

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR.

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Original Application No. 470 of 1998

this the 25th day of February 2003.

HON'BLE MR. R.K. UPADHYAYA, MEMBER(A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

1. Mohd. Rashid, S/o Mohd Shafique, aged about 50 years, Working as Senior Gangman, under Sr. Section Engineer, Katni- Jabalpur Division, Central Railway, R/o Rly Qr. No. P/49/7-Katni Murwada Katni.
2. Mihilal, S/o Gajadhar, aged about 56 years, Sr. Trolleyman under Section Engineer Saugor Central Railway, Jabalpur Division, r/o RB 1-B-18 Nehru Colony, Saugor .
3. Munnalal, S/o Kadorilal, aged about 44 years, working as Senior Trolleyman under Section Engineer Khurai Central Railway, Jabalpur Division, R/o Rly Qr. No. RB I jurwa Khenda Station.
4. Damodar Prasad, aged about 49 years, S/o Moolchand Gateman, Shreedham Central Railway, Jabalpur Division, R/o Rly. Qr. No. RBI Shreedham Station.
5. Jan Mohd., S/o Peer Mohd, aged about 48 years, working as Sr. Trolleyman under Section Engineer Saugor, Central Railway, Jabalpur Division, R/o Railway Qr, Saugor.
6. Bhaiyalal, S/o Laloo, aged about 47 years, working as Sr. Gangman under Section Engineer (South), Jabalpur Central Railway, Jabalpur R/o Near Railway Station, Jabalpur.

Applicants.

By Advocate : Sri L.S. Rajput.

1. Union of India through General Manager, Central Railway, Mumbai.
2. Chief Personnel Officer, Central Railway, Mumbai.
3. D.R.M., Central Railway, Jabalpur.

Respondents.

By Advocate : Sri S.P. Sinha.

O R D E R (ORAL)

BY MRS. MEERA CHIBBER, MEMBER (J)

By this J.A., six applicants have sought the following relief(s) :

"(A) This Hon'ble Court be pleased to command the records of the respondents to ensure that their action is not arbitrary and what irregularity has been committed in conducting the selection.

(B) Order the respondents to cancel and withdraw the impugned order (Annexure A-1) cancelling the select list.

(C) Direct the respondents to maintain the select list as notified vide Annexure A-5 and direct the applicants for necessary training to enable them to take charge of the post of P.W. Mistry.

(D) -----

(E) -----."

2. It is submitted by the applicants that vide notification dated 24.6.1997/4.7.1997 ^{in applications were called for} for filling-up the posts of Permanent Way Mistries (in short P.W.M) in the scale of ^{against} Rs.1400-2300/- / 50% vacancies meant to be filled-up from departmental quota. It was stated therein that incase sufficient number of Mates are not eligible than the said vacancies may be filled-up from amongst Chowkidars, Gangmen, Gate Keepers and Trollymen in the pay-scale of Rs.825-1200/-. It was also stated therein that 08 vacancies are for General category and two for Scheduled Tribes. This was stated to be one time measure in the notification itself. It is submitted by the applicants that all of them had applied pursuant to the said notification and the respondents issued a letter dated 8.11.1997 (Annexure A-4) calling the eligible candidates

for filling-up the vacancies of Pwms in the grade of Rs.1400-2300/- and by order dated 1.4.1998 (Annexure A-5) all the candidates were found suitable and placed in the select list as per their seniority, applicants' name figured at sl. nos.1,2,4,5,6 &7 in the said select panel. However, subsequently, some Union members gave a representation that there were certain irregularities in the selection, therefore, they sought quashing of the said selection. However, vide their letter dated 5.5.1998 the office of D.R.M., Jabalpur informed the Union members that there was no irregularity committed in the selection (Annexure A-6), but in spite of it, vide order dated 9.6.1998 (Annexure A-1) the said selection was cancelled allegedly due to some procedural flaws on behalf of DRM(P). It is this order which has been challenged by the applicants in the present O.A.

