

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHENNAI BENCH**

**OA/310/00677/2011 & OA/310/00683/2011**

**Dated 18<sup>th</sup> day of February Two Thousand Nineteen**

**CORAM: HON'BLE MR. R. RAMANUJAM, Member (A)  
HON'BLE MR. P. MADHAVAN, Member (J)**

S.Ramakrishnan,  
S/o. K. Sivasankaran,  
Working as Inspector Gr. I,  
O/o the Chief Works Manager,  
Mechanical/Shell Division,  
Integral Coach Factory, Chennai 600038.  
Residing at No. 145/4, ICF West Colony,  
Chennai 600038.

....Applicant in both OAs

By Advocate Sr. Counsel Mr. V. Prakash  
for M/s. Ramapriya Gopalakrishnan

Vs

1.Union of India,  
Owning Railway Board,  
rep by its Chairman,  
Rail Bhawan,  
New Delhi 110001.

2.The General Manager,  
Integral Coach Factory,  
Chennai 600038.

3.The Senior Personnel Officer,  
O/o the Chief Personnel Officer,  
Integral Coach Factory,  
Chennai 600038.

4.P.Gunasekaran,  
E.No. 683139,  
C/o The Chief Personnel Officer,  
Integral Coach Factory, Chennai 600038.

5.V.Ramachandran,  
E.no.685433,  
C/o The Chief Personnel Officer,  
Integral Coach Factory, Chennai 600038.

6.S.Sivaraj,  
E.No.685716,  
C/o The Chief Personnel Officer,  
Integral Coach Factory, Chennai 600038.

7.V.Ramnath,  
E.No.689531,  
C/o The Chief Personnel Officer,  
Integral Coach Factory, Chennai 600038.

8.V.Sugumaran,  
E.No.688845,  
C/o The Chief Personnel Officer,  
Integral Coach Factory, Chennai 600038.

9.M.Venkateswara Rao,  
E.No.697266,  
C/o The Chief Personnel Officer,  
Integral Coach Factory, Chennai 600038.

....Respondents in OA 677/2011

1.Union of India,  
Owning Railway Board,  
rep by its Chairman,  
Rail Bhawan,  
New Delhi 110001.

2.The General Manager,  
Integral Coach Factory,  
Chennai 600038.

3.The Senior Personnel Officer,  
O/o the Chief Personnel Officer,  
Integral Coach Factory,  
Chennai 600038.

4.B.Srinivasalu,  
E.No. 689557,  
C/o The Chief Personnel Officer,  
Integral Coach Factory, Chennai 600038.

5.P.Sreetharan,  
E.no.685595,  
C/o The Chief Personnel Officer,  
Integral Coach Factory, Chennai 600038.

....Respondents in OA 683/2011

By Advocate Mr. A. Abdul Ajees (R1-R3 in both OAs)

**ORDER**

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

As the facts, issues involved and the relief sought in the two OAs are similar/identical, they are disposed of by this common order. At the request of both sides who submit that the facts of the case in OA 568/2012 are somewhat different and may be delinked, the latter has been posted for hearing separately.

2. The applicant in OA 677/2011 has sought the following reliefs :

"i. To set aside the order bearing ref. No. PB/CON/5/114/61 dt. 22.04.2008 issued by the 3<sup>rd</sup> respondent in selecting the respondents No. 4 to 9 for the post of Intermediate Apprentice Mechanic/Mechanical under 25% Qualified Serving Employees Quota for the year 2007-2008 (Ann. A7) and

ii. To set aside the order bearing Ref. No. PB/CON/5/114/61 dt. 06.04.2011 passed by the 3<sup>rd</sup> respondent in rejecting his representation dt. 25.02.2011 as being illegal, arbitrary and contrary to the judgment of the Supreme Court reported in 1996 (8) SCC 266 and the judgment dt. 09.04.2008 passed by the Hon'ble High Court of Punjab and Haryana in CWP No. 4746 of 2002 (Ann. A14).

iii. To consider and select the applicant for the post of intermediate apprentice mechanic/Mechanical w.e.f. 22.04.2008 under the 25% Qualified Serving Employees Quota for the year 2007-2008 with all other consequential benefits including the monetary benefits and seniority and

iv. To pass such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, award costs and thus render justice."

