

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT COURT SITTING AT INDORE

Original Applications No 41 of 2004

Jabalpur, this the 25th day of August, 2005.

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

Kumud Narayan Nagar
S/o Shri Shvi Narayan Nagar,
Aged 32 years, Occupation Unemployed,
R/o: 102, Sanchar Nagar, Kanadia Road,
Indore (MP)

Applicant

(By Advocate – Shri C.B. Patne)

V E R S U S

1. Union of India,
Through Secretary to the Govt. of India,
Ministry of Railways, Railway Board,
New Delhi.

2. The Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi – 110 011,
Through its Secretary.

Respondents

(By Advocate – Shri Y.I. Mehta)

O R D E R

By M.P. Singh, Vice Chairman -

By filing this Original Application, the applicant has sought the following main reliefs :-

“(b) to direct the Respondent No.1 to issue appointment and posting order to the applicant for the post of Mechanical Engineer under the Central Engineering Service and to grant the applicant all consequential benefits at par with his colleagues selected in the Engineering Services Examination 2001;

(c) to quash the letter dated 17.11.2003 (Annexure A/10) issued by Respondent No.1;”



2. The brief facts of the case are that the applicant had appeared in written examination for Engineering Services conducted by the Union Public Service Commission (for short 'UPSC') in June, 2001. He was declared successful and was placed at Sr.No.97 in the category of Mechanical Engineering. The total number of vacancies in the category of Mechanical Engineering was 117. The applicant was directed to undergo medical examination at Mumbai on 20.6.2002. His character and antecedent verification was also done by the police sometime in August-September 2002. But the applicant has not been issued appointment and posting order. He had earlier filed OA No. 508/2003, before this Tribunal and the Tribunal had disposed of the said OA vide order dated 11.8.2003 by directing the respondents "to dispose of the pending claim of the applicant regarding his appointment to the post of Mechanical Engineer by treating the present OA as a supplementary representation and to pass a detailed and speaking order". Now, the respondent no. 1 have issued the impugned order dated 17.11.2003 (Annexure-A-10) denying the applicant the post of Mechanical Engineer on the basis of judgment of Hon'ble Supreme Court in the case of Ritesh R.Sah Vs. Dr.Y.L. Yamul and others, (1996)3 SCC 253= JT 1996(2)SC495. According to the applicant, the respondent No.1 have mechanically rejected the claim of the applicant and, therefore, the impugned order deserves to be quashed. He has also stated that the applicant has been duly selected by the UPSC for the post of Mechanical Engineer against a vacant post; all formalities have been completed by the respondents; and there has been therefore no justification in denying the appointment order in favour of the applicant. Hence, this OA.

3. The respondents in their reply have stated that the allocation of services/departments, on the basis of Engineering Services Examination-2001, has been done as per the criteria notified in the



Official Gazette of India. The applicant had appeared for the Mechanical Engineering posts/services. The Railway administration had indented 7 UR and 5 OBC vacancies in the Railways for Indian Railway Service of Mechanical Engineering (for short 'IRSME') on UPSC. The last candidate in the UR category, who got IRSME is placed at rank 9 (1 UR and 1 OBC were allotted to IRSS which was their 1st choice). Hence, all the OBC candidates who were placed up to that rank were adjusted against unreserved vacancies only. They have further stated that there was 1 such OBC candidate who was adjusted against unreserved vacancy. Thus, there remained 12 OBC candidates in the Unreserved list for allocation of service/departments. The OBC candidate who was placed at serial no. 11 in the list may be taken as an illustration. His first preference was IRSME. As brought out above, all the unreserved vacancies in the Railways have been exhausted at rank 9. If rank 11 is adjusted against unreserved vacancy only (since there were 10 other services to which the allotment was to be made) it would mean that the said candidate at rank 11 would not be allotted to his first preference i.e. IRSME but to his lower preference. Whereas, at the same time another OBC candidate much below him in the merit list who has qualified with relaxed standards, say at rank 43 (against quota vacancy), would get his first preference i.e. IRSME. This puts the more meritorious reserved category candidate to disadvantage vis-à-vis a lower ranking OBC candidate. To do away with this discrimination within a particular category, vacancies meant for OBC are used for higher ranking candidates irrespective of whether they are recommended against normal or relaxed standards and are allotted to their higher preferences so long as there are vacancies available. As a result reserve category candidates at the tail end are left unabsorbed as the reserved vacancies against which they were recommended have already been exhausted by higher ranking reserved category candidates recommended against normal standards. In the instant case, there were a total of 41 OBC candidates (13 against normal standards + 28 against relaxed



