

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.1152 of 2012

Reserved on : 24.10.2018

Order pronounced on : 25. 10.2018

Between:

1. M. Mukhalingam, S/o. Late M. Latchmanna,
Aged 51 years, Technician Gr. II (TRD),
SE/PSI/SCMN/WAT, R/o. D. No. 38-31-1/12/2,
Visakhapatnam – 530018.
2. Md. Ghouse, S/o. Shaik Meeravalli (late),
Aged about 45 years, Tech. Gr. I, AC-RRD/WAT,
R/o. D. No. 44-8-31, T.C. Palem, Rly. New Colony,
Visakhapatnam – 530 004.

... Applicants

And

1. Government of India, Rep. by its Chairman,
Railway Board, Rail Bhavan, New Delhi – 110 001.
2. General Manager, East Coast Railway,
ECoR Sadhan, Chendra Sekharpur,
Bhubaneswar, Orissa – 751 017.
3. Chief Personnel Officer
ECoR Sadhan, Chendra Sekharpur,
Bhubaneswar, Orissa – 751 017.
4. Addl. Divisional Railway Manager,
Waltair Division, East Coast Railway,
Visakhapatnam – 530 016.
5. Divisional Personnel Officer,
Waltair Division, East Coast Railway,
Visakhapatnam – 530 016.
6. Sri S.K. Halder, SSE,
Electrical Loco Shed,
East Coast Railway, NAD Post,
Visakhapatnam – 530 009.
7. Sri J.R. Lochman, SSE,
Loco Maintenance,
East Coast Railway, Bachali, Orissa.
8. Sri M. Eswara Rao, SSE,
Electrical Loco Shed,

East Coast Railway, NAD Post,
Visakhapatnam – 530 009.

9. Sri V.T. Diwaraka Raju, SSE,
Electrical RRD,
East Coast Railway, S.Kota Post,
Vizianagaram (Dist).
10. Sri B.C. Sikari, SSE
Electrical (Gen), Under Sr. DEE(G),
East Coast Railway,
DRM Complex, Dondaparthi,
Visakhapatnam – 530 016.
11. Sri D. Venkata Rao, SSE
Electrical RRD,
East Coast Railway, Simhachalam North,
Visakhapatnam – 530 027.

... Respondents

Counsel for the Applicants	...	Mr. V. Ravindranath Reddy
Counsel for the Respondents	...	Mr. D. Madhava Reddy, SC for Railways

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
<i>Hon'ble Mr. Swarup Kumar Mishra</i>	...	<i>Member (Judl.)</i>

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The OA has been filed by the applicants for not including their names in the provisional panel issued vide Order No.Esst/Elect./TRD/97/02 dated 23.10.2002 for the post of JE-II (Elect) though the applicants got highest marks.

2. The facts of the case are that the applicants were working in the respondent organization as Technicians in various departments of Electrical Branch. The 5th respondent issued a notification dated 06.03.2002 for selection of candidates from three electrical wings i.e. Electrical (TRD), Electrical (TRS) & Electrical (Gen) for filling up of (6) posts of Junior Engineer Gr. II under 25% IAM quota with breakup of 3 UR, 2 SC and 1 ST. The applicants appeared in the written examination on 20.07.2002 and viva-voce on 20.09.2002. The

respondents on 23.10.2002 have published provisional panel of selected candidates for the post of JE-II wherein the names of the applicants were not figuring. The panel published did not indicate the number of marks allotted to each of the candidates. Observing this, the applicants sought information under RTI Act and came to know that the 1st applicant got 72.10 and the 2nd applicant got 68.40 marks in contrast to the empanelled candidates who got less marks than the applicants. The reason for selecting the candidates having lesser marks was that the panel was prepared based on seniority and not on merit among the qualified candidates. The applicants represented on 02.05.2012, but it was rejected by the respondents vide their letter dated 08.06.2012 stating that JE-II selection panel was issued in 2002 on the basis of seniority and as the change in rule for preparing the panel on merit basis was issued subsequently in 2009, the request of the applicant cannot thus be considered. Aggrieved by the rejection of the representation of the applicants, the present OA has been filed.