3. It is submitted by the applicants' counsel that since the notification dated 24.6.1997/4.7.1997 was issued pursuant to the directions given by the Headquarters and the applicants had already been declared as selected candidates, the DRM was not competent to cancel the said selection without taking-up the matter with the Headquarters, therefore, he has submitted that the order dated 9.6.98^{to his favor} passed by an authority, who was not competent to decide the issue. He has next argued that after filing of O.A., the respondents have again issued a notification on 30.7.99 for which even though the applicants gave their applications, but they were not called-for in the selection for the said posts. Accordingly, applicants moved M.A. no. 18/2000 stating therein that during the pendency of the case, the respondents have conducted the selection for same posts and are again conducting the selection to fill-up the posts against which the applicants had already selected without calling them and incase they are allowed to fill-up all these vacancies, irreparable loss will cause to them as

than no relief ^{is} would be available to the applicants. They have, therefore, sought a direction to the respondents to keep six vacancies reserved for the applicants till the finalisation of the case or the case may be ~~heard~~-finally. The counsel for the applicants has invited our attention to para 6 of the Reply to the new points raised by the applicant in his Rejoinder, wherein it was categorically stated by the respondents that in the fresh selection, the same candidates would be given chance to appear, thus, their rights would not be affected. Similarly in the main reply filed by respondent nos. 1 to 3 also in para 5.4, the respondents have categorically stated that after cancellation fresh suitability shall be held in which all those persons who had competed in the cancelled selection shall again be permitted, if they apply against the fresh notification. Thus, no prejudice ^{is caused} caused to the applicants. In view of the statement made by the respondents categorically, the applicants' counsel submitted that the respondents could not have denied the applicants to appear in the subsequent selection as that would be contrary to their ^{own} undertaking given to the Court and also in violation of the legitimate expectation of the applicants who had at least ^{to a right} to consider in the fresh selection as the earlier selection was cancelled only on the ground that there were certain irregularities. The counsel for the applicants, therefore, submitted that a direction be given to the respondents to consider the candidature of the applicants as well in the selection for the post of FWMs

4. The respondents' counsel submitted that though applicants' name figured in the select list, but that do not give any right for appointment to the post as well and since there was a direction given by the Tribunal in O.A. no. 304/98 to the DRM to decide the representation of the applicant therein against the same selection, the

DRM ~~was~~ passed ~~by~~ the order, only pursuant to the order of the Tribunal and since it was found that there were some irregularities inasmuch as the same question ~~paper~~ was repeated, the DRM came to the conclusion that the said selection had to be cancelled, but thereafter in the year 1999 when they issued another notification for filling-up the posts of FWM, it was seen that number of Mates ^{K. K. K.} available which was a feeder post for promotion to FWM and the applicants were to be considered only in the event that Mates were not available, ^A naturally, applicants ^{to not be} could ^{be} allowed in the subsequent selection. Therefore, according to him, there is no illegality committed by the respondents in not permitting the applicants to appear in the selection for the post of FWMs in the year 1999.

5. We have heard both the counsel and perused the pleadings as well.

6. As stated above, it is seen from the reply and additional reply filed by the respondents in response to the pleas raised by the applicant in his Rejoinder that a specific assurance was given by the respondents not only to the applicants, but also ^{to not be} the court that the same persons who had appeared in the selection for the post of FWMs pursuant to the notification dt. 4.7.1997, will be allowed to appear in the subsequent selection, therefore, there is no justification to now take a different stand and to say that the applicants were not allowed to appear in the test because eligible Mates were available. We would like to point-out here that the notification dated 4.7.1997 was issued for ten vacancies pursuant to the letter issued by the Headquarters on 9.1.1997, which ~~has~~ been produced for our perusal in the Court by the respondents and the same is taken on record. Perusal of the same shows that it was in view of the difficulties being experienced by the Divisions in filling-up

the vacancies of PWMs against 50% departmental quota as the P. Way Mates do not qualify in the prescribed written test because of not having any writing capacity due to illiteracy. It was, therefore, proposed to enlarge the fields of eligibility for filling-up the vacancies of PWMs against 50% departmental quota as a one time measure in the order as follows:

- | | |
|---------------------------------------|-----------------------|
| 1. P.Way Mates | Gr.Rs.950-1500 (RPS) |
| 2. Keyman | Gr.Rs.825-1200 (RPS) |
| 3. Gangmen, Gate-keeper & Trolley-men | Gr.Rs.825-1200 (RPS) |
| 4. - do- | Gr.Rs.800-1150(RPS) |
| 5. - do- | Gr.Rs.775-1025(RPS) " |

