

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 518/2012

ORDER RESERVED ON: 20.04.2014

DATE OF ORDER: 24.4.2015

CORAM

HON'BLE MR. JUSTICE HARUN-UL-RASHID, JUDICIAL MEMBER
HON'BLE MR. R. RAMANUJAM, ADMINISTRATIVE MEMBER

Virendra Singh S/o Jai Ram, by caste Jat, aged 54 years, nowadays (Fitter grade I) Technician Grade I Mechanical Track Machine Kota Division Kota, C/o Shri S.K. Jain, Advocate, Jaipur.

...Applicant

Mr. S.K. Jain, counsel for applicant.

VERSUS

1. Union of India through General Manager West Central Railway Jabalpur.
2. Divisional Railway Manager Bhopal Division Bhopal

...Respondents

Mr. Anupam Agarwal, counsel for respondents.


ORDER

(PER MR. R. RAMANUJAM, ADMINISTRATIVE MEMBER)

The facts of the case as stated by the applicant in this OA are as follows:


The applicant is presently working as Fitter Grade-I under the respondents in the Mechanical Section in Kota. The pay scale of the applicant is Rs. 5200-20200. This post is now called as Technician Grade-I (TMM). The

respondents through notification dated 12.01.2012 called for applications for promotion to the post of Junior Engineer in the Grade of Rs. 9300-34800 against the 25% vacancies reserved for filling up through Limited Departmental Competitive Examination (for short, LDCE). Out of the posts identified for such promotion, 8 posts were available for selection of general candidates and 2 for the reserved categories. The applicant's name was at Sl. No. 24 of the candidates found eligible for selection (Annexure A/3). The applicant participated in the LDCE and his name figured at Sl. No. 7 of the successful candidates (Annexure A/2). However, by impugned order dated 19.06.2012 (Annexure A/1) only 2 candidates were promoted to the grade of Rs. 9300-34800 with grade pay of Rs. 4200. On enquiry, it was revealed that the applicant has been denied promotion to the said grade in spite of clearing the LDCE on the ground that the applicant was not a Senior Technician. The applicant contends that it was only because Technician Grade-I were also eligible to compete in the LDCE that they had been allowed to participate in the selection process. After the written test is conducted and the names of successful candidates have been declared, the respondents cannot change the eligibility criteria and re-determine the eligibility of the successful candidates. The applicant seeks a direction to the respondents to grant him promotion on



the post of Junior Engineer Grade 9300-34800 with effect from the date two senior Technicians were promoted i.e. 19.06.2012.

2. The respondents contend that no valid grievance has been made out by the applicant against the impugned order of promotion, promoting two Senior Technicians as they were clearly in a higher grade vis-à-vis the applicant. The two persons who were promoted and the applicant cannot be treated as equals. For persons in the grade of Fitter, the immediately next promotional post is Senior Technician and, therefore, a Fitter working as Technician Grade-I cannot claim a right of promotion to the post of Junior Engineer which is a promotional post for Senior Technicians. As far as the inclusion of the name of the applicant in Annexure A/3 is concerned, the respondents submit that the names of MCM and TMM were inadvertently incorporated although they were not eligible for promotion to the post of J.E. The mistake was rectified by the Selection Committee while finalizing the panel by striking out the names of ineligible persons from the final panel. As no other person belonging to the grade of Technician Grade-I has been promoted as J.E., the question of the applicant being discriminated against does not arise. The applicant cannot claim a relief which is not available under




the rules only on the basis of a mistake committed by the respondents which had also been detected and rectified well before the final selection was made.

3. We have heard the learned counsels for the applicant and the respondents and carefully gone through the documents filed by both sides.

4. The thrust of the applicant's plea is that having found the applicant eligible along with Senior Technicians, having permitted him to participate in the competitive process and after having declared him successful in the written test, it is not open for the respondents to re-visit the issue of eligibility. In this connection, the learned counsel for the applicant referred to the ruling of the Hon'ble Supreme Court in the case of **Hemani Malhotra vs. High Court of Delhi** (Civil Writ Petition No. 490 of 2007, decided on 03.04.2008) reported in 2008 (4) SLR (Vol. 210) 699 wherein it was held that a selection committee cannot either during or after selection process add an additional requirement of securing minimum marks in interview. At the commencement of the selection process, minimum qualifying marks had been prescribed only for written examination in the said case. Learned counsel for the applicant further referred to the judgment of the Hon'ble


