

**Central Administrative Tribunal
Madras Bench**

MA/310/00636/2018 (in)(&) OA/310/00573/2018

Dated 6th March Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

1. A.Kalyanasundaram
2. M.Marivijayakumar
3. A.Venis Jenova
4. R.Pushpalatha
5. G.Palani
6. S.Kanagarajan
7. P.Senthilkumar .. Applicants

By Advocate **M/s.Ratio Legis**

Vs.

1. The Union of India rep by
The General Manager,
Southern Railway,
Park Town, Chennai 600003.
2. The Principal Chief Personnel Officer,
Southern Railway,
Park Town, Chennai 600003.
3. The Divisional Personnel Officer,
Southern Railway,
Madurai Division,
Madurai. .. Respondents

By Adovacte **Dr.D.Simon**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

This is an OA filed seeking the following relief:-

“to call for the record related to the impugned orders No.P(S)608/I/4/JE/P.Way/LDCE dated 17.11.2017 made by the 2nd respondent and No.U/P608/WP/JE/P.Way/LDCE/Vol.I dated 09.4.2018 by the 3rd respondent and to quash them and further to direct the respondents to continue the onward selection process in continuation of the qualifiers list in the written test and to pass such other order/orders as this Tribunal may deem fit and proper and thus to render justice.”

2. The applicants in this case joined the Southern Railway in the Engineering Department and they are at present working as Track Maintainers. The respondents had notified 20% of Limited Departmental Competitive Examination (LDCE) quota on 13.4.2017 for the post of Junior Engineer/P.Way and there exists 6 UR vacancies, I SC vacancy and ST-Nil. The requisite qualification are also prescribed and the applicants had applied for the said post as they fulfilled all the conditions. After writing the test conducted by the respondents, the Railway Board has published the result on 26.10.2017 and the applicants were declared as passed on 25.1.2018. They were under the legitimate expectation that the process of empanelment would take place immediately. As per the impugned order dated 09.4.2018, the respondents had cancelled the examination for the purpose of including Technicians and Helpers coming from Small Track Machine. This was done without giving any prior notice and this cancellation was per se arbitrary and illegal. There is no further explanation

offered regarding the reasons for cancellation. Now the respondents are preparing to conduct another selection test after including the Technicians and Helpers of Small Track Machine. The action of the respondents are ab-initio illegal and only the staff of Permanent Way alone can apply for the post of JE/P.Way. Only staff of the P.Way are eligible for applying to the post and the respondents had without any basis trying to include Track Machine staff also to be considered for the post. So, the applicants pray for quashing the impugned order on the ground of arbitrariness and illegality.

3. The respondents entered appearance and filed a detailed reply statement denying the averments and allegations in the OA. They admitted the notification dated 13.4.2017 calling for volunteers for the selection to the post of Junior Engineer/Permanent Way (JE/P.Way) under 20% LDCE quota. According to them, there were 7 vacancies and 137 candidates had applied for the same. The selection consisted of written examination and assessment of service records. The written examination was conducted on 28.10.2017. 16 candidates were declared passed and the result was published on 25.1.2018. The passed candidates were sent for medical examination. According to the respondents, the Principal Chief Personnel Officer, Southern Railway, Chennai had directed the respondents to include the employees who are working in the Small Track Machines on the basis of a representation dated 01.2.2018. The copy of the letter and representation were produced as Annexure R1 and R2. It was on the above basis the selection was cancelled. According to the respondents, there is no need of issuing any notice for cancelling the list. Mere passing of the examination will not confer any rights on the applicants for claiming

promotion.

4. The respondents mainly rely on the Circular of the Railway Board dated 29.10.2014 which is produced as Annexure A4 for deciding that the employees working in the Small Track Machines are also eligible for writing the examination for the post of JE/P.Way. So, according to the respondents, there is no arbitrariness or illegality in cancelling the above selection conducted by the department under LDCE quota.