standards) who were to be considered for allocation to the various departments. Out of the 13 OBC candidates appearing in the unreserved list only 4 could be allotted to the service preferred by them utilizing the unreserved vacancies. The balance 9 OBC candidates were allotted against the OBC quota vacancies. So in all 9 OBC candidates would have been left unallotted/ unabsorbed to any service. There were 29 (result of 1 OBC candidate was withheld and later his candidature was cancelled) OBC vacancies and out of these 9 vacancies were used to adjust 9 OBC candidates who qualified with normal standards. This has resulted in a situation whereby only 20 OBC quota vacancies were left whereas the OBC candidates available were 28. Out of 28 OBC candidates recommended against reserved vacancies, two candidates did not achieve the prescribed medical standards and another one abstained from medical examination. Thus 20 vacancies were available for allotment for OBC candidates. As a result 5 candidates (including the applicant) ranking 43 (because of less number of preferences given) 97, 100, 101 and 102 could not be allotted to any service due to want of OBC vacancies. The applicant had filed OA No.508/2003 before this Tribunal. The said OA was disposed of the Tribunal with a direction to pass a speaking order within three months.

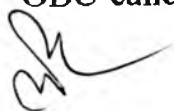
3.1 The respondents have further stated that the phenomenon of unabsorbed cases has been prevailing in Civil Services and Engineering Services over a period of time. In the cases of Satya Prakash Vs. Union of India, OA No.294/98 decided on 10.5.1999 by the Principal Bench of the Tribunal, and N. Vijay Bhaskar Vs. Union of India, O.A.No.878/96 decided on 5.3.1997 by Hyderabad Bench of the Tribunal, the Tribunal have expressed sympathy with the candidates but have also observed that no relief can be granted to the applicants in the said cases. In view of the position explained above, the respondents have submitted that the present O.A. is devoid of any merit and deserves to be dismissed.



4. Heard the learned counsel of both the parties and carefully perused the records.

5. During the course of the arguments, the learned counsel for the applicant has submitted that there were 118 vacancies for the post of Mechanical Engineer and the total number of candidates recommended by the UPSC were 117. He has also submitted that out of 118, 29 vacancies were reserved for the OBC candidates, and 69 vacancies were unreserved. In addition to 29 candidates, recommended by the UPSC for appointment against reserved vacancies for OBC candidates, 13 candidates, had qualified the examination on merit with normal standard. Thus, there were 41 OBC candidates (13 against normal standard + 28 against relaxed standards) declared successful. The candidature of one OBC candidate was withheld and subsequently cancelled. The applicant belongs to OBC category and ranked 97. The total number of vacancies were 118 and, therefore, there is no reason as to why the applicant should be denied the appointment and post against one of 118 vacancies in the category of Mechanical Engineer.

6. On the other hand the learned counsel for the respondents has submitted that as per the judgment of Hon'ble Supreme Court in the case of Shri Ritesh R.Sah (supra) " a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category, but at the same time the provisions should be so made that it will not work out to the dis-advantage of such candidate and he may not be placed at a more dis-advantageous position than the other less meritorious reserved category candidates". In view of the aforesaid judgment of the Hon'ble Supreme Court, the learned counsel has submitted that the out of 13 OBC candidates appearing in the unreserved list, only 4 candidates could be accommodated against general vacancies as per their preferences. The remaining OBC candidates although qualified the examination on merit without



relaxing the standard could be accommodated against reserved vacancies for the OBC as per their preference given by them. This has been done in accordance with the legal position enunciated by the Hon'ble Supreme Court and as a result, 5 candidates ranking 43 (because of less number of preferences given), 97, 100, 101 and 102 could not be allotted to any service ~~due to want of~~ ^{due to} ~~any~~ ^{vacancies} ~~service~~ due to want of OBC vacancies. The applicant is one of the five candidates who could not be allotted to any service due to want of vacancies. In view of this position, as there was no vacancy earmarked for reserved category candidate, he cannot be given appointment. The OA is, therefore, devoid of merit and is liable to be dismissed.

