

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A. No. 15 of 2003

DATE OF DECISION 3rd July 2003

Sh. Hargovind Singh Parihar & Anr. APPLICANT (S)

Smt. S. Menon Advocate for the Applicant (s)

VERSUS

UOI & Anr. RESPONDENTS

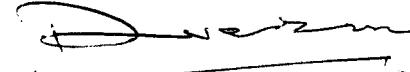
Shri S.P. Sinha Advocate for Respondents

CORAM :

Hon'ble Shri D.C.Verma - Vice Chairman (Judicial)

Hon'ble Shri Anand Kumar Bhatt - Administrative Member

1. Whether Reporters of local papers may be allowed to see the judgments ? - YES/NO
2. To be referred to the Reporter or not ? YES/NO
3. Whether their Lordships wish to see the fair copy of the judgment ? - YES/NO
4. Whether it needs to be sent to the Principal Bench for circulation to other Benches of the Tribunal ? - YES/NO


(D.C.Verma)
Vice Chairman (J)

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 15 of 2003

Jabalpur, this the 3rd day of July, 2003.

Hon'ble Mr. D.C. Verma, Vice Chairman (Judicial)
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

1. Shri Hargovind Singh Parihar,
S/o Shri R.S. Parihar,
aged 41 years,
R/o House No. 71, Adarsh Nagar,
Model Town, Ambala,
Haryana.

2. Shri Satya Narayan Tiwari,
S/o Shri D.P. Tiwari,
aged 45 years,
R/o House No. 82,
Adarsh Nagar, Model Town,
Ambala,
Haryana.

APPLICANT

(By Advocate - Smt. S. Menon)

VERSUS

1. Union of India,
Through: The General Manager,
Central Railway,
Administrative Building,
C.S.T. Mumbai.

2. Divisional Railway Manager
(Personal),
Central Railway,
Bhopal.

RESPONDENTS

(By Advocate - Shri S.P. Sinha)

ORDER

By D.C. Verma, Vice Chairman (Judicial) -

By this OA, the applicants have prayed for
quashing of the memo dated : 13-12-2002 (Annexure A-8)
to the extent it imposes a condition upon the present
two applicants to submit a mark sheet of 10+2 with
Science and Maths.

2. The brief fact of the case is that the two
applicants are presently working as Technical Man/Gan

at Ambala. Both the applicant, have passed Higher Secondary examination and also Diploma in Civil Engineering. The 25% of the posts of Pathway Mistry is to be filled up on the basis of Limited Departmental Competitive Examination (LDCE). A notification calling application for filling up the 10 posts of Pathway Mistry was published on 9-9-2002. Out of the ten posts, eight were General and two were reserved for S.T. Both the present applicants are general candidate. In pursuance to the said notification, the applicants filled up form which was forwarded by the Senior Personnel Officer at Ambala on 7-10-2002. By the impugned order dated 13-12-2002, the applicants were informed about the date of written examination to be held on 18-1-2003, but three persons, including the two applicants, were asked to produce certificate with regard to passing of 10+2 qualification with Science and Maths, prior to scheduled written examination. As the applicants do not possess such certificate but hold Diploma in Civil Engineering, they have filed the present OA.

3. By an interim order dated 14-1-2003, the applicants were permitted to appear in the examination to be held on 18-1-2003 as a special case, but their results were to be kept in sealed cover till such time the OA is finally disposed of.

4. The respondent's case is that as per note below para 143 (3) of IREM Part I read with Railway Board order dated 7-11-1997 (Annexure R-II), the applicants are not eligible for the examination notified on 9-9-2002 (Annexure A-5).

5. The submission of the learned counsel for the



applicant is that even though the present applicants do not possess 10+2 with Science and Maths, they are eligible to appear in the examination as they hold Diploma in Civil Engineering. In support of this contention, the learned counsel has referred to the notification (Annexure A-9) issued by the Jabalpur Division for filling up the post of Pathway Mistry wherein it has been provided that Gangman etc. having three years regular service with 10+2 or 11+1 with Science and Maths are eligible. It also provides that in case the person of the said qualification is not available in that case Gangman etc, having three years of regular service as on 12-1-2003 with Matriculation or H.L.S.C may apply. It also provides that those holding Civil/Electrical/Mechanical Diploma are also eligible to apply. On this basis, the learned counsel submitted that the qualification prescribed by the Bhopal Division vide their notification dated 9-9-2002 and communication dated 13-12-2002 asking the applicants to produce 10+2 certificate with Science and Maths qualification is discriminatory and is not valid on the ground of discrimination under Article 14 & 16 of the Constitution of India.