Rajasthan High Court in the case of **Jagdish Singh vs. Union of India and others** (SB Civil Petition No. 140 of 1970 decided on January 31, 1975) reported in Weekly Law Notes Vol. VIII 1975 at page 843 (Rajasthan High Court Reports 1975) wherein certain rules in the Railway Establishment Manual were held to be not such rules as modified rule 2 – Statutory Rules and Administrative orders. It was held in that case that a subordinate legislative body could not make rules without publishing in some known mode. The contention of the applicant is that he was not considered for promotion as J.E. only because he was Technician Grade-I. As Technician Grade-I, he was eligible for promotion at the commencement of the selection process. The respondents could not impose new conditions regarding eligibility midway the selection process and declare him ineligible even as he had successfully cleared the written examination. The recommendation of the Selection Committee which has been submitted by the respondents as Annexure R/2 clearly shows that the employees from Sl. No. 3 to 7 were not considered for the reason that they belonged to the category of Technician Grade-I. When a competent authority had initially declared the eligibility of Technician Grade-I for promotion to the level of J.E., it is not for the selection committee to reject the claims of such candidates as the selection committee is



not above the appointing authority. Learned counsel for the applicant also pleaded that it is not as if that the respondents have not promoted Technician Grade-I J.E. previously. In this connection, he submitted photocopies of two orders dated 04.05.2010 and 07.07.2011.

5. Learned counsel for the respondents admitted that the name of the applicant figured in the list of candidates initially found eligible and also in the list of successful candidates after the results of the written examination. He, however, pleaded that persons working at the level of Technician Grade-I were not eligible for promotion to the level of J.E. in terms of RBE No. 31/2005 (No. E (NG)/I/99/PM7/3, dated 22.02.2005). Referring to para 3 (iii) thereof, he pointed out that the post of JE-II earmarked for promotion by selection will be filled from amongst Sr. Technicians in identical grade Rs. 5,000-8,000 subject to the condition that the existing Technician Grade-I as may be senior to those fitted as Sr. Technician as per procedure in force until now will also be considered for selection for promotion as JE-II. Learned counsel for the respondents contended that an error committed at the beginning of the selection process would not confer a right on those who were incorrectly determined to be eligible earlier. Once an error is discovered, it has to be rectified as perpetuation of

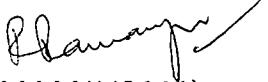
a mistake would lead to granting undue benefits to otherwise ineligible candidates sometimes at the expense of others. He pointed out that the fact that RBE No. 31/2005 has been in public domain is clear from the publication Railway Board's Orders 2005 and by no stretch of imagination could it be held to have been issued without the knowledge of the employees. The aforesaid ruling of the Hon'ble Supreme Court and Hon'ble Rajasthan High Court cited by the learned counsel for the applicant had no applicability in this case as the selection committee has not imposed any new condition of eligibility but has only acted in accordance with the circular already in operation with effect from 2005. As for certain Technicians Grade-I being promoted in the past to the rank of JE, he drew attention to para 3 (iii) of the said circular of the Railway Board which clearly states that the post of JE-II will be filled from amongst Sr. Technicians in identical grade subject to the condition that the existing Technician Grade-I as may be senior to those fitted as Senior Technician as per procedure in force until now would also be considered for selection for promotion as JE-II. In view of this, only those Technician Grade-I who were senior to those fitted as Senior Technician as per procedure in force till 2005 would qualify for such promotion and not others who were subsequently and erroneously found eligible to compete for promotion.

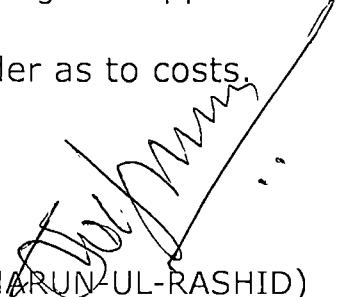


6. After carefully listening the arguments of the learned counsels of the applicant and respondents, we are of the view that the case laws cited by the learned counsel for the applicant do not apply to the facts and circumstances of this case. It is not a case where new conditions regarding eligibility or change of the norms governing the selection process in terms of qualifying marks etc. has sought to be imposed post-commencement of the selection process. Nor is it a case where the order/circular issued by the authority concerned is in violation of any statutory rules governing the appointment. There is no evidence of the said RBE No. 31/2005 having been challenged by the applicant or any other person similarly situated and set aside by a competent Tribunal/Court. In view of this, the correction of an error during the course of a selection should be considered entirely bonafide and well within the authority of the respondents. The selection committee was fully competent to recommend only the names of those who were eligible and suitable under the relevant rules / orders. As a matter of fact, the selection committee would have exceeded its authority had it recommended the names of other Technicians Grade-I even after its attention was drawn to the inadvertent and incorrect application of the relevant rules/orders. It has nowhere been contended by the applicant that he was senior to the two senior

Technicians promoted as JE by the impugned order. As no junior has been promoted to the said grade from among the list of successful candidates mentioned in Annexure A/2, there is no valid grievance made out by the applicant that calls for intervention by this Tribunal.

7. In view of the aforesaid facts, the Original Application fails and is accordingly dismissed. No order as to costs.


(R. RAMANUJAM)
ADMINISTRATIVE MEMBER


(JUSTICE HARUN-UL-RASHID)
JUDICIAL MEMBER

Kumawat