

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR**

Original Application No. 1114 of 2004

Jabalpur, this the 14th day of December, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Prakash Nigam, S/o. late Shri Rajendra
Nigam, aged about 30 years, by occupation
Apprentice/Technician-III, CTCC, Western
Railway, Ujjain. Applicant

(By Advocate – Shri D.M. Kulkarni)

V e r s u s

1. Union of India, through the Secretary,
Department of Railways, New Delhi.
2. Divisional Railway Manager, Western
Railways, Ratlam.
3. Senior Divisional Personnel Officer,
Western Railway, Ratlam.
4. Shri Shukhdeo Deomurar,
Technician-II, Western Railway,
Ratlam. Respondents

(By Advocate – Shri V. Saran for official respondents and Shri
A.N. Bhatt for private respondents)

O R D E R

By Madan Mohan, Judicial Member –

By filing this Original Application the applicant has claimed the
following main relief :

“(ii) to quash the impugned orders in Annexure A/4, A/5 and A/6,

(iii) to command the respondents to hold the fresh examination
for appointment on the post of Apprentice Mechanic/Junior



Engineer-2 and to appoint the applicant as such with all consequential benefits."

2. The brief facts of the case are that the applicant is holding the post of Technician Grade-III. He was initially appointed as Apprentice on 11.10.1991 and thereafter was regularized on 17.10.1994. The respondent No. 2 issued letter dated 19.3.2003 making certain modifications in the qualification mentioning therein that only those candidates should apply who are having the certificate of ITI/Ex-apprentice or passed 10+2 examination with Science subject. Thereafter all of a sudden an order was issued dated 16.7.2003, whereby two persons have been selected in the written examination including the respondent No. 4 and were called for interview vide letter dated 16.7.2003, and ultimately vide order dated 26.8.2003 the respondent No. 4 was selected for the post. On 14.8.2003 again an order has been issued mentioning therein that for appointment on the post of Apprentice Mechanic/Junior Engineer-2 the persons who are already working, holding the qualification as per Annexure A-1 should be allowed to compete and revised qualification should not be considered/forced, meaning thereby the applicant was entitled to compete in the examination as per the letter Annexure A-1 Again a letter dated 25.9.2003 was issued whereby it was made clear that if his ITI then he must possess the certificate in the concerned trade only and not in any other trade. The applicant submitted a detailed representation on 26.12.2003 that he has wrongly debarred from the competition when he is holding the qualification and was entitled to appear in the examination. The representation of the applicant has not been considered by the respondents. Hence, this Original Application is filed.
3. Heard the learned counsel for the parties and carefully perused the pleadings and records.
4. In reply it is contended by the respondents that they issued a circular dated 26.2.2003 by virtue of which the applications were invited



from the Departmental candidates who are already working in the Railways and possessed *the requisites* qualifications mentioned in the circular. By another subsequent circular dated 19.3.2003 the requisite qualifications were mentioned in the above referred circular were modified in the light of existing circular dated 8.11.2002. The aforesaid circular was issued by the Ministry of Railways and it was decided that the educational qualification for consideration for selection as Intermediate Apprentice in all categories/department for absorption as JE Grade-II in pay scale of Rs. 5000-8000/- should henceforth be ITI/10+2 in Science stream. The present applicant does not possess the requisite qualification as he did not neither pass the ITI nor passed the 10+2 in Science stream and accordingly the order dated 28.5.2003 was issued by which the list of those persons was declared who were found eligible in accordance with the criteria laid down by the above referred circulars. Through this communication the scheme of test/examination was also declared. The candidates who qualified in the written test were then called for interview vide communication dated 16.7.2003. The private respondent No. 4 was selected. The application of the present applicant was rejected as he does not possess the requisite qualification. The circular dated 14.8.2003 (Annexure A-7) on which the applicant is relying upon cannot be applied in the present case due to the fact that upto this date all formalities with regard to the selection i.e. the written test and interview were over. The aforesaid circular was meant for having got the prospective application and not the retrospective. Hence, this Original Application deserves to be dismissed.

5. We have given careful consideration to the rival contentions made on behalf of the parties.

6. The learned counsel for the applicant has submitted that the applicant is working under the respondent Railways as Technical Grade-III and had applied for the post of JE-II, as notified by the office of the DRM Ratlam vide their letter dated 26.2.2003. As per the qualifications mentioned in that letter, the applicant was eligible for the post of JE-II.

Later on the respondents have revised the educational qualifications for selection to the post of JE-II vide their letter dated 19.3.2003 (Annexure A-3) making ITI/Ex. Apprentice Pass/10+2 with Science, as essential qualification. The applicant did not possess this qualification and was therefore, made ineligible for the post of JE-II. The respondents have conducted the test vide their letter dated 16.7.2003 and 28.5.2003, and finally prepared the panel on 26.8.2003, by selecting the private respondent. The learned counsel for the applicant has drawn our attention to the letter dated 14.8.2003 (Annexure A-7) again issued by the office of the DRM, Ratlam, in which it has been stated that for the employees who were working as on 12.8.2002 and where the qualifications have been revised, the revised qualifications will not be insisted upon and they should be given permission to participate in the selection for the post of JE-II. The note below under that letter also states that those who were in service on 12.8.2002, for them, this revised qualifications will not be applicable for the selection made after 23.6.2003. The submission of the learned counsel for the applicant is that according to this letter, the applicant was eligible and had applied for the post, however, he has not been permitted. Thus, the respondents have committed grave error by not considering the applicant for appointment to the grade of JE-II.

7. On the other hand, the learned counsel for the respondents had submitted that the orders issued by the respondents revising the qualification for selection to the post of JE-II vide order dated 19.3.2003 has been done in pursuance of the letter issued by the GM, Western Railway. He has also submitted that the subsequent letter dated 14.8.2003 again not insisting for the revised qualification for the persons who were working on 12.8.2003, has again been issued by the office of DRM in pursuance of the instructions issued by the zonal as well as by the Railway Board. He has contended that no irregularity has been committed by the respondents while making the selection and, therefore, this O.A. is liable to be dismissed.



8. We have given careful consideration to the arguments advanced on behalf of both sides.

9. It is an admitted fact that the applicant did not possess the qualifications as prescribed for selection to the post of JE-II vide letter dated 19.3.2003. The respondents have conducted the test vide their letter dated 16.7.2003 and 28.5.2003 and finally prepared the panel on 26.8.2003 by selecting the private respondents. As the applicant did not fulfill the requisite qualifications prescribed for recruitment to the post of JE-II he was not permitted to participate in the test. It is a settled legal position that mode of recruitment and category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for this Tribunal to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive. The reliance placed by the learned counsel for the applicant on the letter dated 14.8.2003 issued by the DRM, Ratlam is not applicable in the instant case as the note below under that letter clearly states that those who were in service on 12.8.2002, the revised qualifications will not be applicable for the selection made after 23.6.2003, whereas in the instant case we find that the test has already been conducted on 16.7.2003 and 28.5.2003 and the final panel was only declared on 26.8.2003.

10. In the conspectus of the aforesaid facts and circumstances of the case we do not find any merit in this Original Application and the same is accordingly dismissed. No costs.


(Madan Mohan)
 Judicial Member

“SA”


(M.P. Singh)
 Vice Chairman