

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 30.08.2011
OA No. 222/2009

Mr. S. Shrivastava, counsel for applicant.
Mr. Anupam Agarwal, counsel for respondents.

At the request of learned counsel for the respondents, put up the matter for hearing on 13.10.2011.

Anil Kumar
(Anil Kumar)
Member (A)

J. S. Rathore
(Justice K.S. Rathore)
Member (J)

kumraj

[Signature]

13/10/2011

OA No. 222/2009

Mr. S. Shrivastava, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondents.

Heard learned Counsel for the parties.

The O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

J. S. Rathore
[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 13th day of October, 2011

ORIGINAL APPLICATION No. 222/2009

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1. Mohd. Ayyub Khan son of Shri Abdul Rahaman Khan aged about 38 years, resident of Railway Bungalow No. 384/B Giri Marg, Ram Ganj, Ajmer. Presently posted as S.E. Carriage Workshop, Ajmer.
2. M.C. Sharma son of Shri Ram Gopal Sharma aged about 47 years, resident of 4044 Nehru Railway Awas Colony, Residency Road, Jodhpur. Presently working as S.E. Diesel/Mechanical under Sr. D.M.E., Diesel BGKT, Jodhpur.
3. Sunil Prakash Mathur son of Late Shri Surya Prakash Mathur aged about 47 years, resident of Railway Quarter No. 13, Durga Pura Railway Colony, Jaipur. Presently posted as S.S.E. (Diesel), HQ. NWR, Jaipur.
4. O.P. Choudhry son of Shri Khemaran Choudhry aged about 42 years, resident of House C/57, Tara Nagar, Jaipur. Presently posted as S.E./C&W, Sikar.

... Applicant

(By Advocate : Mr. S. Shrivastava)

Versus

1. Union of India through General Manager, North Western Railway, In front of Railway Hospital, Hasanpura Road, Jaipur.
2. Chief Personal Officer, HQ, North Western Railway, In front of Railway Hospital, Hasanpura Road, Jaipur.
3. Sr. Divisional Personnel Officer, DRM Office, Ajmer Division of North Western Railway, GLO Road, Ajmer.
4. Vikas Agarwal son of Rewti Prasad Gupta, Senior Instructor Diesel Shed Abu Road under Sr. DME, Diesel Shed, Abu Road.

... Respondents

(By Advocate: Mr. Anupam Agarwal)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following relief:-

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- “(i) That this Hon’ble Tribunal may graciously be pleased to quash the impugned order dated 13.05.09 in respect of the respondent no. 4 by which he has been selected on the group “B” post of AME in spite of the fact he was not eligible for appearing in the test.
- (ii) That respondents may further be directed to conduct fresh selection in respect of 1 post for which only eligible incumbents as per the condition of the aforesaid notification should be called and whoever fair well should be selected amongst those who are eligible for selection.
- (iii) Any other order, which this Hon’ble Tribunal may deem fit and proper, may be passed in favour of the petitioners.”

2. Brief facts of the case are that a notification was issued by the respondents on 04.08.2008 to fill up two posts of Assistant Mechanical Engineer. In the notification, eligibility conditions were stipulated. As per eligibility condition, the Group “C” staff of Mechanical Department who have put in a minimum 05 years of non-fortuitous regular service in Grade Rs.5000-8000 (RSRP) and above as on 01.03.2008 are eligible for the selection against 30% quota of vacancies of AME. The applicants appeared in the said written examination and were declared successful and then applicants were called for viva-voce test but were not selected. The main grievance of the applicants is that they have not been selected for the post only for the reason that the official respondents have considered the candidature of respondent no. 4 and selected him on the post of AME-Group ‘B’ post inspite of knowing the fact that he had not completed five years service to his credit as it was required as per the eligibility criteria. The respondent no. 4 has been recruited through Railway Recruitment Board against the

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direct recruitment vacancy and as such was given his posting vide order dated 04.05.2006. Thus respondent no. 4 had not completed five years of service in Mechanical Branch and hence his selection against the post in question is illegal, arbitrary and also against the eligibility criteria and, therefore, his selection be quashed.

3. The respondents have filed their reply. The respondents have stated that as per the notification, the following eligibility criterion has been laid down:-

"The Group "C" staff of Mechanical Department who have put in a minimum 05 years of non-fortuitous regular service in Grade Rs.5000-8000 (RSRP) and above as on 01.03.2008 are eligible for the selection against 30% quota of vacancies of AME."

4. The respondents have further stated that the notification nowhere mentioned that non fortuitous five years service should be of the same department for which selection is to be conducted. Respondent no. 4 was initially appointed as JE Grade II (Elec.) in the scale of Rs.5000-8000/- in 2001 and continuously worked in the said grade upto 14.08.2004. He was further promoted as JE II scale Rs.5500-9000/- w.e.f. 18.4.2005. Meanwhile, he applied for the examination of SE scale Rs.6500-10500 through proper channel and obtained necessary permission from the Railway administration. On being selected for the post of SE, he tendered a technical resignation and joined the post of SE on 27.4.2005. Thus he was working in the scale of Rs.5000-8000/- w.e.f. 07.06.2001 and rendered more than

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5 years non-fortuitous service till the date of eligibility i.e. 01.03.2008. Accordingly any submission to the effect that he was not fulfilling the eligibility to appear in the selection is without any substance and, therefore, selection of respondent no. 4 is as per rules and according to the procedure laid down for the selection. Hence the present OA has no merit and deserves to be dismissed.