3. The applicant in OA 683/2011 has sought the following reliefs :

"i. To set aside the order dt. 29.03.2006 bearing Ref. No. PB/S2/M/114/QSE/V passed by the 3<sup>rd</sup> respondent in rejecting his representation dt. 18.03.2006 (Ann A-4) and

ii. To set aside the order dated 22.04.2006 bearing Ref. No. PB/S2/M/114/QSE/Vol.V in selecting the respondent No. 4 and 5 to the post of Intermediate Apprentice Mechanic/Mechanical under 25% Qualified Serving Employees Quota (Ann. A-5) and

iii. To set aside the order dt. 10.07.2006 bearing Ref. No. PB/S2/M/114/QSE/V passed by the 3<sup>rd</sup> respondent in rejecting his representation dt. 29.06.2006 (Ann. A-7) and

iv. To set aside the order dt. 03.11.2006 bearing Ref. No. PB/S2/M/114/QSE/VI passed by the 3<sup>rd</sup> respondent in rejecting his representation dt. 20.09.2006 (Ann A-9) and

v. To set aside the order dt. 06.04.2011 bearing Ref. No. PB/CON/5/114/61 in rejecting his representation dt. 25.02.2011 as being illegal, arbitrary and contrary to the judgment of the Supreme Court reported in 1996 (8) SCC 266 and judgment of the Hon'ble High Court of Punjab and Haryana passed in CWP No. 4746 of 2002 (Ann A-22)

vi. To consider and select the applicant for the post of intermediate apprentice mechanic/Mechanical w.e.f. 22.04.2006 under the 25% Qualified Serving Employees Quota for the year 2005-2006 with all other consequential benefits including the monetary benefits and seniority and

vii. To pass such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, award costs and thus render justice."

4. The matter had been disposed of by an order of this Tribunal dt. 03.09.2014. A finding was recorded therein that in so far as the selection for the years 2006 and 2008 were concerned, the respondents had followed Railway Board letter dt. 26.11.1986 in accordance with the paras 141 & 320 of the IREM and no irregularity was seen in the selection procedure. The applicant challenged the order of this Tribunal before the Hon'ble Madras High Court in WPs No. 30170 and 30172 of 2014 which was disposed of by an order of the Court dt. 30.06.2017. It was observed that the Tribunal was expected to consider the factual matrix of the case in the light of the circulars issued by the Railways and the decision of the Hon'ble Supreme Court. The Tribunal, without discussing the issues raised by the petitioner simply dismissed the OAs taking

into account the reply filed by the Railways. The order passed by the Tribunal did not contain any indication that the larger issues raised by the petitioner were considered before dismissing the OAs. Accordingly, it was held that the issue required fresh consideration by this Tribunal and the common order dt. 03.09.2014 in the OAs was set aside. The petitioner and the respondents were given liberty to produce material to substantiate their contentions and the Tribunal directed to consider the matter on merits and in accordance with law.

5. The grievance of the applicant in the two cases being considered here is essentially that persons who had secured 60% and above marks in the written test for selection to the post of Intermediate Apprentice Mechanic/Mechanical under the 25% serving employees quota for the years 2005-06 & 2007-08 had been arranged on the basis of their seniority and not relative merit in terms of their performance in the written examination. In this process, the claim of the applicant to be selected in preference to his seniors, the private respondents herein on the strength of his securing higher percentage marks than them was overlooked.

6. The applicant has sought to place reliance on the law laid down by the Hon'ble Supreme Court in *M. Ramjayaram Vs. General Manager, South Central Railways & ors* [(1996) 8 SCC 266] wherein it had been held that where the competing candidates were not from the same unit but of different units, Rule 320 of the Indian Railway Establishment Code would stand

excluded. Weightage of 15 marks for seniority given to the respondents therein was obviously illegal. Therefore, there was force in the contention of the appellant that his non-selection was tantamount to arbitrary exercise of power on the part of the respondents 1 & 2 therein. Accordingly, the Hon'ble Apex Court set aside the order of the Hyderabad Bench of CAT in OC No. 1039/1992 dt. 21.03.1995. The respondents were directed to consider the selection according to rules and make appointment according to law.

