

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**JABALPUR**

**Original Application No.200/00137/2018**

Jabalpur, this Thursday, the 17<sup>th</sup> day of May, 2018

**HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER**  
**HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Vijay Singh Meena, S/o Shri Gabdu Ram Meena, Aged about 35 years, Presently working as Junior Engineer (Mechanical)/ WCR/NKJ, Diesel Shed Katni, Resident of RB-2, 123-D, Diesel Shed Colony, New Katni Junction, Katni, District Katni (M.P.) – 483501  
**-Applicant**

**(By Advocate – Smt. Shobha Menon, Senior Advocate, assisted by Shri Rahul Choubey)**

**V e r s u s**

1. Union of India through its Secretary (Estab.) Ministry of Railways, Railway Board, Rail Bhawan, New Delhi – 110001.
2. General Manager, West Central Railways, Headquarter Office, Jabalpur (M.P.) – 482001.
3. Divisional Railway Manager, Office of Divisional Railway Manager, Personnel Branch, Jabalpur (M.P.) – 482001.
4. Chief Personnel Officer, West Central Railways, Jabalpur (M.P.) – 482001.
5. Senior Divisional Personnel Officer, West Central Railways, Jabalpur (M.P.) – 482001.
6. Rajesh Jaganlal Meena, JE (Engine), Adult, New Katni Junction (D), C/o Divisional Railway Manager (Personnel), Jabalpur (M.P.) – 482001  
**- Respondents**

**(By Advocate – Shri Sapan Usrethe)**

(Date of reserving order : 14.05.2018)

## **ORDER**

**By Navin Tandon, AM.**

The applicant is aggrieved by the fact that even though he was selected in the year 2015, he was excluded in the promotion order issued on 02.01.2017. Hence, this Original Application has been filed.

2. The undisputed facts of the case are that the respondent department issued a notification on 25.02.2015 (Annexure A-2) for selection of JE (Engine) under 25% intermediate quota. The vacancies were 3, 1, 1 (total 5) for General, SC and ST categories respectively.

2.1 Annexure A-2 states that candidates applying should fulfill the following eligibility conditions:

- “1. आर्टीजन (इंजन) स्टाफ में अधिसूचना जारी तिथि को कम से कम तीन वर्ष की नियमित सेवा पूर्ण हो। (प्रशिक्षण अवधि को छोड़ कर)
2. आवेदक की शैक्षणिक योग्यता आई.टी.आई/एक्टअप्रेन्टिस पास (इन रेलीवेन्ट ट्रेड) अथवा विज्ञान विषय में 10+2 (साइंस स्टीम) पास हो।
3. रेल्वे बोर्ड के पत्र दिनांक 14.06.2011 के अनुसार अधिसूचना जारी तिथि को सामान्य जाति के आवेदक की उम्र 47 वर्ष एवं अनु. जाति/अनु.जनजाति के आवेदक की उम्र 52 वर्ष से अधिक न हो।

4. पेनल मेरिट आधार पर बनेगा।
5. उक्त पद संरक्षा पद है।”

**2.2** Based on the written exam held on 23.05.2015, a merit list dated 07.10.2015 (Annexure A-3) was prepared in which the name of Shri Rajesh Jaganlal Meena (respondent No.6), an ST candidate, was included at Sr. No.3 of the General category list (against unreserved vacancy). The applicant was selected against the ST vacancy.

**2.3** The selected candidates, including the applicant, were sent for 52 weeks' training. After completion of training, the promotion orders were issued on 02.01.2017 (Annexure A-9). In the promotion order, Shri Rajesh Jaganlal Meena (respondent No.6), was shown against ST quota. Note 3 and 4 of the said promotion order mentions that, as per WCR/O-HQ/Ruling/O/949/Reservation/S.No.109 dated 03.10.2016, Shri Rajesh Jaganlal Meena (ST) (respondent No.6), was found suitable against unreserved vacancy, but he has been promoted against the reserved vacancy, whereas the applicant was found fit against the reserved vacancy, but his posting has been kept pending as per order dated 03.10.2016.

