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CALCUTTA BENCH, KOLKATA

O.A. 492 of 2014

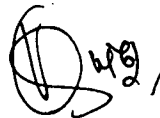
Present : Hon'ble Justice Shri Vishnu Ch. Gupta, Judicial Member  
Hon'ble Ms Jaya Das Gupta, Administrative Member

Shri Manas Mukherjee,  
S/o Shri B.K. Mukherjee,  
Aged about 48 years,  
Working as Technician Gr.-I  
Under Divisional Mechanical Engineer (Diesel),  
S.E. Railway, Bokaro Steel City, Adra Division,  
Residing at P.O. – Bokaro Steel City, Railway Colony,  
Qtr. No. DS/II/151/B, Dist. – Bokaro, Jharkhand.

..... Applicant.

Versus

1. Union of Indian,  
Service through the General Manager,  
South Eastern Railway, Garden Reach,  
Kolkata – 700 043.
2. The Divisional Railway Manager,  
S.E. Railway,  
Adra – 723 121.
3. The Sr. Divisional Personnel Officer,  
S.E. Railway,  
Adra – 723 121.
4. The Sr. Divisional Mechanical Engineer,  
S.E. Railway,  
Adra – 723 121.
5. Swapan Banerjee,  
JE – II, Electrical Wing,  
Under DLS, S.E. Rly.,  
Bokaro Steel City, Bokaro,  
Jharkhand – 827 010.



..... Respondents.

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Ms. A.K. Dutta, Counsel

Date of hearing: 05.10.2016

Date of order: 10.11.2016

### ORDER

JUSTICE V.C. GUPTA, JM

This O.A has been filed by applicant Sri Manas Mukherjee under section 19 Of A T Act 1984 on 08.04.2014 seeking the following reliefs :

"i) The Office Order dated 31.12.2013 issued by the Asstt. Personnel Officer-II for Sr. Divisional Personnel Officer/ Adra, cannot be tenable in the eye of law and therefore the same may be quashed.

ii) An Order do issue directing the respondents to fill up 01(UR) vacancy of JE (Elect. Wing)/DLS/BKSC against 25% IMAQ should be selected on the basis of merit of the selection conducted by the authority concerned on 13.12.02."

2. The brief facts for deciding this application are that the applicant was working as Technician Grade-I (Electrical) under Divisional Mechanical Engineer (Diesel), S.E.Railway, Bokaro Steel City, Adra. An advertisement was issued on 13.12.2002 to fill up one post of Junior Engineer Grade-II by the Railway administration. According to the advertisement persons who were working as Skilled Artisans in all the trades were asked for their option for the post. The requisite qualifications mentioned in the advertisement were; (i) persons passed the Matriculation or equivalent examination (ii) 3 years satisfactory service in the grade of skilled artisan, (iii) satisfactory service record and (iv) age below 45 years as on 31.12.2002.



2.1 The applicant including those opted had been appeared in the written test. Out of those persons including the applicant and respondent No.5, namely Swapan Banerjee cleared the written test and called for viva voce on 12.04.2003. The respondent No.5 was thereafter promoted. This selection and promotion of respondent No.5 was challenged by filing O.A.No.1076/2003 which was finally decided by judgment and order dated 12.08.2008. The operative portion of the judgment is reproduced herein below:

*"8. It is manifest therefrom that they do not controvert the pleadings/averments of the applicant that the respondent No.5 was not holding any post of Artisan Gr.I. To reiterate, even in accordance with Para 215 (a) of the IREM to get promotion one should have worked for 2 years in the immediate lower grade before promotion. Respondents have failed to give any reply to the pleading as to whether the respondent No.5 had worked for 2 years in the immediate lower grade of J.E. Gr.II before promotion was given effect to. Obviously artisan Gr.II was not the immediate lower grade. The respondent No.5 having not worked in the immediate lower grade of J.E.-II was not eligible for such promotion in accordance with Para 215(a) of IREM. On the other hand, the authority while asking for applications to appear the trade test in the notice at Annexure P/1 dated 13.12.2002 stipulated that one should have 3 years satisfactory service in the grade of Skilled Artisan. Respondent No.5 does not fulfil that condition too. Accordingly respondent No.5 was not eligible to get promotion to the post of J.E.Gr.II. To reiterate, though he has been made a party, he has not filed any reply. Thus, promotion of respondent No.5 to J.E.-II is not sustainable.*

*9. After careful consideration we hold that selection/appointment of respondent No.5 to the post of J.E.-II is not sustainable and therefore, it is quashed. Respondents are directed to reconsider the case of the applicant and other similar incumbents for promotion to the post of J.E.-II out of the 25% intermediate quota in accordance with rules and instructions. The O.A. is accordingly disposed of. No order as to cost."*

2.2. This order was challenged by Union of India by filing WPCT No.49/2009 but the same was dismissed. The operative portion of the judgment passed by Hon'ble High Court is reproduced herein below:



"It appears from the conduct of the petitioners that they have gone out of the way to favour respondent No.5 for recruitment to the post. In fact, although the impugned order has been passed in 2008 and the petition has been filed in 2009, no steps were taken by the petitioners to move this Court for immediate orders.

