

(2016) 03 RAJ CK 0018
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11281/2012

Ved Sheel Sharma and Others	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Citation : (2016) 03 RAJ CK 0018

Hon'ble Judges : Satish Kumar Mittal, C.J. and Mohammad Rafiq, J.

Bench : Division Bench

Advocate : Shailendra Shrivastava, for the Appellant; Shailesh Prakash Sharma, for the Respondent

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—1. Ved Sheel Sharma and Ranjeet Singh have approached this Court by way of filing instant writ petition challenging judgment dated 09.08.2011 passed by Central Administrative Tribunal, Jaipur Bench (for short "the Tribunal") whereby original application filed by the petitioners has been dismissed and further with the prayer that order dated 16.01.2008 dismissing the claim of the petitioners to prepare panel for promotion to the post of Junior Engineer Grade-II through Limited Departmental Competitive Examination on merit basis be also quashed and set aside.

2. Factual matrix of the case is that Notification dated 31.03.2005 was issued by Respondent No. 2 to fill up 11 posts of Junior Engineer Grade-II in pay scale of Rs. 5000-8000. Incumbents having qualification of Metric and experience of three years service on the post of Technician Grade-III and on higher post were eligible to compete in the selection known as Limited Departmental Competitive Examination against 25% quota fixed for said purpose. The petitioners, on being called, appeared for written test on 25.09.2005 and were declared successful in the result, which was notified on 21.11.2005. Names of successful candidates were arranged in the order of merit, in which a specific note was put that this was not in the order of seniority. However, the respondents, subsequently, did not

include names of the petitioners in the panel, which was prepared on the basis of seniority and not on merit. Aggrieved thereby, the petitioners submitted representation to the respondents which was dismissed. The petitioners then filed original application before the Tribunal, which vide judgment dated 04.12.2007 required the respondents to decide representation of the petitioners. The respondents vide order dated 16.01.2008 rejected representation of the petitioners on the ground that para 219(j) of Indian Railway Establishment Manual(for short "IREM") provides for preparation of panel on the basis of seniority and the petitioners were not senior. Being aggrieved by the action of the respondents, the petitioner again approached the Tribunal by filing another original application. The respondent-Railways however before the Tribunal relied on Railway Board's letter dated 26.11.1986 and letter dated 04.01.1996 for preparing panel in the order of seniority amongst those who had qualified the written examination. The Tribunal vide impugned judgment dated 09.08.2011 dismissed original application of the petitioners. Hence, this writ petition by the petitioners.

3. Mr. Shailendra Shrivastava, learned counsel for the petitioners argued that the Tribunal has not considered the fact that the procedure followed by the respondents in selection in question is based on Railway Board's letter dated 26.11.1986 was not correct and it was contrary to the judgment of the Supreme Court dated 15.03.1996 in M. Ramjayram v. General Manager, South Central Railway, SLJ SC 1996 (1) page 536. The procedure laid down in para 219(j) of IREM relied by the respondents to reject the claim of the petitioners is confined to normal promotion and not for the promotion through selection in Limited Departmental Competitive Examination. Reliance has been placed on decision of this Court dated 10.02.2009 delivered in the cases of Shri Sadan Singh and Shri Shiv Singh(D.B. Civil Writ Petition No. 980/2009 and 982/2009) wherein it was held that para 219 of IREM can only be applied in the case of normal promotion, but not in selection known as Limited Departmental Competitive Examination to be conducted for promotion, where candidates from different departments and categories or seniority are called. Therefore, the Tribunal wrongly recorded findings against the petitioners. It is argued that procedure adopted by the respondents for preparing the panel based on seniority was under challenge and claim of the petitioners should not have been dismissed on the ground that the instructions laid down in letter dated 08.10.2007, passed subsequent to the date of panel in question formed.