7. We have given careful consideration to contentions made by the learned counsel for the parties.

8. It is not in dispute that there were 118 vacancies for the category of Mechanical Engineering and 117 candidates were recommended by the UPSC on the basis of Engineering Services Examination, 2001. ^{The} category-wise vacancies (aggregate 118) were as under :

<u>UR</u>	<u>OBC</u>	<u>SC</u>	<u>ST</u>	<u>Total</u>
69	29	11	9	118

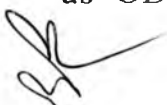
The UPSC declared result of 117 candidates the break-up of which is as under :

<u>UR</u>	<u>OBC</u>	<u>SC</u>	<u>ST</u>	<u>Total</u>
69	28	11	9	117

The result of one OBC candidate was withheld by the UPSC. His candidature was subsequently cancelled thus leaving 117 candidates against 118 vacancies. The UPSC had advised 29 OBC vacancies to the nodal ministry i.e. Ministry of Railways. However the total number of OBC candidates qualified in the list of successful candidates was 41. This was due to the fact that OBC candidates who obtain marks equal to or more than the minimum qualifying marks as fixed for URs candidates and have not availed themselves any relaxation/concession at any stage, qualify as UR candidates. Thus

there were 41 OBC candidates (13 against normal standard + 28 against relaxed standards) who were to be considered for allocation of departments. According to the respondents out of 13 OBC candidates appearing in the unreserved list, only 4 could be allotted to the service preferred by them utilizing the unreserved vacancies. For the remaining 9 OBC candidates appearing in the unreserved list, the preferred services could be allotted to them only after utilizing OBC quota vacancy. This had resulted into a situation whereby only 20 OBC quota vacancies were left whereas the OBC candidates available were 28. Out of 28 OBC candidates qualified against quota vacancies, two candidates did not achieve the prescribed medical standards and another one abstained from medical examination. Thus 20 vacancies were left to be allotted whereas the available number of OBC candidates were 25. As a result 5 candidates ranking 43, 97, 100, 101 and 102 could not be allotted to any service due to want of OBC vacancies. The applicant is one of the five candidates who could not be allotted to any service due to want of vacancies. The respondents have justified their action in denying the five candidates belonging to OBC category who were selected by relaxed standard and their names were recommended but could not be appointed. According to the respondents the allocation of department has been done in keeping with the notified criterion and judgment of Hon'ble Supreme Court of India in the case of Shri Ritesh R.Sah (supra) wherein the Hon'ble Supreme Court has observed that the reserved category candidates higher in merit position should not be placed at a more disadvantageous position than the other less meritorious reserved category candidates.

9. The sole question which arises for consideration in this case is as to whether those OBC candidates who were selected on merits and were placed in the list of general category candidates, having regard to the decision of the Apex Court in the case of Shri Ritesh R.Sah(supra), could still, for the purpose of placement, be considered as OBC candidates, leading to deprivation of the OBC category



candidates, who have been selected and recommended by the UPSC for appointment by the relaxed standard, from allocation to the Service.

10. We find that the Apex Court in the case of Shri Ritesh R.Sah(supra), has clearly held that "[T]here cannot be any dispute with the proposition that if a candidate is entitled to be admitted on the basis of his own merit, then such admission should not be counted against the quota reserved for Scheduled Caste or Scheduled Tribe or any other reserved category since that will be against the Constitution mandate enshrined in Article 16(4)". Thus, the decision of the Apex Court in the case of Shri Ritesh R.Sah(supra), does not take away the constitutional right of a reserved category candidate as interpreted by the respondents. It is really a matter of great surprise that the respondents without framing appropriate guidelines for allocation of services/jobs evolved a procedure, as a result whereof the purpose and object of grant of reservation itself had been taken away.