On perusal of the judgment of the Tribunal, we see no reason to differ with the same.

Mr. Roy, appearing for the petitioners, states that since the respondent/ applicant before the Tribunal had participated in the selection process, he is not entitled to challenge the selection of respondent No.5.

We are unable to accept this submission of Mr. Roy as there is a patent illegality committed by the petitioners in selecting respondent No.5.

The petition is dismissed with no order as to costs."

2.3. Thereafter, the authority passed the office order dated 31.12.2013, which is extracted herein below:

"No.E(M/G/D/10)/740/JE/IMAQ/5      Adra,      Date:-  
31.12.13

To

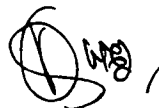
The Sr. Divl. Mech. Engineer(DL),  
Diesel Loco Shed,  
Bokaro Still City,  
S.E. Railway.

Sub:-Selection for the post of JE of Elect. Wing DLS/BKSC against 25% Intermediate Apprentice quota (IMAQ) in scale Rs. 9300-34800/- GP-4200/-.

In order to fill up 01(UR) vacancy of Intermediate Apprentice JE of Elect. Wing/DLS/BKSC in scale Rs. 5000-8000/- 9300-34800/- GP-4200/-(6<sup>th</sup> PC) against 25% Int. quota, option were called for vide this office letter No. E/M/G/D/10)/740/25% JE-II/DLS/BKSC dtd. 13.12.02 and panel published vide this O.O.No.180/03 dtd. 22.8.03.

In obedience to the directive of Hon'ble Tribunal, the entire selection proceeding for fill up the post of JE/DLS/BKSC in response to notification dtd. 13.12.2002 and panel published dtd. 22.8.03 has cancelled vide this O.O.No.128/13 dtd.10.10.13 and directive to re-consider the similar incumbent for fresh selection for promotion to the post of JE in accordance with rules and instruction.

To conduct of fresh selection for fill up 01(UR) vacancy of JE(Elect. Wing/DLS/BKSC against 25% IMAQ of same candidates who give option earlier vide notification dtd. 13.12.2002 to be called in



fresh selection to the post of JE who fulfilled the following eligibility criteria.

- 1) Skilled Artisans of all grades & all trades i.e. from Sr. Tech. (MCM) to Technician/Mechanic Gr.III.
- 2) 03 (three) years residual service in skilled grade however training period of 03 years Apprentices in Skill Artisan Gr.III will not be counted as residual service in terms of Estt. Srl. No.20/98 & 64/99.
- 3) Must have passed Matriculation or equivalent examination.
- 4) Age not more than 45 years as on 31.12.2012.

Amongst of 22 Nos. of opties who give option earlier vide notification dtd. 13.12.2002, 09 (Nine) no. of opties are eligible to be called the fresh selection and remaining 13 no. of opties are not fulfilled the eligibility criteria as they has been completed 3 years of regular service in the grade of Skilled Artisans.

The following candidates are eligible to be called to appear in the Written Test for selection to fill up the vacancy of JE of Elect. Wing/DLS/BKSC in scale Rs.9300-34800/- GP 4200/-.

Srl.No.	Name	Caste	Design./Station
1.	Sri Milan Kr. Mahato	UR	Tech-I/DLS/BKSC
2.	Sri Manas Mukherjee	UR	-do-
3.	Sri Rajesh Prasad	UR	-do-
4.	Sri O.P. Sharma	UR	-do-
5.	Sri A.K. Pradhan	UR	-do-
6.	Sri S.K. Singh	UR	-do-
7.	Sri Madhab Mudi	ST	-do-
8.	Sri A.K. Mondal	SC	-do-
9.	Sri Sukumar Middey	SC	-do-

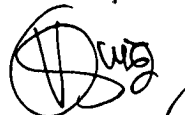
The above named staff may be informed to keep themselves in readiness for Written Test of the above selection. The date of Written Test will be informed latter on.

Further it is requested you, the syllabus for the above selection given wide publication of the among staff and a copy of the same could invariably be send to this office for further course of action.

(K.C. Hembram)

Asstt. Personnel Officer-II,  
For Sr. Divl. Personnel Officer/Adra"

3. Aggrieved by this order the applicant filed this O.A seeking the aforesaid reliefs.
4. Reply has been filed by the respondents wherein they did not dispute the correctness of fact mentioned herein above and further stated that after passing the impugned order on 31.12.2013 that only those opties who were given



option earlier in pursuance of notification dated 13.2.2002, 9 opties were found eligible and called for fresh selection as per rules. The remaining 13 opties were not found eligible as they have not completed 3 years regular service in the grade of Skilled Artisan. All the 9 eligible candidates including the applicant were called to appear in written examination on 01.04.2014 vide office letter dated 13.3.2014 but the applicant absented and did not appear in the written test. After conducting written test the applicant filed the present O.A before this Tribunal. It was further submitted that applicant and two others again given chance to appear in the written test. But only one S.K.Singh appeared but applicant and O.P.Sharma absented inspite of intimations. The selection process could not be completed on account of the interim order passed by this Tribunal. There is nothing wrong in conducting the fresh examination. The same is in compliance of the order passed by this Tribunal in O.A.No.1076/2003 as affirmed by the Hon'ble High Court.