3. The contention of the applicants is that the Hon'ble Supreme Court in M. Ramjayaram Vs. General Manager, South Eastern Railway in CA No. 5085/1995, decided on 15.03.1996 has observed that "Railway Establishment Code – Rule 320- Respondents awarded preferential 15 marks over appellant in selection as Law Assistants – Contesting respondents were not from same unit but of different units – Rule 320 stood excluded – Weightage of 15 marks for seniority was illegal – Appellant had secured higher marks in written and viva-voce and his non-selection tantamount to arbitrary exercise of power." Similarly, Hon'ble High Court of Punjab and Haryana in WP No.4746/2002, decided on 09.04.2008 has held that the provision for arranging the names in the final panel in order of seniority in general selections as per the provisions of

Rule 219(j) of the IREM irrespective of marks secured by the candidates in the selection is wholly illegal and arbitrary and accordingly, set aside the same. The order was contested in the Hon'ble Supreme Court vide SLP No. 16774 of 2008 and the same was dismissed. Hence, the panel for general selection has to be based on merit only and not on seniority. This Tribunal in OA 607/2007 has also held a similar view quoting the judgment of the Hon'ble Supreme Court in CA No. 5085/1996 and the order of the Hon'ble High Court of Andhra Pradesh in WP No. 2398/1999. In the absence of marks not being indicated in the panel, the applicants were under the impression that they got lesser marks and therefore did not get selected. The applicants also claim that in the present case, they hail from different units and therefore, the above judgments squarely cover their case. The applicants further point out that the issue has to be dealt in the context of IREM pars 219 (g) but not IREM 219(j). Applicants also inform that Hon'ble Cuttack Bench of this Tribunal in a similar case has ordered inclusion of one Sri Ch. Vishnumurthy for having got higher marks and accordingly, the respondents accommodated the candidate by enlarging the panel.

4. The respondents in their response have pointed that the applicants after failing to qualify in the selection for promotion to the post of JE-II in 2002 have filed the OA after a lapse of 10 years. Therefore it should not be considered. The emphasis laid by the respondents is that the claim of the applicant is stale and therefore should not be entertained as observed by the Hon'ble Supreme Court in SS Rathore Vs. State of Madhya Pradesh, AIR 1990 SC 10 and Naresh Kumar Vs. Dept of Atomic Energy, 2010 (2) SCC (L&S) 436. The respondents also point out that the selection has to be based on seniority as per para 219 (g) of IREM Vol. 1989 Edition read with Advance Correction Slip No. 66 circulated

under Railway Boards RBE No. 263/98. Accordingly, when the panel was prepared, since the applicants being juniors, they could not be selected though they qualify as per the prescribed per centage. This is strictly in accordance with the RBE No. 263/1998 dated 16.11.1998, which clearly states that the panel has to be arranged in the order of seniority. The respondents also claim that in accordance with the observations of the Hon'ble Supreme Court in M. Ramjayaram Vs. General Manager, South Eastern Railway, they have issued RBE No. 263/98 wherein no marks are being allotted for seniority and that the applicants after securing the required per centage have been arranged as per seniority and accordingly selected. Nevertheless, they intimate that the Railway Board has issued another Memo bearing RBE No. 113/2009 dt.19.06.2009 wherein the principle of merit was brought in and general selections will be made on the basis of merit and not on the basis of seniority. This memo was given effect from 19.06.2009 and since the applicants case pertains to 2002, the said Memo does not apply to them to provide any relief. In addition, the Railway Board memo No. 113/2009 dated 19.06.2009 has prospective effect and applying the same to the past cases would unsettle the settled cases of the past and hence, is against law.

5. Heard learned counsel. Both the counsel struck to their written submissions.

6. A detailed perusal of the records indicate that the notification issued by the respondents dated 06.03.2002 does indicate that the candidates would be selected through a competitive examination/ selection. It would mean that the selection is based on merit. The selection panel released by the respondents vide letter dated 23.10.2002 appended to the OA as Annexure IV does indicate the names of the

candidates, but does not show the number of marks secured by the candidates. However, when the applicants sought information under the RTI Act, they came to know that the applicants got 72.10% and 68.40% respectively as per the Annexure V of the OA. It is evident that the applicants got highest marks when compared to those who have been selected. The applicants have represented on 02.05.2012 to the General Manager, East Coast Railways requesting to issue a fresh panel based on merit by indicating the marks secured by them as well as those empanelled by the respondents. The Hon'ble Supreme Court in M. Ramjayaram Vs. General Manager, South Central Railway in CA No. 5085/1996, has held that:

“219(g) of the Indian Railways Manual states that selection should be made primarily on the basis of the overall merit but for guidance of the Selection Board the factors to be taken into account and their relative weightage are laid down as under:

	Maximum	Qualifying
	Marks	Marks
(i) Professional ability	50	30
(ii) Personality, address, leadership and academic qualification	20	-
(iii) Record of service	15	-
(iv) Seniority	15	-

In this case, since the contesting respondents are not from the same unit but from different units, Rule 320 stands excluded, weightage of 15 marks for seniority given to the respondents obviously is illegal. Therefore, there is force in the contention of the appellant that his non-selection tantamounts to arbitrary exercise of power on the part of the respondent Nos. 1 and 2. .”

