

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR

Date of decision: 6.02.2004

OA No.495/2003

Mahaveer Prasad Meena s/o Shri Saitana Ram Meena aged about 45 years, MCF under Dy. CME (Diesel), Phulera, r/o 307 A Railway Colony, Near Shiv Mandir, Behind Ramleela Stage, Phulera.

.. Applicant

VERSUS

1. Union of India through General Manager, North-Western Railway, Hasanpura Road, Opposite Railway Hospital, Jaipur.
2. Divisional Railway Manager, North-Western Railway, Power House Road, Jaipur.

.. Respondents

Mr.Nand Kishore, Counsel for the applicant

Mr. Anupam Agarwal, Counsel for the respondents

CORAM:

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

Hon'ble Mr.A.K.Bhandari, Member (Administrative)

O R D E R

Per Hon'ble Mr. M.L.Chauhan.

The applicant has filed this OA thereby praying for the following reliefs :-

- "i) It is prayed that the entire record pertaining to the case may kindly be called and after examination of the same, respondents may be directed to declare the results of written test held on 22.6.2003 (A/4). The notification dated 14.8.2003 (A/5) may be declared null and void may



be quashed.

- ii) The respondents may be directed to amend, modify the notification dated 1.10.2002 (A/7) to the extent that the cut of date of age of 45 years be determined as per earlier notification dated 21.1.2002 (A/1).
- iii) Any other directions and orders which is deems proper in the facts and circumstances of the case may kindly be allowed to the applicant."

2. The facts of the case are that the applicant at the relevant time was working as Electrical Fitter in the pay scale of Rs. 4500-7000. The respondents issued a notification dated 21.01.2002 (Ann.A1) for filling up 25% intermediate quota vacancies of Diesel Chargeman (Electrical) pay scale Rs. 5000-8000 and the eligible candidate were required to give their applications provided they fulfil the condition mentioned therein. Because of certain administrative reasons, the said notification was cancelled and another notification was again issued on 4.3.03 (Ann.A2). One of the condition in the said notification was that the age of the employee should not be more than 45 years (condition No.3). The applicant applied for the post and he was considered eligible, as can be seen from letter dated 14.5.03 (Ann.A3) wherein the name of the applicant has been shown at Sl.No.1. The respondents fixed the date of the written test on 22.6.03 vide letter dated 30.5.03 (Ann.A4). The applicant appeared in the said written test. The respondents, instead of declaring the result of the written test held on 22.6.03, issued letter dated 14.8.03 whereby the earlier notifications were cancelled due to

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administrative reasons. A copy of the said letter dated 14.8.03 has been placed on record as Ann.A5. Thereafter the applicant represented the case to the respondents for declaring the result of the test held on 22.6.03. The case of the applicant was also represented through the Association. However, the respondents issued notification dated 1.9.2003 (Ann.A7) for filling one post of Diesel Chargeman (Electrical) after cancellation of all earlier notifications vide Ann.A5. In the said notification person who are not above 45 years of age as on 15.10.03 have been made eligible. It is on these facts that the applicant has filed this OA thereby praying for the aforesaid reliefs.


3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, it has been stated that as per notification dated 4.3.03 (Ann.A2) the applicant was not eligible as he has crossed the age of 45 years as on 13.4.02 but because of earlier notification dated 21.1.02, the reference of which was given in the notification Ann.A2, the name of the applicant was found place in the eligibility list dated 14.5.03. It is further stated that because of certain administrative reasons, the respondents cancelled the selection vide letter dated 14.8.03 (Ann.A5). It is further pleaded that it is the prerogative of the answering respondents to make selection or not for which no grievance can be raised by the applicant. Even otherwise also, the Apex Court has time and again held that an applicant despite his selection has no right to be appointed as such. The administration has every right to conduct the selection or cancel the same for valid administrative reasons. It is further stated that mere

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representation to Association does not give any right to the applicant especially under the circumstances when the selection itself stood cancelled for valid administrative reasons. The respondents have also stated that the impugned notification dated 1.9.2003 is a fresh notification and as such there was no reason to mention the reference of earlier notifications (Ann.A1 and A2) which stood already cancelled vide notification Ann.A5. It is the prerogative of the administration to fill up the posts lying vacant with them. The applicant has failed to demonstrate as to how these vacancies were pertaining to the year 1999-2000. Bare perusal of the notification would show that the applicant was not eligible on the cut off date as he has crossed the upper age limit especially under the circumstances when as per his own averment there is no provision with regard to age relaxation. Thus the allegation with regard to wilful/intentional debarment of the applicant is without any basis.