4.1. Learned counsel for the respondents further brought to the notice of the Tribunal that respondent No.5 had also filed a Writ Petition challenging the order of the Tribunal on the ground that he has not been given an opportunity of being heard, but the same was dismissed. Against which review petition was filed by the respondent No.5 but the same was also dismissed finally.

5. No rejoinder affidavit has been filed by the applicant.

6. We have heard the learned counsel for the applicant and learned counsel for the respondents and perused the record.



7. The contention of the applicant is that no fresh proceeding or selection can be initiated and the candidature of the applicant should be considered on the basis of earlier selection in terms of the order passed by the Tribunal in O.A.1076/2003 which was affirmed by the Hon'ble High Court.

8. It is not in dispute that the selection by which the respondent No.5 was promoted was cancelled. It is also not in dispute that only those candidates who opted in pursuance of the earlier notification dated 13.12.2002 were considered in the light of the judgment. It is also not in dispute that a criterion for promotion which was settled in 2002 in the advertisement was not changed. It is also not in dispute that any other candidate who has not opted earlier in 2002 has been given a chance to appear in the written test. Therefore, in the aforesaid facts and circumstances this Tribunal has to consider;

(i) **Whether the action of the respondents cancelling the selection process by which respondent No.5 was promoted was in accordance with the order passed by this Tribunal in O.A.1076/2003?**

(ii) **Whether conducting fresh selection by adopting similar procedure as mentioned in the earlier advertisement of 2002 was also in terms of the aforesaid order of the Tribunal?**

9. The order which has been passed by the Tribunal and made the basis for seeking the relief is unambiguous and clear. The official respondents in that earlier case (OA No.1076/2003) has taken a stand, which is evident from para 2 of the judgment and the same is reproduced herein below:

*"2. Official respondents in the written reply submit that to fill up one vacancy of J.E. Gr.II, the incumbents have been asked to appear the test in accordance with the instruction of the Railway Board. Six incumbents inclusive of the applicant and the respondent No.5 were found suitable to be called for viva voce test.(Annexure P-2). Respondents submit that none except the*

*(WB)*

respondent No.5 secured the minimum marks stipulated by the Railway Board for promotion. They refute the assertion of the applicant that a person should have 3 years' experience in the post of artisan grade to be eligible for appearing in the test for promotion to J.E. Gr.II. On the contrary it is submitted that in accordance with Para 215 of Indian Railway Establishment Manual(IREM), one should have 2 years' experience in the grade of Artisan at the time of getting promotion, even not at the time of consideration."

On perusal of the same it is evident that in accordance with Para 215 of Indian Railway Establishment Manual (IREM), one should have 2 years experience in the grade of Artisan at the time of getting promotion, and not at the time of consideration. In this regard para 8 referred herein above of the said judgment is also relevant. This order of the Tribunal was challenged by the Union of India by filing Writ Petition before the Hon'ble High Court. The order passed by the Tribunal was affirmed by the Hon'ble High Court which ought to have been followed by the respondents. The specific direction contained in the order is that selection/appointment of respondent No.5 to the post of J.E.-II is not sustainable and therefore it was quashed. Further the Respondents were directed to reconsider the case of the applicant and other similar incumbents for promotion to the post of J.E-II out of the 25% intermediate quota in accordance with rules and instructions.

10. It is also pertinent to mention here that the record of earlier selection could not be placed before the Tribunal by the respondent in spite of the order passed for production of file of selection. Specific statement to this effect has been made in para 4 of the judgement of the Tribunal in OA No.1076 of 2003. Para 2 of the judgement is quoted below for ready reference.

"4. We called for the file relating to such selection but that could not be produced by the concerned Railway administration on



*the plea that it could not be traced even after reasonable endeavour."*

11. Hence, in view of the above and keeping in view the fact that candidates who opted for promotion in pursuance of advertisement made in 2002, as per respondents, could not secure minimum marks except respondent No.5, whose selection has already been cancelled and on account of non availability of record of earlier selection the respondent rightly initiated fresh selection by issuing letter dated 31.12.2013 after cancellation of the selection process in terms of the judgement of this Tribunal in OA No,1076 of 2013 and the candidates were rightly called for written test to complete the process of selection. The order of cancellation of the selection process, thus, cannot be held to be erroneous. The applicant has consciously not participated in the selection process in spite of repeated request made by the respondents so his claim as made in relief clause cannot be accepted.

12. We do not find any merit in the O.A. accordingly, the same is **dismissed**. The interim order if any stand discharged. The respondents are directed to conclude the process of selection in accordance with rules, if not already concluded, within a period of 3 months from the date of communication of this order. The counsel for the respondent shall communicate this order to the concerned Railway Authorities. There shall be no order as to costs.



(Jaya Das Gupta )  
Administrative Member



(Justice V.C. Gupta)  
Judicial Member