The respondents based on the judgment, issued RBE 113/2009 on 19.06.2009. The respondents did argue that this Memo applies with prospective effect and not to the cases of past. In the present case the situation is slightly

piquant. The respondents failed to indicate the marks in the selection panel released on 23.10.2002. Had they done so, and if that the applicants had not represented, then the blame could come to the applicants for inaction. Through informal sources when they came to know that they secured higher marks they got it confirmed through a RTI application on 10.04.2012. Hence, there is reason to believe that the applicants could not approach the respondents earlier. Nevertheless, having come to know that they were the most meritorious candidates, they did represent but the respondents turned it down saying that the rule of merit only applies from 2009 onwards. In this regard, it needs to be pointed out that the judgment of the Hon'ble Supreme Court in M. Ramjayaram's case is dated 15.03.1996. In other words, the respondents were aware of this judgment delivered in regard to their organization before the applicants appeared for the JE-II examination in 2002. As the law was set by the Hon'ble Supreme Court in 1996 itself, the respondents were expected to follow the law. The delay in issuing of a Memo by the respondents in 2009 should not penalize the applicants to realize their legitimate right based on merit. The respondents claiming that reopening the cases of this nature would unsettle the settled issue does not stand to reason because the respondents were expected to follow the law of the land as set by the Hon'ble Supreme Court. Further, they had not developed transparent system where the applicants got proper opportunity to know their merit position in terms of the marks secured in a competitive examination. Having not done so, the respondents have put the applicants in a disadvantageous position. Usually in a competitive examination to make the system transparent, uniform and non discriminatory, the marks are displayed so that any grievance thereof due to technical errors or honest mistakes could be rectified and that deserving candidates get selected. In the present case,

the respondents not displaying the marks in the selection panel has led to the delay in applicants approaching the respondents for correcting the same. Moreover, it is an established fact that the Hon'ble Supreme Court has delivered a judgment that merit should be criteria in regard to the general selections pertaining to an issue concerning the respondents themselves in 1996. Both these factors heavily weigh in favour of the applicants. Justice can be delayed but cannot be denied.

7. The observations that a stale claim should not be entertained based on the judgment of the Hon'ble Supreme Court does not apply in the present case because the respondents were aware of the judgment of the Hon'ble Supreme Court in 1996 and have made a fatal mistake in not allowing the candidates to know as to where they stand in respect of marks. The follies are on the part of the respondents. Had it been known to the applicants in 2002 itself and had they not represented then the claim of the applicants would have come under the observations made by the Hon'ble Supreme Court cited by the respondents. This being so, the claim of the applicants has to be considered. Therefore, the applicants have made out a case and the OA succeeds in the light of the judgment of the Hon'ble Supreme Court in M. Ramjayaram (supra).

8. Therefore, the orders issued by the respondents bearing No.ECoR/Pers/Wat/Staff Grievance Diary No. 148, dated 08.06.2012 and also the selection panel issued by the respondents vide letter dt. 23.10.2002 are quashed. Consequently, the respondents are directed:

- (i) to consider to issue a merit list based on the para 219(g) of the IREM as per the orders of the Hon'ble Supreme Court in M. Ramjayaram case and

the order of the Hon'ble High Court of Punjab & Haryana in WP No. 4746/2002 and the orders of the Hon'ble High Court of Andhra Pradesh in WP No. 2398/1999.

- (ii) to promote the applicants along with juniors with all consequential benefits of seniority, fixing of increments, promotions, if any on notional basis
- (iii) Pay and allowances for the applicants shall be drawn from the date they join the promoted post and no backwages shall be paid.
- (iv) Time calendared to implement this order is three months from the date of receipt of this order.

9. In the result, the OA is allowed. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 25th day of October, 2018

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