**3.** The applicant has sought for the following reliefs:

“8.(i) This Hon’ble Tribunal be pleased to set aside impugned orders dated 02.01.2017/Annexure A-9, to the extent whereby respondent no.6 is promoted as JE (Engine) against the reserved post of ST category and hold the action of respondents as arbitrary and illegal;

8.(ii) This Hon’ble Tribunal be pleased to set aside communication dated 11.02.2017/Annexure A-12 and hold it as illegal.

8.(iii) This Hon’ble Tribunal be pleased to direct the respondents to consider and confer the benefit of promotional post to applicant as per recommendations of the selection committee dated 07.10.2015/Annexure A-3 and to grant all consequential benefits including arrears of salary and seniority.

(iii) This Hon’ble Tribunal be further pleased to pass any order deemed just and proper in the facts and circumstances of the case.

(iv) Cost may be awarded.”

**4.** The applicant is calling in question sustainability of order dated 02.01.2017, to the extent whereby respondent no.6 has been promoted on the post of JE (Engine) under reserved quota against ST category while no order of promotion is passed in favour of applicant.

**4.1** It has been submitted that by virtue of aforesaid impugned order, respondents have shown undue favour to respondent No.6,

inasmuch as, earlier on the basis of written exam, official respondents placed respondent no.6 on the basis of merit against 3 general category post of JE and applicant was selected against the reserved post of ST category. But by virtue of impugned order, official respondents, without affording any opportunity of hearing, altered the said select list and placed respondent no.6 against reserved post for ST and applicant has been ousted for no rhyme or reasons.

**4.2** Further, while passing impugned order, respondents have allegedly acted in terms of executive order dated 30.09.2016 issued in terms of undertaking given before the Apex Court that no promotion of reserved category employee would be made against un-reserved category but the said executive order could not be applied retrospectively against applicant so as to deny and deprive him the benefit of promotional post.

**4.3** It has been further submitted that respondent no.6 being a member of Schedule Tribe, was selected and promoted against the un-reserved vacant post on the basis of merit, whereas, applicant was promoted against the post reserved for scheduled tribe, as

such, on the basis of subsequent executive order, respondents could not have altered the recommendations/select list for the post of JE.

**4.4** The applicant submits that Railway Board, vide RBE No.117/2016 has issued directives on 30.09.2016 (Annexure A-8), wherein the learned Solicitor General of India has informed the Hon'ble Supreme Court that the Government would not pass any further order of promotion of reserved category persons to unreserved posts relying on the circulars dated 10.08.2010/14.09.2010. Therefore, Railway Board's RBE No.126/2010 dated 01.09.2010, has been held in abeyance with immediate effect till further advice.

**4.5** It is the case of the applicant that Annexure A-8, cannot be operated retrospectively and its applicability is confined to the cases wherein, the person belonging from reserved category, is promoted against unreserved post on the basis of his/her merit.

**4.6** The applicant contends that the respondents, while passing the impugned order dated 02.01.2017, have effectively altered the recommendations made by the Selection Committee, which is

wholly impermissible. This action on the part of the respondents is just to show undue favour to respondent No.6.

**4.7** The applicant also submits that Sr. DME (D)/NKJ, has issued orders on 08.06.2017 (Annexure A-13), wherein designation of the applicant has been shown as JE (Engine).

**5.** The respondents have submitted that the orders issued in October, 2015, were only the results of the selection and the selected candidates were initially sent for training and no promotion orders were issued at that stage. In between, RBE No.117/2016 has been issued, as per which, no further promotion of reserved category persons to unreserved posts, was to be made relying on the circulars dated 10.08.2010/14.09.2010. With the issuance of RBE No.117/2016, the provisions contained in RBE No.126/2010, has lost its enforceability till further orders/directions of Hon'ble Supreme Court. Now SC/ST candidates even promoted on their own merit and seniority, are to be adjusted against reserved points of reservation roster to the extent of reserved post.

**5.1** The respondents have further submitted that the promotion orders dated 02.01.2017, are in pursuance of RBE No.117/2016, and therefore, have been correctly issued.

