

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA



No. O.A.1029 of 2011

Coram : **Hon'ble Ms. Bidisha Banerjee, Judicial Member**
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Biplab Nandi,
Son of Sri Netaial Nandi,
Aged about 37 years,
Residing at Narendra Nath Banerjee Road,
Panihati,
Kolkata – 700 114
Working as Helper-I under
SSE/AC/ELECT/GRC, South-Eastern Railway,
Kharagpur Division;
2. Subrata De,
Son of Sri Sunil Kumar De
Aged about 41 years,
Residing at 2, Santipally, Library Road,
Post Office and Police Station – Bhadreswar,
District – Hooghly, Pin – 712124,
Working as Helper-I under
SSE/AC/ELECT/SRC, South-Eastern Railway,
Kharagpur Division;
3. Swapan Kumar Kar,
Son of Sri Kalipada Kar
Aged about 40 years,
Residing at Village – Kodalia,
Post Office – Bhogpur,
Police Station – Kolaghat,
District – Purba Medinipur
Working as Helper-I under
SSE/AC/ELECT/GRC, South-Eastern Railway,
Kharagpur Division;
4. Supriya Barman,
Son of Sri Purbati Kumar Barman,
Aged about 43 years,
Residing at Vilalge Koushallya,
Post Office – Kharagpur,
District – Pachim Medinipur,
Working as Helper-I under
SSE/AC/ELECT/KGP, South-Eastern Railway,
Kharagpur Division;

..... Applicant.

Versus

1. Union of India
Service through the General Manager,
South Eastern Railway,
Garden Reach,
Kolkata – 700 043;

2. The Divisional Railway Manager,
South-Eastern Railway,
Kharagpur Division, Kharagpur,
Paschim Medinipur.

3. The Chief Personnel Officer,
South-Eastern Railway,
Garden Reach,
Kolkata – 700043.

4. The Senior Divisional Personnel Officer,
South-Eastern Railway,
Kharagpur Division, Kharagpur,
Paschim Medinipur.

5. The Divisional Personnel Officer,
South-Eastern Railway,
Kharagpur Division, Kharagpur,
Paschim Medinipur.

6. Tarun Mukherjee,
Helper-I
Under SSE/AC/ELECT/SRC,
South-Eastern Railway,
Kharagpur Division;

7. Probash Kumar Rana,
Helper-I
Under SSE/AC/ELECT/SRC,
South-Eastern Railway,
Kharagpur Division;

8. Kartick Manna,
Helper-I
Under SSE/AC/ELECT/SRC,
South-Eastern Railway,
Kharagpur Division;

9. Yamarappa Bhanu Murthy,

Respondents.

Helper-I
Under SSE/AC/ELECT/KGP,
South-Eastern Railway,
Kharagpur Division.

..... Private Respondents.

For the applicant : Mr. P.C. Das , Counsel

For the respondents : Mr. A.K. Banerjee , Counsel

Reserved on : 28.08.2018

Date of Order : 5/9/2018

Per : Bidisha Banerjee, Judicial Member

This application has been preferred by applicants to seek the following relief:

"8.(a) Leave be granted to move one single application jointly under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 as all the applicants has got a common grievances and all of them are similarly circumstanced persons;

(b) To pass an appropriate order directing the respondent authority to quash and/or set aside the impugned panel for promotion to the post of Technician Grade-III in Pay Band of Rs. 5200-20200 with Grade Pay of Rs. 1900/- AC Wing Electrical (G) Department from Group "D" employees against 25% Qualified Staff Quota in Electrical D' Department dated 13.01.2011 in favour of private respondent being Annexure A-5 of this original application;

(c) To pass an appropriate order directing the respondents authority to strictly follow the notification dated 18.3.2010 being Annexure A-2 of this original application by directing the respondent authority to finalize the selection process on the basis of Establishment Serial No. 52 of 1998 in terms of the said notification and to consider the promotion of the present applicants by considering their seniority marks and the marks relating to the service those who are secured more than 75% marks above the qualifying marks and to give promotion to the post of Skilled Artisan Grade-III in Pay Band of Rs. 5200-20200 with Grade Pay of Rs. 1900/- AC Wing Electrical (G) Department from Group "D" employees against 25% Qualified Staff Quota;

(d) To pass an appropriate order directing the respondent authority that in terms of the Railway Board Circular which has been circulated by the Department in Establishment Serial No. 52 of 1998 and the case of the

present applicants be considered for promotion to the post of Skilled Artisan Grade-III in Pay Band of Rs. 5200-20200 with Grade Pay of Rs. 1900/- AC Wing Electrical (G) Department from Group "D" employees against 25% Qualified Staff Quota with effect from 13.1.2011 and to give all consequential benefits in this respect with inter-se-seniority.