5. The main contention put forward by the counsel for the applicant is that as per Para-144 of the IREM, the vacancies of JE/P.Way has to be actually filled by LDCE from among the persons eligible for applying to the post. The applicants had produced the letter of the Railway Board dated 29.10.2014 to show that 60% of the vacancies has to be filled by Direct Recruit and 20% by LDCE. The eligibility criteria for LDCE are given as follows:-

“Eligibility Criteria: Track Maintainers of all grades and Civil Engineering staff, such as USFD staff, Blacksmith, Hammermen, Welder, Moulder, Aligner, Painter, Carpenter etc. working on P.Way side, with 3 years of Railway Service and either 10+2 pass with at least three subjects out of Mathematics, Physics, Chemistry and Computer Science OR having Diploma in Civil Engineering/Civil Engineering (Transportation) are eligible. All Diplomas should have the recognition/affiliation of AICTE).”

From the above, it can be seen that as per Annexure A4, only employees from the Track Maintainers/P.Way can apply for the post of JE/P.Way. As per the contention of the respondents, it is mentioned in the above eligibility criteria that **“Track Maintainers of all grades and Civil Engineering Staff” will include Small Track**

Machines also and hence it was a mistake committed by the respondents not to include them for selection. It is because of that the selection was cancelled.

6. On a reading of Annexure A4, it is clear that 20% of the vacancies has to be filled up by LDCE and the eligibility prescribed is “Track Maintainers of all grades and Civil Engineering Staff, such as USFD staff, Blacksmith, Hammermen, Welder, Moulder, Aligner, Painter, Carpenter etc. working on P.Way side, with 3 years of Railway Service and either 10+2 pass. From this it is clear that Track Maintainers of all grades should be coming from P.Way side and employees of Small Track Machines are not included in the above direction issued by the Railway Board. So, the contention of the respondents that employees of the Small Track Machines Unit is eligible and has to be permitted for applying to the post of JE in P.Way is not tenable. There is also no explanation offered as to how they came to the conclusion that Track Machine employees can apply for the same. The respondents had simply cancelled the selection on the basis of a letter issued by the Divisional Personnel Officer on 09.4.2018 and it is clear that the action of the respondents are arbitrary and without any rhyme or reason to support the action. The counsel for the applicant would contend that in Para-144 of the IREM, only candidates from Permanent Way Mystries can apply for the post of JE/P.Way. The respondents had already conducted the written examination and published the results in accordance with the rules and the selected persons have already undergone medical test also in continuation of the selection process. The respondents had notified the vacancies and they had also

notified the persons who can apply to the post as per IREM in Annexure A1. There is no mention of Small Track Machine employees in the said notification. Now all of a sudden, the respondents had cancelled the selection undertaken stating that they had omitted to include Track Machine employees etc. and had cancelled the list. In the case of ***Dr.M.A.Haque v. Union of India 1993 AIR SCW 784*** the Hon'ble Supreme Court had observed that by passing of accepted recruitment rules should not be permitted in any case. Here also, the respondents had attempted to add certain persons who are not eligible to apply for LDQE test as per prevailing rules. It is against the accepted principles of law. The respondents have miserably failed to substantiate as to what reason they have cancelled the selection list. The reason given is a letter addressed by DPO. The respondents are bound by the rules and conditions laid down by the IREM and the letter of DPO cannot be considered as sufficient reason for the same if it is not well explained.

7. In view of the above circumstances, we are of the view that the cancellation of the selection process done by the respondents is arbitrary and high-handed prejudicing the applicants. In this circumstance, we are of the view that the impugned order dated 09.4.2018 cannot stand in the eye of law. Accordingly, we quash the above impugned order dated 09.4.18 and direct the respondents to complete the selection process on the basis of the rules laid down in the IREM and other orders issued by the Railway Board, within a period of three months from the date of receipt

of a copy of this order. OA is ordered accordingly. Consequently MA 636/2018 stands disposed off. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

06.03.2019

/G/