7. The contention of the applicant is that in issuing the notifications for the post of Intermediate Apprentice Mechanic/Mechanical dt. 02.01.2006 & 19.12.2007, the respondents ignored the law laid down by the Hon'ble Supreme Court in the aforesaid case and stipulated that those who secured 60% and above in the written test and in the aggregate would be qualified for being included in the selection panel. The panel would be drawn up on the basis of seniority from amongst those who qualified, the total number of persons in the panel not exceeding the number of vacancies notified. Those who secured 80% and more would be classified as outstanding and placed at the top of the panel, but again in the order of seniority. These provisions were a direct violation of the law laid down by the Hon'ble Supreme Court in the case cited supra and must therefore, be held *non est*.

8. The applicant made an application under the RTI Act on 03.02.2007 seeking information regarding the marks obtained by him in the written test,

marks awarded to him for personality, leadership, etc, marks for record of service and the aggregate as also similar details of selected candidates. He also sought a copy of the relevant Rule, Railway Board orders along with notings based on which the selection and fixation of integrated seniority on various trades had been made. However, the information was denied to him by a letter dt. 03.03.2007 wherein it was stated that the details of marks secured by individuals could not be disclosed as no public interest was involved. Such disclosure would cause unwarranted intervention of privacy into the other candidates who might not desire their results to be published. His request for further clarification by letter dt. 18.04.2007 was also rejected by a reply dt. 03.05.2007 reiterating the same view.

9. The applicant made an appeal dt. 29.05.2007 to the appellate authority which was rejected citing the same provisions of the RTI Act. It was also stated that a recent pronouncement of the CIC with reference to the disclosure of examination also highlighted the fiduciary relationship between the evaluator and the examinee. Any disclosure that may affect this trust would not be acceptable. Moreover, disclosing another person's evaluation of performance especially leadership, personality, etc would definitely violate the privacy of other party which was covered by the RTI Act, 2005.

10. The applicant made an appeal to the CIC on 13.09.2010 followed by an affidavit dt. 25.09.2010. The Central Information Commission passed an order

dt. 28.01.2011 directing the PIO to provide information relating to the marks obtained by the applicant in the exam he had appeared in the year 2006. Thereafter, the respondents provided information dt. 31.01.2011 duly disclosing the marks secured by the candidates in the said examination. It was found that applicant had secured 65 marks out of 100, whereas two persons who had secured 60.5 & 63 had been empanelled.

11. The applicant made a representation to the respondents alleging that the selection of the candidates who had secured less marks than the applicant was faulty and illegal. He was, however, informed that his seniority position was 147 whereas the persons selected held seniority positions between 1 & 11. By virtue of their performance & seniority, these employees had been selected in the UR category and were empanelled. The applicant had no valid claim, given his low seniority, he was informed.

12. Learned Sr. counsel Mr. V. Prakash, appearing for applicant would vehemently argue that when the Hon'ble Supreme Court had already laid down the law in respect of how a merit based selection was to be made of candidates competing from different seniority units, the notification of the vacancies providing for arranging the meritorious candidates above a certain cut-off percentage in the order of seniority was bad in law. Accordingly, the entire selection process was vitiated and the respondents were bound to revisit the selection and select the candidates strictly in accordance with the aggregate



marks secured by them without any reference to seniority. The applicant had been pursuing the matter by way of representations as also, seeking information under the RTI Act and filing appeal thereon and as such, there was no delay on his part in approaching the Tribunal.

13. Learned Sr. Counsel for the applicant would urge that if a view is taken that the selection made in 2006 and 2008 could not be undone now after 11-12 years, the Tribunal still had the discretion to direct the respondents to create a supernumerary post to accommodate the applicant alone who had pursued the matter. Those who did not exercise any legal remedy in time would forfeit their right to be treated similarly and as such, it would be adequate to create one supernumerary post, it is contended.