(e) To pass an appropriate order directing the respondent authority to consider the appeal preferred by the applicants on 28.7.2011 and 6.9.2011 in terms of the Establishment Serial No. 52 of 1998 dated 11.3.1998 and to consider the promotion of the present applicants in terms of the notification dated 18.3.2010 being Annexure A-2;

(f) Costs;

(g) To pass any appropriate relief or reliefs."

2. Their grievance in a nutshell is that the respondent authorities had published a notification dated 18.03.2010 for "filling up vacancies of Skilled Artisan Gr.-III in Pay Band Rs. 5200-20200 with Grade Pay Rs. 1900/- in AC wing of Elect. (G) Department from Group "D" employees against 25% Qualified Staff Quota Assessed Vacancies = 10 (UR=08 SG=01, ST=01)", wherein they clearly specified that "the selection will be finalised strictly in accordance with the instructions contained in Estt. Srl. 52/98", yet they conducted selection in terms of 2009 circulars as evident from communication dated 1.4.11 (Annexure A-6) as a result whereof the applicants were deprived of their rightful selection and hence the OA. The said communication dated 1.4.11 of PIO under RTI Act reads:

"The selection was conducted on the basis of Estt. Srl. No.52/98, Estt. Srl. No. 146/03 and Estt. Srl. No. 132/09."

3. At hearing Ld. Counsel would invite our attention to Estt. Srl. 52/98 which lays down procedure for filling up the posts of Skilled Artisan against 25% quota and envisage the following:

"In terms of Para 159, Indian Railway Establishment Manual, Volume I, 1989, the vacancies in the artisan category of Skilled grade since re-

designed as Technician (Trade) in scale Rs. 950-1500 (RPS)/3050-4590 (RSRP) required to be filled as under :-

25% by selection from course completed 'Act Apprentices', ITI passed candidates and Matriculates from the open market; serving employees who are course completed Act Apprentices or ITI qualified could be considered against this quota allowing age relaxation as applicable to serving employees.

25% from serving Khalasis and Khalasi Helpers (formerly known as unskilled and semi-skilled respectively) with educational qualification as laid down in Apprentices Act.

50% by promotion of staff in the lower grade as per the prescribed procedure.

The question of laying down a uniform procedure for filling up the vacancies against the quota referred to at 1 (i) above has been under the consideration of the Ministry of Railways. It has now been decided that henceforth the following procedure may be followed for filling up the vacancies in the category of Technician (Trade) grade Rs. 950-1500 (RPS)/3050-4590 (RSRP) against the quota referred to as commonly known as qualified staff quota :-

- i) Khalasi/Khalasi Helpers possessing the qualifications prescribed in the Apprentices Act with a minimum of three years regular service will be eligible to appear in the selection. However, Scheduled Caste and Scheduled Tribes candidates possessing the requisite qualifications will be eligible for being considered against the vacancies re-served for them as per the extant instructions if they have completed a minimum of one year's regular service.
- ii) All the eligible volunteering employees may be subjected to a written test followed by a viva-voce. Distribution of marks between written test and viva-voce may be 85 and 15 respectively. Those securing 60% marks in the written test may be eligible to be called for viva-voce. Those securing 60% and above in the aggregate will qualify for being included in the panel.
- iii) The panel may be drawn up on the basis of seniority from amongst those who qualify the total number to be empanelled not exceeding the number of vacancies assessed to be filled against the prescribed quota. There will be no classification of outstanding."

4. Ld. Counsel would submit that juxtaposed to the above the Respondents held the selection not in accordance to merit as 52/98 required but in terms of 113 of 2009, which provides as under: (extracted verbatim hereinbelow with supplied emphasis for clarity)

Selection Procedure for promotion of General Selection Posts- Placement of names on panel – instructions regarding.