It was pursuant only to this letter dated 9.1.1997 that notification dated 4.7.97 at Annexure A-3 was issued, meaning thereby that the field of candidates was enlarged by the Headquarters keeping in view the difficulties faced by the different divisions and since the applicants had appeared in the test pursuant to the said notification as called by the respondents themselves and had even declared/candidates ^{selected} that they would have no right to be appointed, ^{once} the said selection was cancelled on the ground of being irregularities, but nonetheless they would definitely have a right to be considered in the next selection as the next selection ^{was} only ^{of} replacement of earlier selection and especially so when the respondents ^{had} categorically made a statement in their replies that the same candidates would be considered, ^{now} having made the statement before the Court and in view of the fact that the J.A. was already admitted, the respondents could not have taken a different stand altogether without taking the prior permission from the Court because in that event the applicants would have pressed for their application for reserving six posts as claimed by the applicants through M.A. no. 18/2000. It was only because of the statement made by the respondents categorically that the Tribunal had not

issued any interim order. It is also seen from the arguments advanced by both the counsel that pursuant to the notification dated 4.7.1997 only one Mate had applied for the post of PWM, therefore, in the subsequent notification meant for the same ten vacancies, it was not open to the respondents to allow other Mates to apply afresh ^{and invite other candidates} because all those candidates who had applied earlier at least had to be considered again and we find no justification what-so-ever in the stand taken by the respondents that since there were number of Mates available, the applicants could not be allowed to appear in the selection test for the post of PWMs.

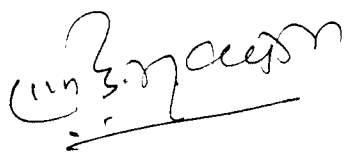
7. Though, there is no averment to this effect, but counsel for the respondents made a statement at the Bar that in the subsequent selection held in the year 1999, only one Mate was found selected and he was given the appointment as such rest of the nine vacancies are not even consumed after the subsequent selection in the year 1999. Therefore, in view of our discussions, as held above, we find that the action of the respondents in not permitting the applicants to appear in the selection test for the post of PWMs is absolutely wrong, arbitrary and illegal. Accordingly, the applicants are entitled to the relief on that ground.

8. As far as the contention of the learned counsel for the applicants that the DRM was not competent to cancel the selection, We have seen that the Tribunal had given a positive direction to the DRM in the case of Laloo Prasad & Others Vs. Union of India & Ors. in O.A. no. 304/98 on 27.4.1998 to decide the representation, which was filed by the applicants therein ^{alleging that} ~~allegedly~~ there were certain irregularities in the selection for the post of PWMs. Since the order dated 9.5.98 has been passed pursuant to the decision taken by the DRM on the file as per the directions of the Tribunal, the contention of the applicants that the DRM could not have cancelled the selection is found not tenable in law. The respondents have produced the original

record for our perusal which shows that the said decision was taken by the DRM as per the directions given by the Tribunal, therefore, the cancellation of the selection cannot be held to be bad in law, illegal or arbitrary as claimed by the applicants, but since we have already held above that the applicants in the O.A. were entitled to be considered for the post of PWMs in ^{subsequent selection in B} view of the statement categorically made by the respondents before the Court, the respondents are directed to conduct the selection for the post of PWMs in the scale of Rs.1400-2300 now revised to Rs.4500-7000/- by issuing a proper notice to this effect within a period of four months from the date of communication of this order and ~~permitted~~ all the applicants herein to appear in the said test. In case they qualify and are selected in the said test, the respondents shall pass appropriate orders in accordance with rules and instructions thereon within a period of three months thereafter. The respondents shall carry-out this exercise within the stipulated period of time, as mentioned above and convey the result thereof to the applicants.

9. With the above directions, the O.A. stands disposed off with no order as to costs.

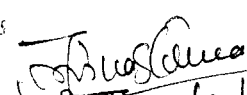

(Mrs. Meera Chhibber)
Member (J)


(R.K. Upadhyaya)
Member (A)

GRISH/-

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L.S. Rajput P.O. & A.D.


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