11. Thus, we are of the considered view that so far as the reserved category candidates are concerned, the recommendations of the UPSC have to be considered having regard to the relaxed standard applying in their case. We further find that the decision of the Apex Court in the case of Shri Ritesh R.Sah(supra) clearly prohibits deprivation of the benefit of reservation only because some reserved category candidates had also been selected on merit inasmuch as they were not to be treated as reserved category candidates for limited purpose, namely for the purpose of allocation of service but thereby the OBC category candidates cannot be deprived of allocation to the service. Further more, the decision of the Apex Court in the case of Shri Ritesh R.Sah(supra) cannot be stretched beyond a point. It cannot be contended that both for the purpose of allocation of service as also for the purpose of computation of number of OBC category vacancies, those OBC category candidates selected, although were to be treated as general category and for all indent and purport they would still be considered to be reserved category candidates. It is not in dispute that



some of the vacancies (9) out of 29 vacancies earmarked for OBC candidates (selected by relaxed standard) have been filled by the respondents by appointing some (9 candidates) of the OBC candidates who were selected on merit by normal standards, but could not get the category of service of their choice/preference as a general candidate. Keeping in view the fact that 117 candidates were selected and allocated by the respondents against 118 posts, we fail to understand as to what had happened to the service/post which remained after allocation of service to all the candidates in terms of their preference. The decision of the Apex Court in the case of Shri Ritesh R.Sah(supra) provides for a guideline only to the effect that these reserved category candidates would not be put to an disadvantageous position despite the fact that they are more meritorious than other OBC candidates and as such they may not be deprived from the benefit of getting the jobs in services of their liking, but it never contemplated a situation that by reason of the process of sliding down, OBC candidates for whose reservation had been made would be deprived of any service at all.

12. We are, therefore, of the considered view that some of the vacancies out of 29 vacancies reserved for OBC category candidates, could not have been given to the candidates belonging to reserved category but qualified on merit. Thus the action of the respondents in depriving the five OBC candidates who have been selected and recommended by granting relaxation of any other service, is not justifiable. This will go against the mandate provided in Article 16(4) of the Constitution of India.

13. Thus, in view of the aforesaid discussions, we are of the considered view that the reliance placed by the respondents upon the decisions in the cases of Satya Prakash (supra) and N.Vijay Bhaskar (supra) decided by Hyderabad Bench of the Tribunal is not applicable in the instant case. We further find that the judgment in the case of Satya Prakash (supra) has been quashed and set aside by the Hon'ble High Court of Delhi in Writ Petitions Nos.3561 & 3562 of 1999 and



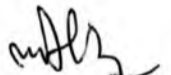
CWP No.867/2000 vide order dated 10.9.2002 in the case of **Satya Prakash Vs. Union of India and another**, 2003(3) SLJ 349. In the said writ petitions, the Hon'ble High Court has passed the following order:

"22. For the reasons aforementioned, the action on the part of the respondents being contrary to the law laid down by the Apex Court, as also contrary to the Article 16(4) of the Constitution of India cannot be sustained".

14. In view of the discussion held above and also in view of the judgment of the Hon'ble High Court in the case of **Satya Prakash (supra)**, the OA is allowed. The impugned order dated 17.11.2003 (Annexure-A-10) is quashed and set aside. The respondents are directed to grant suitable appointment to the applicant within a month from the date of receipt of a copy of this order, and thereafter grant him all consequential benefits, including seniority and notional fixation of pay, at par with his colleagues selected in the Engineering Services Examination 2001, within a period of three months from the date of his appointment. However, the applicant will not be entitled to any arrears of pay & allowances for the period he has not actually worked. No costs.



(Madan Mohan)
Judicial Member



(M.P. Singh)
Vice Chairman

Rkv.

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

पसिलिभि आये विना -

(1) सतिप, उदा न्यायालय कार एकोरिगेशन, जबलपुर

(2) आदेवत श्री/श्रीमती/शुके काउंसल

(3) प्रदर्शी श्री/श्रीमती/शुके काउंसल

(4) कर्मपाल, कोप्रअ, जबलपुर कर्मचारी

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

CA Patne AN 9/12

K. L. Mohite AN 9/12

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