

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00622/2017

**Chandigarh, this the 7th day of August, 2018
(Reserved on: 27.07.2018)**

...
**CORAM:HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)**

...
Gurmail Singh son of Shri Mahan Singh, aged 57 years, working as Senior Section Engineer Employee No. 305825, Rail Coach Factory, Kapurthala, Punjab (Group 'B')

....Applicant

(Present: Mr. V.K. Sharma, Advocate)

Versus

1. Union of India cum Ministry of Railways, Rail Bhawan, New Delhi through its Secretary.
2. The General Manager, Rail Coach Factory, Hussainpur, Kapurthala.
3. S.K. Kapil, s/o Bhagirath Kapil, aged 51 years, working as Senior Section Engineer, Employee No. 305454, Rail Coach Kapurthala.

Respondents

**(Present: Mr. Yogesh Putney, Advocate for Respnts No.1&2)
Mr. Sanjeev Manrai, Senior Advocate, along with Mr.
A.S. Parmar, Advocate, for Resp. No. 3**

**ORDER
SANJEEV KAUSHIK, MEMBER (J)**

1. By way of the instant O.A., the applicant has assailed the notification dated 29.05.2017 (Annexure A-1), whereby Respondent No. 3 has been selected and appointed to the post of AXEN (Group 'B') in the scale of Rs.9300-34800 + G.P. Rs.4800, against 70% quota in Civil Engineering Department, on the basis of result dated 02.05.2017 of written examination and viva voce on 25.05.2017. He has also sought issuance of a direction to the respondents to offer him appointment to the post in question, being more meritorious than Respondent No. 3, with all consequential benefits.

2. The facts which led to the filing the present case are that the applicant Gurmail Singh was working as SSE with the respondents and was eligible for promotion to the post of AXEN. The respondents issued a notification dated 24.01.2014 (Annexure A-2) for selection for promotion to one post of AXEN carrying pay scale of Rs.9300-34800 + G.P. 4800/-, against 70% quota for promotion by selection, in the Civil Engineering Department. The name of the applicant as well as of Respondent No. 3 was included in the list of eligible candidates for the post in question. Both appeared in the written examination held on 14.06.2014 and passed the test, vide notification dated 01.08.2014 (Annexure A-3). Both appeared for viva voce test held on 21.08.2014.

3. By another notification dated 07.10.2014 (Annexure A-4), the respondents cancelled the earlier result and issued revised result of written examination, after rectifying the mistake, wherein the name of Respondent No. 3 was not shown in the list of qualified candidates, but the name of applicant existed there. Aggrieved thereby, Respondent No. 3 filed O.A. No. 060/00907/2017 before this Court, praying for quashing of the revised result. The applicant was impleaded as Respondent No. 7 in that case. That O.A. was partly allowed, and while quashing the revised result, the respondents were directed to send all the relevant record of written test of the candidates to the Chairman Railway Board, who was further directed to nominate a competent Evaluator to evaluate the papers of all the five candidates, including the applicant and Respondent No. 7 (applicant herein), and then declare the result of written examination, vide order dated 14.02.2017, by this Court. The said order was also challenged before the Hon'ble

Jurisdictional High Court, by filing Writ Petition 10673/2017, which was disposed of as infructuous, vide order dated 18.05.2017 (Annexure A-8), in view of the fact that the respondents had called all the candidates for viva voce on 20.05.2017.

4. The respondents, in compliance with the directions of this Court aforementioned, issued a notification dated 02.05.2017 wherein the applicant and Respondent No. 3 were declared qualified, after re-evaluation of the answer sheets of all the candidates. However, Respondent No. 3 has been selected and appointed to the post of AXEN, vide order dated 29.05.2017 (Annexure A-1).

5. Applicant has challenged the impugned order dated 29.05.2017 (Annexure A-1), on the ground that despite securing more marks and being more meritorious than the respondent No. 3, he was not selected and appointed to the post in question, and therefore the impugned order being violative of Articles 14 and 16 of Constitution of India, is liable to be set aside.

6. The official respondents filed written statement wherein they did not dispute the factual accuracy of the facts, mentioned in the O.A. However, they submitted that the applicant has no case. It is submitted that the respondents in compliance of the orders of this Tribunal, re-evaluated the result, made a panel of the selected candidates, as per the rules of IREM for selection against 70 % quota, and Respondent No. 3, being at a higher place in the panel, was offered appointment. It is averred that the selection against 70% quota is not only made on the basis of merit in the written examination and viva vice, which is only a qualifying test, but also

on the basis of the placement of the candidates in the panel, which is prepared on the basis of their seniority and grading in the ACRs.