**6.** We have heard the learned counsel for the parties and perused the pleadings and documents available on record.

**7.** The instructions of the Railway Board dated 01.09.2010 (RBE No.126/2010) was to promote reserved category candidates against unreserved posts, if found on merit. This was challenged in the Hon'ble Apex Court. During the hearing in the Apex Court, the learned Solicitor General of India, made a commitment on behalf of the Government of India that the Government would not pass any order of promotion relying on the circulars dated 10.08.2010 and 14.09.2010. Accordingly, RBE No.117/2016 dated 30.09.2016 (Annexure A-8) was issued.

**8.** The learned Senior Advocate, Smt. Shobha Menon submitted that the advertisement for the said selection was initiated on 25.02.2015, written examination held on 23.05.2015 and the Selection Committee gave its recommendations on 01.10.2015. During this stage, RBE No.117/2016 was nowhere in



existence. The Selection Committee made its recommendation and prepared the merit list on 07.10.2015, wherein, applicant's name was considered and recommended against a post reserved for Scheduled Tribe category, whereas, respondent No.6 was considered against unreserved category, on the basis of his merit. Therefore, by way of order dated 02.01.2017, the respondents have altered the merit list/recommendation of the Selection Committee by shifting respondent No.6 from unreserved category to the reserved category available for Scheduled Tribe. Hence, the whole selection process is vitiated.

**8.1** The learned Sr. Advocate very strongly argued that at the best respondents could have withheld the promotion of respondent No.6, by taking recourse to circular dated 30.09.2016, inasmuch as, the same was applicable in the case of respondent No.6, as he was placed against the unreserved post on the basis of his merit, but the said circular had no application to the case of applicant, who was considered and recommended against the reserved post of Scheduled Tribe. Instead thereof, and in order to favour respondent No.6, the official respondents have shifted his name from unreserved category to reserved category and conferred the benefit of promotion, which is nothing but an abuse of process of law.

**9.** Learned counsel for the respondents brought to our notice that the orders dated 02.01.2017 (Annexure A-9), very clearly mention that the present designation of all the candidates is Technician-II (Engine) in Grade Pay of Rs.2400/- and after promotion, their designation has become JE (Engine) in the Grade Pay of Rs.4200/-. He reiterated that the promotion orders have been issued after issuance of RBE No.117/2016, which is as per rules.

**10.** We have gone through the notification for promotion (Annexure A-2) in which the eligibility conditions were mentioned (Para 2.1 above). None of the conditions mentioned therein have been changed. Therefore, the averment of learned Sr. Advocate that the whole selection process has been vitiated, is not valid.

**11.** As per the extent rules prevailing in 2015 (RBE No.126/2010), a combined merit list was prepared. It is obvious that in that merit list, the respondent No.6 was above the applicant as far as ST candidates are concerned. Only because respondent No.6 being higher in the merit list, his name was considered against the unreserved vacancy, and therefore, the applicant got an opportunity being selected as an ST candidate. It is pertinent to note that no promotion orders have been issued in the year 2015.

The promotion orders were issued on 02.01.2017, which is after issuance of RBE No.117/2016 by reassigning respondent No.6 against the ST quota and keeping the name of the applicant as pending.

**12.** It would be gross injustice to respondent No.6, if the logic of the learned Sr. Advocate is accepted that the applicant should be promoted in ST quota and the case of respondent No.6 should be kept pending. It is undisputed that in the merit list, respondent No.6 was placed above the applicant. Therefore, we are convinced that by implementing RBE No.117/2016 in the manner, which has been done by the respondent department, is correct. It has not been applied retrospectively, as has been made out by learned Sr. Advocate. The respondents have also gone through the merit, and accordingly, respondent No.6 finds his name in the promotion order to the exclusion of the applicant, which is correct as per law.

**13.** Accordingly, we do not find any merit in this Original Application and the same is dismissed. No order as to costs.

**(Ramesh Singh Thakur)**  
**Judicial Member**  
am/-

**(Navin Tandon)**  
**Administrative Member**