[No. E(NG)1-2008/PM7/4 SLP, dated 19.6.2009]

As the Railways are aware, in pursuance of Hon'ble Apex Court's judgement dt. 15.03.1996, in M. Ramjayaram Vs. General Manager, South Railway and others, 1996(1) SC SLJ 536, it was held that it is illegal to award marks for 'Seniority', for promotion to General Posts, i.e., those outside the normal channel of promotion, for which eligible volunteers are called from different categories whether in the same department, or, from different departments, Board vide their letter No.E(NG)I-98/PMI/11, dt. 16.11.1998 (*Bihri's RBO 263/1998 p-293*) had modified the Selection Procedure to such General posts. These instructions are obtained in para 219 (j) of Indian Railway Establishment Manual (IREM), Vol.I, 1989, as amended from time to time. In terms of instructions contained in clause (iii) below para 219(j), final panel in such cases is required to be drawn up in the order of seniority from amongst those who secure a minimum of 60% marks in professional ability and 60% marks in the aggregate, provided that those securing a total of 80% or more marks are classed as 'Outstanding' and placed at the top of the panel, in the order of seniority. Besides above provisions, separate instructions prescribing different methods for placement of names on panel, in a few categories, viz. LDCE quota in the category of Sr. Clerks (Rs. 4500-7000), Commercial/Traffic Apprentices (Rs. 5500-9000), for induction of Intermediate Apprentices for eventual absorption as JE-II (Rs. 5000-8000) in various technical departments, qualified Staff quota in the category of Skilled Artisans Gr.III (Rs.3050-4590) in various engineering departments, LDCE quota in the (Rs. 6500-10500) etc. have also been issued.

3. The matter has, accordingly been carefully considered by the Board and it has been decided that in cases of promotion to General Posts in which candidates are called from different categories, whether in the same department or from different departments and where zone of consideration, is not confined to three times the number of staff to be empanelled, panels should be strictly prepared as per merit with reference to marks obtained by the candidates in 'Professional ability' and 'Record of Service'. Subject to usual relaxation for SG/ST staff, wherever permissible, those securing less than 60% in 'Professional ability' and 60% in aggregate, will not be considered eligible for inclusion in the panel. Further, the service records of only those candidates who secure a minimum of 60% marks in 'Professional ability', shall be assessed. Since the final panel has to be drawn on the basis of merit, there will be no scope of erstwhile provision of placement of candidates who secure 80% or more marks, classified as 'Outstanding' on the top of the panel.

3.1 These instructions will supersede all previous instructions, as far as the same relate to the provision of arranging names on the final panel in the order of seniority, for promotion to General Posts. However, all other conditions, as contained in the specific instructions for a particular category, shall continue to hold good."

Ld. Counsel would vociferously submit that due to such arbitrary and wrongful action, the persons came to be selected not on merit, as 52/98 supra envisaged but on marks on seniority in terms of RBE 113/2009.

5. Ld. Counsels were heard & materials on record were perused.
6. The scores of individual candidates, as depicted by respondents, vide Tabulation sheet, are as under:

"TABULATION SHEET FOR THE SELECTION TO THE POST OF TECHNICIAN GRADE - III, 25% QUALIFIED STAFF QUOTA OF ELECTRICAL (G) DEPT; (AC - WING) IN TERMS OF EST. SFRL. NO. 52/98, 146/03 AND 132/09 TOTAL MARKS - WRITTEN TEST - 85; RECORD OF SERVICE - 15 PASS MARKS - a) WRITTEN - 60%, b) AGGRAGATE - 60%; Usual Relaxation of SC/ST.