4. The applicant has also filed rejoinder thereby reiterating the stand taken in the OA. It is further averred that the vacancy was for the year 2000-2001 as such prospective candidates on cut off date when the vacancies were required to be filled as per notification Ann.A1, the age limit if any will have to be considered for the relevant period. It is further stated that some persons who had not completed 3 years of service as per condition No.2 of the said notification dated 21.1.2002 (Ann.A1) were made eligible wrongly and subsequently when the respondents came to know that these candidates could not found place in the select list, the entire selection was cancelled, in order to favour them and made them



eligible.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

5.1 The main grievance of the applicant in this OA is that once he was held eligible for the post of Diesel Chargeman (Electrical) pursuant to notification dated 4.3.03 (Ann.A2) and vide Ann.A3 where his name find mention at SL.No.3 and a written test was also conducted on 22.6.03, it was not permissible for the respondents to withhold the result of the written test and cancel the earlier notification, as was done vide letter dated 14.8.03 (Ann.A5) and to issue fresh notification vide impugned notification dated 1.9.03 (Ann.A7) for the same post. Thus, according to the applicant, direction may be issued to the respondents to declare the result of the written test held on 22.6.03 after quashing the notification dated 14.8.03 (Ann.A5) whereby earlier notifications for filling up the post was cancelled, as can be seen from prayer No. i). Further case of the applicant is that the respondents may be directed to amend/mofidy the notification dated 1.10.2003 to the extent that cut off date of age of 45 years be determined as per earlier notification dated 21.1.02. We are of the view that the relief as prayed by the applicant cannot be granted to him. It has been legally settled that eligibility for filling up the post has to be seen when the selection to the post is made or in terms of notification if there are no such stipulation regarding eligibility for the post to which the appointment is to be made. From the facts as stated above, it can be seen that for the first time notification dated 21.2.02 was issued

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for filling one post of Diesel Chargeman (Electrical) and as per condition No.3 the candidate who has crossed the upper age limit of 45 years were held not eligible for the said post, as per this notification. Admittedly, no effect was given to this notification. Subsequently, another notification dated 4.3.03 (Ann.A2) was issued. This was a fresh notification stipulating all the conditions as was mentioned in the earlier notification, though reference of earlier notification was also made. In this notification dated 4.3.03 (Ann.A2) the same condition viz. candidate should not have crossed the upper aged limit of 45 years was also mentioned. It was further mentioned in the said notification that the application should be submitted through their senior subordinate upto 19.3.2003. Admittedly, on that date the applicant was over age. In case the applicant was aggrieved of the condition No.3 of the notification Ann.A2, he should have challenged the said notification immediately thereafter. It is no doubt true that when the eligibility list was prepared by the department for the purpose of selection to the post of Diesel Chargeman (Electrical), the name of the applicant was shown at Sl.No.1 vide notification dated 14.5.03 (Ann.A3). The respondents have taken a specific stand that his name was wrongly included in this eligibility list taking into consideration the notification dated 21.1.02 and he was allowed to appear in the written examination which was held on 22.6.2003. We see no infirmity in the action of the respondents, if the result of such examination was not declared and the applicant cannot be given benefit of erroneous inclusion of his name in the eligibility list Ann.A3 when admittedly he was over age as on 4.3.03, when the vacancy was notified which stipulates

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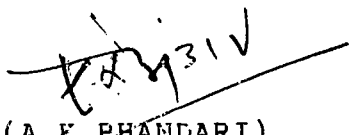
the condition that the candidate should not be more than 45 years of age (Ann.A2). Thus, the action of the respondents in cancelling the earlier notifications vide notification dated 14.8.03 (Ann.A5) cannot be faulted. Thus, no mandamus can be issued to the respondents to declare the result of the written test held on 22.6.03 <sup>held</sup> pursuant to notification dated 4.3.03 (Ann.A2) especially when the applicant was over age and there is no provision regarding relaxation of the age. We are also of the view that notification dated 4.3.03 (Ann.A2) is independent to the notification dated 21.1.02 (Ann.A1) and cannot be said to have been issued in continuation of the earlier notification, incorporating a specific condition regarding age limit which was obviously in the earlier notification. We are further of the view that it is the prerogative of the respondents either to fill or not to fill the post and no direction can be given that the posts which are lying vacant should be filled, more particularly, when the applicant has not been selected so far and written test held pursuant to the notification Ann.A2 stood already cancelled. Thus, relief No.i) as prayed by the applicant cannot be granted.


5.2 As regards relief No.ii) that the respondents may be directed to amend/modify the notification dated 1.10.2003 (Ann.A7) to the extent that the cut off date of age of 45 years be determined as per earlier notification dated 21.1.2002 (Ann.A1) cannot also be accepted. As already stated above, the eligibility has to be seen at the time of selection of a candidate or as per the conditions notified in the notification vide which the post has been advertised. The person who is not eligible as per notification cannot be made eligible on the basis

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of earlier notification which stood already cancelled. Thus, the alternative prayer/prayer No.ii) of the applicant cannot be granted more particularly when the applicant has failed to show that there is a provision regarding relaxation of age and the respondents have failed to exercise such power. Further, the applicant cannot be permitted to say that the cut off age of 45 years to be determined as per notification dated 31.1.2002 (Ann.A1) <sup>as</sup> he has waived his right by appearing in the written test pursuant to notification dated 4.3.03 (Ann.A2) thereby accepting the eligibility criteria regarding bar of age, (though he was over age and wrongly permitted to appear in the written test.)

6. In view of what has been stated above, the present OA is devoid of merit and, therefore, dismissed with no order as to costs.

  
(A.E. BHANDARI)  
Member (A)

  
(M.L. CHAUHAN)  
Member (J)