14. Learned counsel for the respondents would, however, submit that the respondents had acted strictly in terms of the rules & Railway Board circulars prevailing at the relevant time. Instructions to conduct selection as per merit was issued by the Railway Board by a letter dt. 19.06.2009 wherein it was stated that any previous selection panel drawn otherwise before the issue of the letter need not be reopened. The Hon'ble Apex Court had not struck down the instructions contained in Railway Board's letter dt. 26.11.1986 and as such, the respondents did not commit any illegality in following the same. As the instructions to conduct selection entirely as per merit was issued only by a letter dt. 19.06.2009, it would have prospective effect. More so, when it was specifically

stated therein that selection done otherwise before the issue of letter need not be reopened. The applicant had not challenged the notification issued on 02.01.2006 wherein the mode of empanelment was clearly indicated and it was stated that the final panel would be drawn up as per seniority. He is, therefore, estopped from raising this issue now after participating in the selection process and failing to make it to the final list.

15. Learned Counsel for the respondents would further submit that whereas the number of posts notified for the year 2005-06 was nine in the UR category, the applicant's position in terms of seniority among the persons who secured the cut-off marks was 101. Even on merit in terms of aggregate marks alone, the applicant's position was 95. As such, there were 81 persons who had secured marks above the applicant but not empanelled due to want of vacancies. Similarly, with respect to the selection in pursuance of the 2007 notification, the seniority of the applicant was 147 against 14 vacancies available for UR candidates. His position as per merit based on aggregate marks alone was 77. There were 59 persons who had secured higher marks than the applicant and, therefore, the applicant could not be said to have qualified even on merit.

16. Learned senior counsel for the applicant would, however, point out that the applicant's grievance arose from the appointment of persons below the applicant in the merit list. In appointing persons with lower marks, the claim of the applicant had clearly been overlooked. As for others who had also figured

higher in the merit list, they had not exercised any legal remedy and, therefore, they forfeited their claim to be considered. The applicant's claim could not be rejected merely because those with even better claims had slept over their rights.

17. We have considered the facts of the case as well as the arguments advanced by the rival counsel. It is not in dispute that the Hon'ble Supreme Court laid down the law on how a merit based selection was to be made in their judgment in *M. Ramjayaram* [(1996) 8 SCC 266] dt. 15.03.1996 (supra). Accordingly, seniority would appear to have no place in a solely merit based selection, especially in the case of persons belonging to different seniority units. It would also appear that after the matter had been successfully agitated by affected persons in various cases, finally, the Railway Board accepted merit alone as the criteria and amended the relevant instructions in 2009 & 2011. If this is the case, clearly the provision in the impugned notifications dt. 02.01.2006 in OA 683/2011 & 19.12.2007 in OA 677/2011 to arrange the candidates securing above 60 percent marks in the order of seniority were not in accordance with the law as laid down by the Hon'ble Supreme Court.

18. To a specific query from the Bench as to why the applicant had not challenged the relevant notifications for the alleged violation of law at the relevant time in spite of being aware of the same, learned senior counsel for the applicant submitted that the applicant was not required to challenge it at all. It was the responsibility of the authorities concerned to comply with law and

conduct the selection process in a legally sustainable manner. In any case, the applicant had to first establish his *locus standi* in the matter which was not possible till he received information regarding the marks secured by him and the selected candidates. As the information in this regard was denied to the applicant and finally provided to him only in the year 2011, the delay that occurred in the meantime was entirely attributable to the respondents and not the applicant. Once the information was available and the applicant found that some of the selected candidates had secured lower marks than the applicant, he lost no time in drawing the attention of the authorities concerned to the allegedly faulty selection and thereafter filing the OAs before this Tribunal.

19. We have considered the above submission of the learned senior counsel. However, we are not persuaded by the argument that the applicant was not required to challenge the alleged violation of law or that he had to wait till he was satisfied that he indeed had the *locus standi* to challenge the same in terms of the marks secured by him and the others. Admittedly, the applicant figured far below on the seniority list and, therefore, his only chance of success in the two selection processes was an outstanding performance in the written examination, etc to be within the top 9 and 14 ranks respectively. The applicant ought to have known that in as much as the two impugned notifications provided for arranging all persons above the cut-off percentage of 60% & 80% respectively in terms of their seniority, his interests would be affected thereby regardless of the marks

secured by him. As a matter of fact, he had submitted a representation dt. 18.03.2006 in this regard which was rejected by the letter dt. 29.03.2006. Had the applicant challenged the decision before this Tribunal at the relevant point of time, the alleged violation of law could have been dealt with and appropriate directions issued to the authorities. It is now far too late to undo the exercise as the applicant had pursued a less effective and more time consuming remedy of first seeking information under the RTI Act before approaching this Tribunal. Such information, if necessary could have been directed to be provided by the respondents in their reply to any OA filed by the applicant.