SL NO	NAME	DESIG	UNIT	ASSESSED VACANCY			
				TOTAL MARKS/100	EQUATED MARKS/85	RECORD OF EDU QUA	TOTAL MARKS LEAVE
1	Sumanta Bandopadhyay	Helper Gr-I	AC/SRC	90	76.5	9	42
2	Rana Pratap Chatterjee			87.5	74.375	9	4.5
3	Tarun Mukherjee			87.5	73.95	9	5
4	Ashis Kumar Nag			83.5	70.975	9	4
5	Sanjib Ganguly			81.5	69.275	9	3
6	Kartik Manha			80.5	68.425	10	5
7	Pravash Kumar Rana			78.5	66.725	9	5
8	Yamarapu Bhanu Murthy		AC/KGP	78	66.3	8	5
9	Sujoy Deb		AC/SRC	77.5	65.875	9	3
10	Supriya Burman		AC/KGP	77	65.45	10	3
11	Biplab Kumar Nandy		AC/GRC	77	65.45	9	4
12	Amit Kumar Poddar		AC/SRC	75.5	64.175	9	3
13	Chandan Bhattacharya			75.5	64.175	9	4
14	Subrata De			75	63.75	9	4.5
15	Susanta Saha (SC)			75	63.75	10	4.5
16	Debabrata Ghosh			76	64.6	8	3
17	Prashanta Kumar Das (SC)			69.5	59.075	9	3
18	Suman Banerjee			69	58.65	9	5
19	Achinta Dutta			68.5	58.225	9	5

20	Pankaj Kumar Ray (SC)	68.5	56.225	9	4	71.225
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Sd/-
Sr. DEE/G/KGP

Sd/-
Sr. DEE/TRD/KGP

Sd/-
DPO/KGP"

The tabulation sheet gives a vivid and clear picture that the applicants (from Srl. No. 11) were way down in terms of merit as compared to the selected candidates, not only on merit but also on aggregate.

7. Further, the materials on record revealed the following facts:

(1) Evidently the selection was supposed to be finalised in terms of Estt. Srl. 52/98, which irrefutably and inarguably lays down, as evident from the extract supra, that para 159 of IREM had to be followed. The Procedure in which selection post are to be filled up have not been envisaged in para 159 of IREM but in paras 210 onwards in IREM particularly para 219 thereof. We noticed that advance correction Slip 209 was introduced to amend para 219 of IREM which unambiguously spelt out the following:

ADVANCE CORRECTION SLIP NO. 209

Indian Railway Establishment Manual, Volume-I (1989 Edition)

Chapter II, Section 'B' – Rules governing the promotion of Group 'C' staff

- I. Substitute the following for the opening sentence of existing sub-para (j) of Para 219 :-

"(j) For general posts, i.e., those outside the normal channel of promotion for which candidates are called from different categories whether in the same department or from different departments and where zone of consideration is not confined to three times the number of staff to be empanelled, the selection procedure should be as under:-
- II. Substitute the following for the existing clause (iii) below sub-para (j) of Para 219 :-

"The final panel should be drawn up in the order of merit based on aggregate marks of 'Professional ability' and 'Record of service'. However, a candidate must secure a minimum of 60% marks in 'Professional ability' and 60% marks in the aggregate, for being placed on the panel. There will be no classification of candidates as 'Outstanding.'

[Authority : Railway Board's letter No. E(NG)I-2008/PM7/4 SLP, dated 19.6.2009]"

(2) The applicant had no where pleaded that the selection in question was not a General Selection as governed by Rule 219 of IREM.

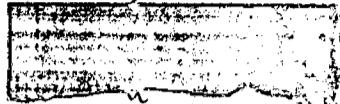
(3) The selection in question was of 2010 and therefore the Railways have rightly followed 2009 circular (extracted supra) which held the field as on the date of selection notification therefore clearly it was not such case where a subsequent circular was introduced while the selection was on, rather, 2009 circular had to be scrupulously adhered to since it was already governing the field as on the date of selection notification. Reasonableness of apprehension that rules of game were changed while the game was on, is ruled out as baseless.

(4) No materials have come to the force to suggest that selection was on the basis of marks on "seniority".

On the contrary, it was on the basis of "Professional ability" (written test) and "record of service" as 219(j) of IREM provided. In fact even upon selection on merit the candidates were required to be arranged as per seniority, as evident from the provisions extracted supra and therefore a junior meritorious person stood a chance to be superceded by a less meritorious senior.

(5) Since, the records clearly demonstrates that selection was on the basis of "Written test Marks" and "record of service" it was in terms of IREM and as such the selection procedure adopted by the respondents could not be faulted with.

8. In view of our revelation supra the OA fails and is dismissed. No costs.



(Dr. Nandita Chatterjee)
Administrative Member



(Bidisha Banerjee)
Judicial Member

drh