4. It is argued that the Tribunal erred in considering circular dated 26.11.1986 especially when subsequent circular of similar intent dated 16.11.1998 was under challenge before the Tribunal and the same ought to have been struck down keeping in view of the fact that circular dated 19.06.2009 has already been issued by the Railway Board in this regard wherein it was categorically stipulated that the procedure defend in circular dated 16.11.1998 has already been struck down by Punjab and Haryana High Court in Writ Petition No. 4746/2002 vide judgment dated 09.04.2008 and it has been held that in the matter of promotion

to general post where candidates are coming from different departments and one of consideration is not confined to three times, panel will be formed in order of merit and not based on seniority. Even then, the Tribunal has wrongly dismissed original application of the petitioners on the ground that at the relevant time, when panel in question was formed, circular dated 26.11.1986 was in force, which is against the settled preposition of law. Learned counsel for the petitioners argued that earlier judgment of the Bench was in favour of the petitioners, even then the Tribunal has dismissed the original application of the petitioners contrary to earlier judgment of same Bench which otherwise ought to have been followed as precedence or matter ought to have been referred to Larger Bench. It is further argued that the respondents have rejected the representation of the petitioners based on Para 219(j) of the IREM, which has already been held illegal by this Court vide judgment dated 10.02.2009 in the case of U.O.I. v. Shri Vishnu Kumar Gautam. Learned counsel for the petitioners argued that criteria of preparing of panel on the basis of merit was adopted by the respondents in the year 2004, as they accepted the judgment of this Court in Union of India & Another v. Shiv Singh & Another(D.B. Civil Writ Petition No. 982/2009) which pertain to the year 2004 and that judgment has attained finality. Same criteria has been adopted by the respondent-Railways in respect of Limited Departmental Competitive Examination after the year 2009 and present dispute pertains to the year 2006, therefore, same criteria ought to be applied to the case of the petitioners. Learned counsel for the petitioners cited judgment dated 09.04.2014 passed by Division Bench of this Court in Arun Kumar Upadhyay v. The Union of India & Others(D.B. Civil Writ Petition No. 5631/2010 and three other writ petitions) and argued that same view has been taken in that judgment. Learned counsel for the petitioners submitted that from the year 2009 onwards, in all such matters, the respondent-Railways is preparing panel on the basis of merit in Limited Departmental Competitive Examination and not on the basis of seniority.

5. Mr. Shailesh Prakash Sharma and Mr. P.C. Sharma, learned counsel for the respondents-railways and Mr. Anupam Agarwal, learned counsel for private respondents opposed the writ petition and submitted that as per notification dated 31.03.2005 (Annexure-4 of O.A.), 25% LDCE quota vacancies of the post of JE II were notified as per para 141(2) of IREM. All those, who were working continuously for last three years in the unit as skilled worker in the scale Rs. 3050-4590 or above and had not completed 45 years of age, were entitled to for the selection. The petitioners being eligible were placed in the eligibility list dated 02.09.2005 and called for written test. The selection was strictly conducted as per Railway Board Circular No. E (NG) I-84-PM/33(AIRF) dated 26.11.1986 and GM(E) Churchgate letter No. EP/1025/0 Part-4 dated 04.01.1996. According to the aforesaid circular, only those qualified in order of seniority found their names in the final panel. Railway Board is competent to frame rules as per Para 123 of IREM. Selection process has already been concluded and the employees, who have been included in panel through selection process, have further been

promoted and posted in various ones of Railways. At this belated stage, settled position may not be upturned by entertaining this writ petition because the same would disturb the panel prepared on 03.01.2006 after passing of more than ten years. Representation of the petitioners was decided by reasoned order and the Tribunal has rightly rejected original application of the petitioners.

6. We have given our anxious consideration to rival submissions of the parties and carefully examined the material available on record.

7. Division Bench of this Court dealt with similar controversy in *Union of India v. Shiv Singh & Another (Supra)* with respect to filling up the posts of Group C carrying pay scale of Rs. 4500-7000 through Limited Departmental Competitive Examination where 25% posts were to be filled through LDCE in the year 2002. The controversy in that case was that whether after holding LDCE, the panel was to be drawn based on merit or on the basis of seniority. The Railways prepared the panel based on seniority with the result that lesser meritorious candidates were placed above the more meritorious ones. The Tribunal in that case allowed the original application. The Railways approached this Court against the judgment of the Tribunal. Reliance on behalf of the Railways in that case was placed on Para 2 of the scheme of examination, which provided that there would be written test and on para (d) which stipulated that the panel would be prepared on the basis of merit, which would be drawn on the basis of total marks obtained by each candidate. In that case, Para 219 as well as aforesaid circular was relied by the Railways to justify preparation of panel on the basis of seniority. Rejecting that argument, Division Bench of this Court held as under:

"The only argument of the learned counsel for the petitioner-Railway is in reference to Para 219 of the Manual and also the circular Annexure-R/4. Perusal of the provision of Para 219 of the Manual and circular reveals that Para 219 of the Manual applies to the case of normal promotion based on selection and not in the case of LDCE. It is no in dispute that it is not a selection made to fill up the post by way of promotion, where the panel is drawn based on seniority and not on the basis of merit and therein only those candidates who secured 80% marks or above, are placed at the top of the list being outstanding candidates. So far as the present case is concerned, it is the case where 25% posts are to be filled up by way of LDCE which are other than the posts filled up by way of normal promotion method. For filling up the post by way of LDCE, a separate circular has been issued by the Railway which is Annexure-6 to the original application and is part of Annexure-1 to these writ petitions. Perusal of the said circular shows as to how LDCE would be held and what would be the minimum required marks therein to be a successful candidate. The said circular further provides that after getting the list of successful candidates, panel would be drawn in order of merit based on total marks obtained by the candidates and not on the basis of seniority. Once such a circular has been issued by the Railway, then it cannot be ignored or violated by making reference to Para 219 of the Manual as it is of no application to the recruitment by LDCE. This is apart from the fact that if criteria

as has been given in Para 219 of the Indian Railway Establishment Manual is applied then there would remain no difference between normal promotion and recruitment based on LDCE from and amongst in service candidates. Thus, the argument of the learned counsel for the petitioner-Railway is not even logical one because as and when competitive examination is conducted, a candidate having obtained higher marks has to be placed above the candidates getting lesser marks, and the panel is required to be drawn accordingly."

8. This Court was again required to decide upon the same controversy in Arun Kumar Upadhyay(supra), wherein the Division Bench of this Court relying upon its earlier judgment in Union of India v. Shivraj Singh Solanki (D.B. Civil Writ Petition No. 979/2009 and one more writ petition) held as under:

"Before examining the controversy & the rival submissions made, it can be noticed from the various circulars issued by the Railway Establishment from time to time, few of which have been placed on record that under Railway Establishment Act, 1989 guidelines have been issued to be implemented by departmental committee for holding selection. Section 72 of the Act which lays down guidelines for holding Limited Departmental Competitive Examinations, being relevant for the present purpose reads ad infra :

"72. Guidelines for holding limited departmental competition. (1) Applications from eligible candidates for appearing in the limited departmental competition to the ranks of Head Constable and Assistant Sub-Inspector shall be invited thirty days in advance of the proposed date of holding the said competitions.

(2) The procedure for holding the said competition shall be the same as provided in Rules 70 and 71 except sub-rule (3) of the said rules.

(3) A panel shall be drawn from amongst the candidates securing sixty percent marks or more in the order of merit."

For group-B posts, circular has been issued by Railway Board dt. 20.07.1995 laying down guidelines for promotion to group-B including LDCE guidelines dt. 20/25-07-1995 & apart from procedure for holding competitive examinations, final panel is to be prepared of the successful candidates on the basis of marks originally secured in the examination & clause-9.4 of the circular dt. 20/25-07-1995 being relevant for the present purpose reads ad infra:--

"There will be no grading of successful candidates as outstanding, good etc. Their names will be arranged in the order of merit on the basis of the total marks obtained by each of the candidates."

Regarding promotion against LDCE quota in the cadre of OS-II & P-I, it has been circulated by the Railway Board vide their circular dt. 17/06/2005, apart from criteria introduced, separate procedure has been provided for holding LDCE & sub-clause (v) of clause-3 mandates to prepare final panel of successful candidates in the order of merit, that being relevant reads ad infra:--

"(v) Based on (iv) above the RRB will furnish the panel of successful candidates in order of merit, equal to the number of total vacancies intimated by the Zonal Railway/PU concerned. While it will be preferable to post the successful candidates in their respective Department/Units, there is no bar to their being posted else here if the number of successful candidates does not match the number of already assessed vacancies in the respective Deptt./Unit."

