

**Central Administrative Tribunal
Madras Bench**

OA/310/00568/2012

Dated the 2nd day of July Two Thousand Nineteen

P R E S E N T

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

S.Ramakrishnan
S/o K.Sivasankaran,
No.145/4, ICF West Colony,
Chennai 600 038. .. Applicant
By Advocate **M/s.Ramapriya Gopalakrishnan**

Vs.

1. Union of India
Owing Railway Board,
rep. by its Chairman,
Rail Bhawan, New Delhi 110 001.
2. The General Manager,
Integral Coach Factory,
Chennai 600 038.
3. The Chief Personnel Officer,
Integral Coach Factory,
Chennai 600 038.
4. Brijesh.B, Emp No.791906,
C/o The Principal,
Technical Training Centre,
Integral Coach Factory,
Chennai 600 038.
5. Kumar.R, Emp.No.697371,
C/o The Principal,
Technical Training Cnetre,
Integral Coach Factory,
Chennai 600 038.

.. Respondents

By Advocate **Mr.A.Abdul Ajees(R1&3), M/s.C.Sivanesan (R4)**

ORDER

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

This is an OA filed seeking the following relief:-

“To set aside the selection list bearing ref. No.PB/CON/5/114/61 dt. 07.05.2012 issued by the 3rd respondent for the post of Intermediate Apprentice Mechanic/Mechanical for 25% qualified Serving Employees Quota in Mechanical Department pursuant to the notification dt. 07.07.2011 as being contrary to the Railway Board's Instructions and violative of Art. 14 and 16 of the Constitution of India and Intermediate Apprentice Mechanic/Mechanical for 25%

To direct the respondents to redo the entire selection process for the post of qualified Serving Employees Quota in Mechanical Department and allot marks for the record of service individually after considering the candidate's confidential record and

To consider and select the applicant for the post of Intermediate Apprentice Mechanic/Mechanical based on the record of service and

Pass such other orders or directions as this Tribunal may deem fit and proper in the circumstances of the case, award costs and thus render justice.”

2. The case of the applicant in nut shell is that the applicant joined the Railway as Khalasi on 09.1.1992 and thereafter he got promotion to the post of Technician Gr.I and he is working as Inspector Gr.I in Quality Assurance w.e.f. 21.8.09. The respondents in this case had issued a notification for selection of Intermediate Apprentice Mechanic/Mechanical on 07.7.2011 and the applicant had submitted his application as he is eligible. The notification is produced as Annexure A2. As per the

notification, a candidate has to obtain 60 marks in the written examination and a maximum of 30 marks will be allotted for Service Record (SR). The 3rd respondent, after conducting the written examination had published the marks scored by the candidates as per Annexure A5. Thereafter, on 07.5.2012, the 3rd respondent has published a select-list for the post of Intermediate Apprentice Mechanic/Mechanical as Annexure A6. According to the applicant, his SR is outstanding and the same can be seen from Annexure A7 series. The Selection Committee had allotted 30 marks each to all the successful candidates irrespective of their performance in the work and this has prejudiced the applicant. The respondents ought to have considered the SR of each applicant and should have given marks on the grading “outstanding”, “good”, or “satisfactory” as per IREM. According to the applicant, 5 candidates selected in the list Annexure A5 obtained 60 marks each and the applicant was one among them. Eventhough the applicant was considered as outstanding in his SR, this was not considered since all of them are given 30 marks each. According to the applicant, the respondents had selected Respondents 4 and 5 (R4&5) stating that R4 & R5 are senior to him in the post of Technician Gr.I and hence they were given selection. According to the applicant, this is contrary to the notification dated 07.7.11 and to the Railway Board letter dated 19.6.09 and 12.1.11 which is produced in this case as Annexure A3 and A4. Only merit can be considered for selection and instead of the same the respondents have considered seniority in the grade of Technician Gr.I for the purpose of selecting R4&5 which is illegal. So, the applicant challenges the selection on the ground of giving 30 marks each to all irrespective of the grading and also

challenging the granting of weightage for seniority which is against the circular produced as Annexure A3 and A4.

