dated 15.5.81 and for consequential declaration that the Artisans Skilled Gr.II in the scale of pay of Rs.1200-1800 are also eligible for promotion to the post of Works Maistry.

5. The main point to be considered in this OA is whether the Gr.II Artisan staff in the scale of pay of Rs.1200-1800 are eligible to appear for selection to the post of Works Maistry as per the Recruitment Rules or as per the avenue chart i.e, whether Gr.II staff are in the feeder category for consideration for enlisting them for the post of Works Maistry in the grade of Rs.1400-2300.

6. The promotional avenue chart of the Atisan staff to compete for the post of Works Miastry has been enclosed as Annexure (at Page 19) to the OA. From this chart, it is evident that the Highly Skilled Gr.I Artistan staff in the grade of Rs.380-560 are only eligible for consideration to be allowed to sit in the examination for the post of Works Maistry and Gr.II Skilled staff are not allowed. The applicant is a Mason Gr.II. As per the chart, the next promotion for Mason Gr.II is Mason Gr.I and thereafter to the cadre of Works Maistry. Hence it is evident that as per the avenue chart which is in force, the applicant has got no right for appearing for the examination to the post of Works Maistry.



7. The first notification issued on 15.9.94 includes Artisan Skilled Gr.II also for appearing for the examination to the post of Works Maistry. The respondents have cancelled this notification and issued a second impugned notification dated 21.4.95. As stated earlier, the first notification is not in accordance with the avenue chart for promotion to the post of Works Maistry. Hence it has to be held that the first notification dated 15.9.94 has been issued wrongly and that cancellation of that notification and issue of the second notification cannot be held as irregular or arbitrary.

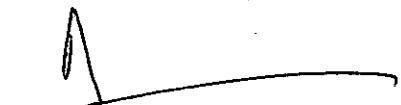
8. The applicant submits that having permitted him to sit for the examination on the basis of the first notification, he cannot be prevented for inclusion if he applies in response to the ~~first~~ notification. The first notification cannot be cancelled and the respondents are estopped from cancellation of the first notification and ~~they should be prohibited from appearing in response to the examination~~ ^{and} ~~to the second notification~~. The question of estoppel does not arise in this case. The rules are very clear. The feeder category for the post of Works Maistry is only Skilled Gr.I Artisan. If any wrong notification is issued, there cannot be estoppel to cancel that notification. It is a common administrative law that incorrect/irregular notification can be cancelled if it is found to be wrong at a later date. As a matter of fact, we can further add that even if promotion is made on the basis of a wrong notification, such a promotion cannot be held as tenable. But we do not want to advance this argument any further as

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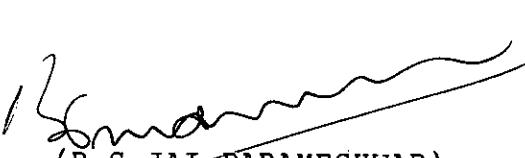
the initial notification itself was cancelled even before starting of the examination. Hence we do not uphold the contention of the applicant that the respondents are estopped from prohibiting Gr.II Artisan staff for appearing for the post of Works Maistry when they are not eligible as per the avenue chart.

9. The second contention of the applicant is that the BTCs who are in the grade of Rs.950-1500 are allowed to appear for the examination in response to the notification even though ^{as} ~~their basic pay is less than the applicants.~~ Hence, allowing them to appear for the examination to the post of Works Maistry is contrary to the rules as they will jump two grades of scales of pay to reach Rs.1400-2300 to become ~~eligible for~~ Works Maistry. In this connection, the circular No.P.E.608/WMs, dated 26.11.91 was produced by the respondent-authorities. We have perused the circular. It is seen from the circular that BTCs in the scale of Rs.950-1500 who are regular BTCs in the CED and are working as such in the regular capacity as on 15.11.91 were only permitted to appear for the post of Works Maistry. All the BTCs who are on deputation or who are appointed later than 15.11.91 were made ineligible for appearing for the post of Works Maistry. The post of ~~Works Maistry~~ ^{BTCs} is a dead end post. If no promotional opportunities are given to BTCs, then those regular BTCs will be stagnating in the scale of Rs.950-1500. The Apex Court every now and then ~~directs~~ ^{observes} that employees should have some avenue of promotion. If such a direction is existing by the Apex Court of this country, we cannot find fault with the respondents if they allow the regular BTCs working in CED as on 15.11.91 to sit



for the Works Maistry's examination due to the fact that they have no further promotional opportunities, such action on the part of the respondents cannot be held as untenable, irregular or violative of any principles of natural justice. The respondents have taken enough care in the order dated 26.11.91 that BTCs on deputation are excluded from appearing for selection to the post of Works Maistry. Even regular BTCs who were working as such after 15.11.91 were also eliminated from this list. Probably there were no regular BTCs appointed in CED after 15.11.91. Be that as it may, we consider that the action taken by the respondents in allowing regular BTCs who were working as such as on 15.11.91 even though they were in the grade of Rs.950-1500 cannot be treated as against any rules in view of the reasons given above. Hence the applicant cannot ^{in refut} agitate the action of the respondents in allowing the BTCs as stated above for appearing for selection to the post of Works Maistry as per the second notification.

10. In view of what is stated above, we have considered the case from all the angles and found that there is no merit in this OA. Hence, the OA is dismissed. No order as to costs.


(B.S.JAI PARAMESHWAR)
MEMBER (JUDL.)

27.11.97


(R.RANGARAJAN)
MEMBER (ADMN.)

DATED: 27th November, 1997
Dictated in the open court.


D.R.

vsn

DA.659/95

Copy to:-

1. The Divisional Railway Manager (P), BG, South Central Railway, Secunderabad.
2. The Senior Personnel Officer, South Central Railway, Secunderabad.
3. The General Manager, South Central Railway, Secunderabad.
4. One copy to Mr. N. Krishna Rao, Advocate, CAT, Hyd.
5. One copy to Mr. N.R. Devaraj, Sr. CGSC, CAT, Hyd.
6. One copy to D.R.(A), CAT, Hyd.
7. One duplicate.

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27/11/92

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TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

THE HON'BLE SHRI R.RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S.JAI PARAMESHWAR :
M (J)

Dated: 27/11/92

ORDER/JUDGMENT

M.A/R.A/C.A AND

O.A. NO. 659/95 in

Admitted and Interim Directions
Issued.

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

YLKR

II Court