5. Heard the learned counsel for the parties and perused the documents on record. Learned counsel for the applicant argued that from perusal of eligibility condition, it is clear that a candidate should be working as Group 'C' staff of Mechanical Department and who should have minimum five years experience of non-fortuitous regular service in the grade of Rs.5000-8000 (RSRP) and above as on 01.03.2008. He argued that respondent no. 4 was appointed in the Mechanical Branch through RRB vide order dated 02.02.2005 and was given regular post vide order dated 04.05.2006 and as such respondent no. 4 did not fulfill the criteria of eligibility which the basic requirement to appear in the selection process. He further argued that there was no clause or condition in the notification in question by which any kind of relaxation could be provided to the persons not having minimum five year non fortuitous service in Mechanical Department. Though respondent no. 4 was working in Electrical Department but that service cannot be counted for the purpose of experience in the Mechanical Department and, therefore, the action of the official

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respondents in treating respondent no. 4 as eligible for the selection and subsequently selecting him on the basis of having five years experience is against the terms of notification and, therefore, the selection of respondent no. 4 may be quashed and respondents may be further directed to conduct fresh selection in respect of one post which is meant for General candidates.

6. Learned counsel for official respondents argued that as per eligibility condition the Group 'C' staff of Mechanical Department who has put in minimum five year of non fortuitous regular service in the grade of Rs.5000-8000 and above as on 01.03.2008 are eligible for the selection to the notified post. Respondent no. 4 was working in the Mechanical Department as on 01.03.2008. This fact is not disputed. He further argued that eligibility condition nowhere mentioned that non fortuitous service of five years should be of the same Department for which selection is to be conducted. He referred to Annexure R/1, according to which, respondent no. 4 had 6 years, 8 months and 24 days of experience in the grade of Rs.5000-8000 (RSRP) and above as on 01.03.2008. He argued that respondent no. 4 was initially appointed as JE Grade II (Electrical) in the scale of Rs.5000-8000 in 2001 and continuously working in the same Department upto 14.8.2004. Respondent no. 4 was further promoted as JE II scale Rs.5500-9000/- w.e.f. 18.04.2005. Meanwhile, he applied for the examination of SE, scale Rs.6500-10500, through proper channel and

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obtained necessary permission from the railway administration. On being selected for the post of SE, he tendered technical resignation and joined the post of SE on 27.4.2005. Thus respondent no. 4 was working in the scale of Rs.5000-8000/- w.e.f. 07.06.2001 and, therefore, rendered more than five years non fortuitous service till the date of eligibility i.e. 01.03.2008 and, therefore, he fulfilled the eligibility criteria and, therefore, his selection is according to the prescribed rules. He also argued that this OA is also not maintainable on the ground that the applicants after participation in the process of selection cannot challenge the procedure of selection and in this connection he referred to the judgment of the Hon'ble Supreme Court in the case of **K.H. Siraj vs. High Court of Kerala & Others**, 2006 SCC (L&S) 1345, relevant portion of which reads as under:-

"72. The appellant petitioners, in any event, are not entitled to any relief under Article 226 of the Constitution of India for more reasons than one. They had participated in the written test and in the oral test without raising any objection. They knew well from the High Court's notification that minimum marks had to be secured both in the written test and in the oral test.....

73. The appellant-petitioners having participated in the interview in this background, it is not open to the appellant-petitioner to turn round thereafter when they failed at the interview and contend that the provisions of a minimum mark for the interview was not proper.....

74. Therefore, the writ petition filed by the appellant-petitioners should be dismissed on the ground of estoppel is correct in view of the above ruling of this Court. The decision of High Court holding to the contrary is per incuriam without reference to the aforesaid decisions."

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Therefore, learned counsel for the respondents argued that this OA has not merit and it should be dismissed.

7. Thus the short controversy in this case is as to whether respondent no. 4 fulfills the eligibility condition or not. It is not disputed between the parties that as on 01.03.2008, respondent no. 4 was working in the Mechanical Department. The only dispute is with regard to his having minimum five years non fortuitous regular service in the grade of Rs.5000-8000 (RSRP) and above as on 01.03.2008. As per the averments made by the applicants' counsel, this five years experience should be only in the Mechanical Department but respondents' contention is that notification nowhere states that five years experience has to be in the Mechanical Department and since respondent no. 4 had more than five years service in the Railways in the grade of Rs.5000-8000/- (RSRP) and above as on 01.03.2008, therefore, he was ~~not~~ eligible. It is not disputed that respondent no. 4 joined as JE II (Electrical) in the scale of Rs.5000-8000/- in 2001 and continuously worked in the same grade upto 14.08.2004. It is also not disputed that he was further promoted as JE II, scale Rs.5500-9000/- w.e.f. 18.04.2005. Further he was selected through RRB on the post of SE in the scale of Rs.6500-10500 after obtaining necessary permission from the Railway Administration and he joined the post of SE on 27.04.2005 and subsequently he was sent for training and after successful completion of the training, he was given regular posting and was working as

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SE in the Mechanical Department as on 01.03.2008. Thus he had completed more than five years of non fortuitous service in the grade of Rs.5000-8000/- (RSRP) and above as on 01.03.2008. Therefore, the action of the respondents in treating respondent no. 4 as eligible candidate for the selection on the post of AME is according to the terms of the eligibility condition. Further the ratio laid down by the Hon'ble Supreme Court in the case of K.H. Siraj (supra) is also squarely applicable in this case. Thus we are of the opinion that there is no ground for interference by this Tribunal and the action of the official respondents in the selection of respondent no. 4 to the post of AME is as per the prescribed procedure and according to the eligibility condition. Accordingly, we find no merit in this OA.

8. Therefore, the OA is dismissed with no order as to costs.

Anil Kumar

(Anil Kumar)
Member (A)

AHQ

K.S. Rathore

(Justice K.S.Rathore)
Member (J)