3. The respondents appeared and filed a detailed statement admitting the selection process as per notification dated 07.7.11 and they also admitted the service particulars of the applicant stated in this case. They also admitted the issuance of the Annexure A 3 and A4 letters by the Railway Department consequent to the decision of the Hon'ble Apex Court in *M.Ramjayaram vs. General Manager, South Central Railway & Ors. Reported in 1996 (8) SCC 266*. There is no dispute even to respondents regarding the principle on which selection has to be made. According to them, Technician Gr.II and III are not having SR or Confidential Report (CR) and hence they had allotted 30 marks each to all the applicants as otherwise it will become pre-judicial to those candidates who come from Gr.II and Gr.III. They also admitted the fact that there arose a tie between the applicant and R4 and R5 as they scored 60 marks each. According to them, for selecting 2 persons they had adopted the seniority in the post of Technician Gr.I. When they considered the same, R 4 and R5 we found more senior than the applicant in Gr.I and hence the applicant was not given selection.

4. The senior counsel appearing for the applicant would contend that the selection giving weightage to seniority among the applicant and R 4 & R5 is per se illegal and violative of the instructions contained in Annexure A3. As per Annexure A3, it is clearly stated that when the applicants are coming from different categories, it will not be proper to give weightage to seniority and only merit should be considered for

selection in such cases. The respondents in this case had used the principle of seniority for the selection of R4 and R5 and they gave priority on the basis of their seniority in Technician Gr.I. This is violative of the instructions in Annexure A3 and A4 issued by the railway in consequence of the decision cited supra. So, the respondents cannot take seniority as a ground for selection to the post of Intermediate Apprentice Mechanic/Mechanical. Another contention put forward by the senior counsel is that the respondents in this case had given equal marks for SR for all the 3 persons who had got the similar marks. As per Rule 11.4.2.3 of IREM clearly gives how SR has to be considered and how marks has to be granted on the basis of performance of the candidates in a recruitment. Though the marks mentioned in the said rules may not be suitable for this selection, the respondents could have followed the same procedure while selecting the applicants who had got similar marks. Instead of doing the same, they have adopted the seniority as the criteria which is not permitted. So, the selection of the candidates R 4 and R5 was not proper and it has to be corrected.

5. The applicant in this case had also challenged the selection for the year 2007-08 and for the year 2006-07 as OA 683/11 and OA 677/11 and all the 3 OAs were disposed off earlier by common order dated 03.9.14. Aggrieved by the order of the Tribunal, the applicant filed WP No.30170 to 30172/14 and the Hon'ble High Court has set aside the order in all the 3 OAs and remitted back for fresh disposal. This Tribunal has disposed off OA 683/11 and OA 677/11 by a common order on 18.12.18. OA 568/12 was not disposed off along with that case and hence taken up for hearing

now.

6. The counsel for the respondents would contend that the respondents had conducted the test and selection in a transparent manner and followed all the rules substantially. They have provided equal marks for SR to all the candidates since Technician Gr.II and Gr.II are not having any SR and they will not get any marks under the same.

7. We have anxiously perused the pleadings and records produced before the Tribunal. On a perusal of the pleadings and arguments, we find that even the respondents agree that selection has to be conducted on the basis of notification dated 07.7.11 and also considering the instructions issued by the railway department consequent to the Hon'ble Supreme Court decision in Ramajayaraman's case referred supra. There is no dispute to the fact that only merit could be considered for selection for the general category. Even the respondents have admitted that the applicant as well as R4 and R5 had got equal marks in the written examination and they are also given 30 marks each under the SR. As per Annexure A3 and A4 no weightage can be granted for seniority in the selection of Intermediate Apprentice Mechanic/Mechanical. But the respondents had violated this guideline issued by the department and adopted the seniority of R4 and R5 for selection. So, respondents had clearly violated the instructions issued as per Annexure A3 and A4 and the applicant was prejudiced by the same and he had to approach the Tribunal for mitigating his grievance. It is not clear why the respondents had adopted seniority again for selecting R4 and R5 in this case. The respondents could have very well

used the gradings obtained in the SR of these persons and given selection on the basis of merit alone.

8. In view of the above, we direct the respondents to consider the case of the applicant herein along with R4 and R5 strictly on the basis of merit (Confidential Reports) without any reference to his seniority vis-a-vis R4 and R5. It is made clear that after such consideration, in the event of regular post not being available, the appointment already made to R4 and R5 shall not be disturbed and supernumerary post(s) as required may be created by the respondents. The above exercise shall be complied with within a period of three months from the date of receipt of a copy of this order.

9. OA is disposed of accordingly. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

02.07.2019

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