6. Learned counsel for the parties have been heard at length. To appreciate the submission made by both the side, it is necessary to re-produce the relevant Provision of Indian Railway Establishment Manual, Vol.I. It is as below:

143. (1) The vacancies in the category of Permanent Way Mistry in scale Rs. 1400-2300/- will be filled as under :-

(i) 50% by direct recruitment through Railway Recruitment Board : and

(ii) 50% by promotion by seniority cum suitability through a written suitability test

(2) Qualification etc. for direct recruitment are as under:-

(1) Educational : (10+2) with Science and Maths. Diploma Holder in Civil/Mechanical/Electrical Engineering also be eligible.

(3) Channel of promotion/higher grades : they are eligible for promotion by selection to the post of PW1 scale Rs 1400-2300/- and further as per para 143.

NOTE : Outlay direct recruitment quota of 50% of the Vacancies 25% will be filled through a limited Deptt. Examination from amongst gangman and keyman who have the Qualification of 10+2 with Science and Maths, and have put in a minimum of three years regular service Shortfall, if any, against the limited Departmental Examination will be added to direct Recruitment quota. This will be on experimental basis upto 30-9-90.

7. In 1997, the Railway Board vide circular dated 7-11-97 (Annexure R-II) on the subject of filling up the vacancies of Permanent way Mistries against 25% LDCE quota considered the demand of the federation that adequate number of employees working in Civil Engineering Department are not available with the qualification of 10+2 with Science and Maths hence the qualification with Science and Maths at +2 be relaxed. Thereafter, the Railway Board had taken a decision as contain in para 3 of the circular dated 7-11-97. For convenience, this is also being re-produced below :

3. The board have considered the matter and decided that while the existing qualification of 10+2 with Science and Maths may continue, for appearing in the LDCE for promotion to the post of Supervisor (P.Way) in scale Rs 1400-2300(RSP)/ 4500-7000(RSRP) against 25% quota of the vacancies shortfall, if any, against the quota may be made good from amongst Gangman/Keyman/Mates having the qualification of Matriculation/HSLC with three years regular service. Further shortfall, if, may be added to the direct recruitment vacancies as hitherto.

8. A reading of para 143 of I.R.E.M. (supra) shows that in the category of Permanent Way Mistires, 50% was required to be filled up through direct recruitment. The note below 143 (3) shows that 25% was to be filled up through a LDCE from amongst Gangman and Keyman who have the qualification of 10+2 with Science and Maths had have put in a minimum of three years regular service. The note, however, provides that shortfall if any in this 25% LDCE quota if any will be added to direct recruitment quota. This clearly shows that though 25% of posts was to be filled up by LDCE having prescribed qualification but in case, 25% eligible or qualified persons are not found to fill up the vacancies, the shortfall was to revert back to the direct recruitment quota. The note also shows that this provision was only on experimental basis upto 30th September 1990.

9. When the matter was taken up, on the demand of Federations, the Railway Board took a decision and conveyed through the circular dated 7-11-97 (supra). Para 3 of the circular (supra) shows that after considering the demand of the federations, a decision was taken to retain the qualification of 10+2 with Science and Maths for appearing against LDCE quota. It, however, provided that in case of any shortfall, the quota may be made good from amongst the Gangman/Keyman/Mates having the qualification of Matriculation/H.S.L.C. with three years of regular service. If there is any shortfall even thereafter, only then it is to be added to direct Recruitment vacancies. This Railway Board circular dated 7-11-97 therefore modifies the earlier note, below 143 (3) of I.R.E.M. to the extent that earlier the shortfall was to be added to the direct recruitment quota, but after the Railway Board circular dated 7-11-97, the shortfall after consideration of 10+2 with science and Maths, was to be

filled up from amongst Gangman etc. with Matriculation/H.S.L.C. If there is any shortfall thereafter, only then it was to be added to the direct recruitment quota. Thus, initially 25% of LDCE quota was to be filled up from amongst those who have 10+2 with Science and Maths qualification and fulfill other eligibility criteria. Thus in a single selection, those with 10+2 with Science and Maths and those with Matriculation were not required to be permitted. Those Gangman etc. who have Matriculation qualification and other eligible criteria can be permitted to appear in the 25% of LDCE examination only, if there is a shortfall after the selection of 10+2 with Science and Maths and not otherwise. The submission of the learned counsel for the applicant, that the impugned order dated 13-12-2002 requiring the applicants to produce 10+2 with Science and Maths marksheet, is not valid, has no merit.

10. The second leg of arguments of learned counsel for the applicant is that the applicants are Diploma holder, hence they should not have been required to produce 10+2 with Science and Maths certificate, also has no merit. The eligibility criteria for LDCE examination either in I.R.E.M. or in the Railway Board's circular dated 7-11-97 does not make only Diploma holders as eligible. The eligibility criteria provided in I.R.E.M. and Railway Board's circular dated 7-11-97 is not under challenge.

11. The third leg of arguments of learned counsel for the applicant is that the notification issued by the Jabalpur Division for filling up of similar vacancies provides different criteria, hence, the impugned order be held discriminatory. This too has no merit. We have

