

Central Administrative Tribunal
Jabalpur Bench

OA No.238/05

Indorse, this the 17th day of November, 2005.

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman

Hon'ble Mr.Madan Mohan, Judicial Member

Kedar Dubey
S/o Shri Pati Raj Duby
Junior Engineer-I (Diesel)
West Central Railway
Diesel Shed, Itarsi.
R/o Railway Quarter RB-II 364
"A" Azad Nagar
New Yard, Itarsi.

Applicant.

(By advocate Shri L.S.Rajput)

Versus

1. Union of India through its
General Manager
West Central Railway
Indira Market, New Railway Station
Jabalpur.
2. The Divisional Railway Manager
West Central Railway
Habibganj, Bhopal. Respondents

(By advocate Shri M.N.Banerjee)

ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicant has claimed the following reliefs:

- (i) Direct the respondents to first fill up the upgraded posts including existing and chain/respondent vacancies of SE(D) Engine Wing in Grade Rs.6500-10500 by modified selection with all consequential benefits flowing from Annexure A4 holding that applicant is entitled for consideration for the said post.



(ii) Quash the impugned notification dated 1.1.2005 (Annexure A1) being ab-initio void and direct the respondents to hold any regular selection only after filling up the upgraded posts by modified selection.

2. The brief facts of the case are that the applicant is the senior most Junior Engineer Grade I in the pay scale of Rs.5500-9000. Due to formation of the new West Central Railway Zone from 1.4.2003, respondents could not make regular promotions of the employees for administrative reasons. However, the applicant, along with other juniors, was given adhoc promotion as Section Engineer (Diesel) on 1.7.2003 against one of the existing vacancies in Grade Rs.6500-10500. In the meantime, the Railway Board took a policy decision to upgrade certain percentage of Group 'C' & 'D' posts under the scheme of "Restructuring of Cadres" with effect from 1.11.2003. The total cadre strength of Mechanical Supervisors (Diesel) as on 1.11.2003 is given on Para 4.4 of the OA. Against the total sanctioned strength of 79, only 62 persons were on roll and 17 posts were vacant. Railway Board vide letter dated 6.1.2004 made certain modifications in the policy letter dated 9.10.2003 and respondent No.1 upgraded as many as 7 posts of S.S.E.(D) in the grade Rs.7450-11500 on West Central Railway Zone. As per the cadre strength as on 1.11.2003 (Annexure A3) there was already a vacancy of S.E.(D) against which applicant was working on adhoc with effect from 1.7.2003 and one post became available due to revision of percentage from 28% to 29% as per A-4 in Grade Rs.6500-10500. Similarly on promotion of 4 SE (D) as SSE (D) from Bhopal Division, 4 resultant vacancies became available (total 6), which are to be filled by modified selection as per A-4. Respondent No.2 has already filled posts of S.E.(D) Electrical Wing by modified selection as back as on 14.6.2004 but did not take any steps to fill the upgraded 6 posts of S.E.(D) Engine Wing till date and is now trying to hold regular selection against the policy decision. Against this, the applicant represented. When no action was taken, the applicant and others sent a joint representation on 14.2.2005 requesting to promote them by holding a modified selection.



Respondent No.2 instead of conducting a modified selection conducted the regular selection by holding written test on 15.2.2005. The result of the test has not been declared so far. Hence this OA is filed.

3. It is contended in the reply that on account of sanction some temporary post applicant and some other employees were given adhoc promotion to hold those temporary post in the grade Rs.6500-10500. The currency of the temporary post was extended from time to time and the present position of the extension post was sanctioned upto 31.3.2005. Thereafter no extension of period is received therefore including these temporary post in the number of sanctioned post is not correct. The position of sanction post is explained in a chart in the reply. As far as table given by the applicant against the chart is concerned, the vacancy position includes the temporary post in addition to the regular sanctioned post. Applicant has relied upon Annexure A3 treating it to be the sanctioned strength as on 1.11.2003 which is incorrect and it does not give the position of actual sanctioned strength. This documents is prepared by Diesel Shed Itarsi showing the staff position who were working in the diesel shed as on 1.11.2003. It merely gives details of employees working in the Diesel Shed, Itarsi, which includes employees working against regular sanctioned post and employees working against temporary post sanctioned upto 31.3.2005. In Para 4.5 of the reply, the position of sanctioned strength as on 1.11.2003 is shown as 16 for the post of S.E. (Loco) in the grade of Rs.6500-10500 and further mentioned that in the Railway Board's circular, it is stipulated that in cases where percentages have been reduced in lower grade and no new post becomes available as a result of restructuring the existing vacancy on 1.11.2003 should be filled by normal selection procedure. In the instant case, no new post became available in grade 6500-10500 for S.E.(Loco). There was sanctioned strength of 16 posts before restructuring and same remain after restructuring.



4. Heard learned counsel for both parties. Learned counsel for applicant has submitted that the applicant is the senior most J.E.I and due for promotion for the post of S.E.(D) under the scheme of restructuring of cadre. The action of the respondents is arbitrary, illegal and discriminatory because as per policy of the Railway Board, posts upgraded and resultant vacancies that became available due to restructuring of cadre including existing vacancies as on 1.11.2003 are to be filled by modified selection. The action is discriminatory because in the cadre of S.E.(Diesel Electric Wing) the posts have been filled by modified selection and the same is denied to the applicant.

5. Learned counsel for the respondents argued that the sanctioned strength vis-à-vis vacancy position in electrical wing is totally different depending upon available posts as on 1.11.2003 in electric wing, which has no relevance to the vacancy position and available post in diesel wing as on 1.11.2003 and therefore the question of discrimination does not arise. He has drawn our attention to the judgment delivered by this Bench of the Tribunal on 13.7.2005 in OA 287/2004 Kamal Singh & Others Vs. UOI, which is based on similar facts and that OA was dismissed by the Tribunal. Hence the present OA is liable to be dismissed.

6. After hearing learned counsel for the parties and perusing the records, we find that the Tribunal vide its order dated 28.9.2005 directed both parties to give details in regard to the number of existing posts in the grade where the applicant is working i.e. the Engine Wing on the post of JE Grade-I Rs.5500-9000. Respondents have a written argument in which it is clearly mentioned that the Railway Board's circular dated 6.1.2004 Para 4.5 stipulates that in cases where percentages have been increased as a result of restructuring of the vacancy as on 1.11.2003 then only modified method of selection is to be adopted and in cases where no new post becomes available as a result of restructuring of the existing vacancy as on 1.11.2003 should be filled by normal selection procedure. In the instant case, the chart submitted in Para 4.4 and 4.5 of reply already filed by respondents



shows the actual position of sanctioned strength as on 1.11.2003. We have perused the order of the Tribunal in OA No.287/2004 in which similar facts are considered and this OA was dismissed. So far as Annexure A3 relied on by the applicant is concerned, it is specifically controverted by the respondents in their reply.

7. Considering all facts and circumstances of the case, we are of the considered view that the OA has no merit and is liable to be dismissed. Accordingly the OA is dismissed. No costs.

[Signature]

(Madan Mohan)
Judicial Member

[Signature]

(M.P. Singh)
Vice Chairman

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पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
परिचयिका -
(1) रजि. नं. जबलपुर, जबलपुर
(2) आ. नं. जबलपुर, जबलपुर
(3) प्र. नं. जबलपुर, जबलपुर
(4) क. नं. जबलपुर, जबलपुर
सूचना एवं आवश्यक कार्यवाही हेतु
उप रजिस्ट्रार

L.S. Rastogi
M. N. Banerjee

Issued
23/11/05