7. The private respondent also filed a separate written statement on the same line of defence, as that of the official respondents. Respondent No. 3 submitted that as per para No. 204.8 and 204.09 of IREM Vol-I, the selection to the post AXEN, has been done on the basis of seniority with respect to grading of the candidates, and he has, therefore, rightly been selected and appointed to the post, being more meritorious. He submitted that the marks secured in the written examination and viva voce are not the only basis for making selection under 70% quota vacancies, as per the relevant scheme.

8. We have heard learned counsel for the parties.

9. Mr. V.K. Sharma, learned counsel for the applicant vehemently argued that selection and appointment of Respondent No. 3 is bad in law and he alleged arbitrariness and discrimination. He submitted that when appointment is made by selection then whosoever is found more meritorious in the examination held for the purpose, is to be given appointment. He argued that once the applicant and Respondent No. 3 were declared qualified in written examination & viva voce, and the applicant scored more marks than Respondent No. 3, then he cannot be deprived of appointment, on the ground of being junior to Respondent No. 3. To buttress his plea, learned counsel has placed reliance upon a judgment rendered in the case of **M. Ramjayaram Vs. General Manager, South Central Railway and Others** (1996) 8 Supreme Court Cases 266, and in the case of **Subhash Chand Joshi and Others Vs. Union of India and Others**, 2008 (2) SCT 787, by the

Hon'ble Supreme Court, and the order dated 29.04.2013, passed in the case of **Ashwani Kumar Vs. Union of India & Others** (O.A. No. 801/PB/2008), by this Court.

10. Per contra, Mr. Yogesh Putney, learned counsel for the respondents vehemently argued that the selection is based upon a master circular issued by the Ministry of Railway, for promotion from Group 'C' to Group 'B'. As per the relevant rule formation, written examination and viva voce test are only qualifying exams and the emphasis is primarily on the seniority and grading of the employees. Though applicant secured more marks in written examination and viva voce than Respondent No.3, but since their ACR gradings were same and respondent No. 3 is senior to the applicant, he has rightly been given appointment to the post in question. In support of his arguments, he has placed reliance upon an order dated 08.12.2016 passed in O.A. No. 586/HR/2008 titled **Surinder Kumar Vs. Union of India & Others**, passed by this Court.

11. Mr. Sanjeev Manrai, Senior Advocate, also argued on the same lines and prayed for dismissal of the O.A.

12. We have given thoughtful consideration to the entire matter and examined the pleadings on record, with the able assistance of learned counsel for the respective parties.

13. The post of AXEN in the Civil Engineering Department is classified as a Group B Post, in the grade of Rs.9300-34800 + G.P. Rs.4800/- . The vacancies in the Group B post are filled 70% by promotion on the basis of selection of eligible Group C employees and 30% on the basis of Limited department Competitive Examination. Here, in the present case, we are concerned with

70% quota for promotion on the basis of selection only, which is governed by para 204.9 of the Indian Railway Establishment Manual (in short IREM), which envisage that the incumbents under 70% selection quota, who secure more than 80% marks and have outstanding grading are placed at the top of the panel of the selected candidates. The inter-se panel position is determined in order of seniority of empanelled candidates. Similarly, the candidates who secure marks between the range 60% to 79% are placed below the outstanding candidates and again in order of inter-se seniority, of the candidates. The relevant para is reproduced hereunder:-

“204.9 The panel should consist of employees who had qualified in the selection corresponding to the number of vacancies for which selection was held. Employees securing gradation “outstanding” will be placed on top followed by those securing gradation “good, inter-se seniority within each group being maintained.”

14. In the present case, the applicant did not fall under the category of “outstanding”. The only criteria to breach the seniority for selection is to get a place at the top of the panel by securing marks “80% or more” and “outstanding grading”, which is lacking in the present case. Therefore, securing more marks in written examination and viva voce, cannot be held to be a valid ground to claim selection to the post, ignoring Respondent No. 3, who has also qualified the requisite examination and is senior to him.