20. More importantly, we find considerable force in the argument of the respondents that even if the correct law as contended by the applicant had been followed in the selection, the applicant would have been nowhere near being selected, his position in the merit list having been 95 & 77 respectively in the relevant years with 81 & 59 candidates above him in the merit list against vacancies of 14 & 9 only in the UR category. Clearly, the applicant would not have been selected in the relevant years and the benefit of the law as laid down by the Hon'ble Supreme Court would only have flown to other candidates who had neither expressed any grievance before the respondents nor approached this Tribunal. As the applicant would not have qualified for selection even if his representation to follow the correct law had not been rejected and the authorities

had made amends to the allegedly faulty selection procedure adopted by them, he would have had no claim to be appointed on the post advertised.

21. In the aforesaid situation, the question that arises for determination is whether the applicant is now entitled to a claim which he did not have in the first place in 2005-2006 and 2007-08 for appointment to the post of Intermediate Apprentice Mechanic/Mechanical in either of the two scenarios ie, a purely merit based selection and merit cum seniority based selection as per the relevant notification merely for the reason that the persons above him in the merit list had chosen not to exercise any legal remedy against the injustice, if any caused to them. In other words, can a person who did not have a right in 2006-07 & 2007-08 to be appointed in terms of either merit or merit cum seniority acquire such right in 2011 or thereafter solely on the basis that two or three persons who had secured even lower marks than him had been granted appointment?

22. After a careful consideration of the matter, we are of the view that since merit was not adopted as the sole criteria for selection and such a lapse on the part of the authorities was tantamount to violation of law, the only conclusion that could be arrived at is that the private respondents who had secured lower marks than the applicant had been wrongly benefitted. Merely because they were granted an undue benefit by a misapplication of law, the applicant could not seek the same undue benefit, especially when he neither had the seniority

nor the merit for the selection. Courts have repeatedly held that there is no negative equality guaranteed by the Constitution of India under the Article 16. The selection of the private respondents figuring lower on the merit list than the applicant must be dismissed as a one time aberration which could not form the basis for a claim by the applicant who was way down in the merit list and nowhere near the rank required for selection.

23. In the above view of the matter, it would appear that the applicant's grievance is not so much as the violation of law in the selection process but that the private respondents who had scored less marks than him were selected. Learned Senior Counsel for the applicant had contended that the applicant was not required to challenge the two notifications which were allegedly bad in law at the relevant time. We do not agree with this view. As the applicant was bound to be almost certainly excluded in a merit cum seniority based selection as notified, given his abysmally low seniority, he ought to have exercised an appropriate legal remedy straightaway. If he had, even if he had not qualified for selection, he would have obtained orders restraining the authorities from granting an undeserved promotion to the private respondents who were even less 'meritorious' than him. This would have settled his grievance which he is now agitating after a lapse of several years. We are, therefore, of the view that the applicant had only himself to blame for his failure to exercise the correct and effective legal remedy at the right time.

24. Theoretically and technically, it may be possible to redress the applicant's grievance even now by cancelling the appointment of the private respondents which is also a relief sought by the applicant in the two OAs. However, we refrain from granting such a relief as there could be practical problems in undoing an event after 10-12 years and it may create a vacuum leading to avoidable administrative complications. Nevertheless, we are inclined to leave it to the official respondents to consider the feasibility of such action against the private respondents even at this distant date, after issuing due notice to them and allowing them an opportunity to show cause thereagainst.

25. OAs are dismissed in the light of the above observations. No costs.

**(P. Madhavan)**  
**Member(J)**

**(R. Ramanujam)**  
**Member(A)**

**18.02.2019**

SKSI