The Division Bench of this Court in the judgment referred to dt. 10.02.2009 which mandates regarding preparation of the final panel on the basis of marks secured by the successful candidates who had participated against vacancies reserved for LDCE quota, being relevant reads ad infra:--

"(d) There will be no grading of successful candidates to as outstanding very good etc. Their names be arranged in order of merit on the basis of the total marks obtained by each of the candidates."

As regards Para 219J of the Manual, it was observed in the judgment (supra) while examining the controversy which arose in regard to the selection process initiated in the year 2004 filling up the post of Junior Engineer Grade-II against 25% LDCE quota that 219(j) lays down regarding promotion to general selection posts & not relevant with regard to 25% LDCE quota in the various groups/cadres and another circular has been placed on record issued by the Ministry of Railways (Railway Board dt. 19.06.2009) regarding selection procedure to general selection post & placement of names on panel and it has been clarified that separate instructions have been issued prescribing different modes for placing names on panel in few categories, viz LDCE quota in the various categories which is issued from time to time & promotion to general selection post there is the procedure for regular promotion to general selection posts to be filled in terms of Para-219(J) IREM (U.L.I.) 1989 and in terms of instructions contained in para(iii) of 219(J) final panel is to be prepared on the basis of seniority from amongst those who secure a particular percentage of marks but in the instant case we are not concerned with the promotion to be made by general selection which obviously has to be made after selection on the basis of seniority but as regards 25% LDCE quota, we find no reason of doubt that after judgment of this Court referred to supra dt. 10.02.2009 that panel is to be prepared on the basis of marks secured in the examination on merit where seniority of the incumbent of the lower grade/cadre is not relevant for preparation of final panel of the candidates who had participated against 25% LDCE quota action of the respondent cannot be held justified and sustainable under the law."

9. We may at this stage take note of the fact that present dispute pertains to same period where for the writ petitions were filed in the year 2010-11 by employee Arun Kumar Upadhyay(supra) and others. On specific query of the Court, Mr. P.C. Sharma, learned counsel for the respondent-Railways has fairly admitted that aforesaid two judgments have attained finality. When already panel regarding Limited Departmental Competitive Examination for different posts has been drawn on the basis of merit in respect of selection of 2004 and

thereafter in respect of year 2009 onwards, preparation of panel in the present case should be on merit basis alone and not on seniority basis.

10. Punjab and Haryana High Court in Subhash Chand Joshi & Others v. Union of India & Others; 2008 LIC 4333 also dealt with Rules 215 and 219(j) of the Indian Railway Establishment Manual, Volume I with regard to promotion to the post of Signal Inspector Grade-III against 20% intermediate quota through LDCE and held that promotion by selection on merit from different cadres excludes seniority and is on merit alone and therefore merit would be relevant for determining the right of promotion. There is no common seniority amongst different feeder cadres. Clause (j) of Rule 2019, which contemplates a panel in the order of seniority, is wholly illegal. Punjab and Haryana High Court in that case struck down Clause (j) of Rule 219(supra) and directed that preparation of panel and promotion be made in accordance with merit of selection. It would be evident from circular dated 19.06.2009 issued by the Railway Board addressed to all General Managers (Personnel) that the aforesaid judgment delivered by Punjab and Haryana High Court has been upheld by the Supreme Court. In the aforesaid circular, the Railway Board, in supersession of all previous circulars, has directed that in such like selections, panel will be prepared on the basis of merit and not on the basis of seniority.

11. In view of above discussion, writ petition deserves to succeed and the same is accordingly allowed. Judgment dated 09.08.2011 passed by the Tribunal is set aside and original application in terms of prayer made therein stands allowed with direction to respondent-Railways to prepare the panel on the basis of merit of the candidates, who qualified Limited Departmental Competitive Examination ignoring circular dated 16.11.1998 issued vide correction slip No. 263/98.

12. Compliance of this order be made by the respondent-Railways within three months from the date of production of copy of this order.