15. We would be failing in our duty, if we do not consider the judgments cited by the parties. Learned counsel for the applicant primarily relied upon a judgment in the case of M. Ramjayaram (supra), which does not relate to promotion from Group C to Group B, which is governed by different rule formation. In that case, the selection was not made as per the rules applicable to the

applicants therein, and therefore, a direction was issued to the respondents to make selection according to the rules and as per law. However, in the present case, panel has been prepared strictly in accordance with para 204.9 of IREM Vol-I, governing the selection from Group C to Group B employees, and the rules are not under challenge in this case. Therefore, the case relied upon by the applicant distinguishable from the present case. On the other hand, the judgment relied upon by the respondents in the case of Surinder Kumar (supra) is exactly on the same issue, wherein this Court considered the aspect of promotion from Group C to Group B in the Railways Department, under 70% quota of selection, and discussed in detail the relevant applicable rules 201.1, 204.1, 204.8 and 204.9 in detail, which is extracted hereunder:

“It is undisputed that the post of ASTE is classified as Group ‘B’ post. Chapter-II Section-A includes Rules 201 to 209. The relevant provisions of the rules are extracted for ready reference as under :-

“201.1. All vacancies in Group ‘B’ are filled by promotion on the basis of selection of eligible Group ‘C’ employees and also on the basis of Limited Departmental Competitive Examination, wherever the scheme is in force. Where the scheme of LDCE is in force, selection is held to fill **70%** of the vacancies and LDCE is held to fill the remaining **30%** of the vacancies. (Railway Board’s letter No. E(GP)/2005/2/69 dated 5.1.06].

204.1. Selection Procedure. The selection is based on a written test to adjudge the professional ability, viva-voce and assessment of record of service by the Selection Committee. The marks allotted and the qualifying marks under the different heads are as follows:-

Prescribe d papers	Max Mar ks	Qualifyi ng Marks	Remar ks
One paper on Profession al subject and Estt. And Financial	150	90	Out of 150 marks, the profess ional subjec

Rules.			t will carry at least 100 marks.
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RECORD OF SERVICE AND VIVA-VOCE		
	Max. Marks	Qualifying Marks
i) Viva-voce	25	30
ii) Record of service	25	(including atleast 15 marks in the record of service).

(Railway Board's letter No. E(GP)/2005/2/69
dated 5.1.06]

204.8. The successful candidates shall be arranged as follows :

- (1) Those securing 80% marks and above graded as 'Outstanding'.
- (2) Those securing between 60% marks and 79% marks graded as 'Good'.

204.9. The panel should consist of employees who had qualified in the selection, corresponding to the number of vacancies for which the selection was held. Employees securing the gradation 'Outstanding' will be placed on top followed by those securing the gradation, 'good' inter se seniority within each group being maintained.

It is also relevant to reproduced para 203.5 as under :-

"203.5 -Where employees from different streams are eligible to appear for the selection, their Integrated seniority for the purpose of selection should be determined on the basis of total length of non fortuitous service rendered in Grade 6500- 10500 and above."

12. The extracted rules make it more than clear that the candidates securing 80% marks and above are graded as 'Outstanding' and those securing between 60% marks and 79% marks graded as 'Good' As per para 204.9, the panel should consist of employees who had qualified in the selection, corresponding to the number of vacancies for which the selection was held and employees securing the gradation 'Outstanding' will be placed on top followed by those securing the gradation 'Good' inter se seniority within each group being maintained. In this case, the Applicant has not secured 80% or more than 80% marks and, therefore, he could not have been put in the list of outstanding candidates category above the other selected candidates who secured less than 80%

marks. Therefore, his case was to be considered only in the category of 'Good' along with other selected candidates i.e. private Respondent. In so far as seniority is concerned, it is a fact that the Applicant joined his duties much after respondent no.3, even though issued appointment order earlier but he became member of service only from the date of joining the service. Thus, he was junior to private respondent no.3. Thus, he had no right, whatsoever, for inclusion of his name just because he secured higher percentage of marks than private respondent no.3 as he could claim so had he secured 80% or more than that 80% marks. Therefore, we do not find any grounds made out to tinker with the selection and appointment of respondent no.3."

The findings and observations made in the extracted paras apply on all fours to the facts and questions raised in this O.A. and therefore, it deserves to be dismissed for the parity of reasons given therein.

16. In view of the discussion aforesaid, we see no reason to interfere with the selection of Respondent No. 3, which has been done strictly in accordance with the relevant rules, by the respondents. Accordingly, the O.A., being devoid of any merit, is hereby dismissed. MAs 060/00017/2018 and 06000901/2017 also stand disposed of accordingly. No costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 07.08.2018

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