

**IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

WP.CT 18 of 2023

**Union of India, service through the General Manager,
Eastern Railway & Ors.
Versus
Sanjoy Kolay & Ors.**

For the Petitioner	:	Mr. Rudrajyoti Bhattacharya Mrs. Sayani Roy Chowdhury
For Respondent No.1	:	Mr. P.C. Das Mrs. Soma Chowdhury Bandhu
For Respondent No. 5 and 6	:	Mr. Sardar Amjad Ali Mr. P. Pal
Heard On	:	22.11.2024
Judgement Delivered On	:	21.02.2025

Supratim Bhattacharya, J.:

1. Being aggrieved by and dissatisfied with the order dated 26.07.2022 passed by the Central Administrative Tribunal, Kolkata Bench, Kolkata (hereinafter after to be referred to as the Tribunal), in Original Application (O.A.) No. 350/1451/2018 the authorities that is the Union of India and the Railway authority has preferred the present writ application under Article 226 of the Constitution of India against the person who had preferred the

O.A. and the persons who have been listed to be promoted for the post of Junior Engineer.

2. The said Tribunal through the said Original Application has directed to recast the panel. By passing the following order:

“... 11. in view of the aberration from established procedure as noted above, the authorities are directed to recast the panel strictly in terms of para 219 (g) of IREM and RBE 17/14, as enumerated supra, within 3 months from the date of receipt of a copy of this order.

12. The present O.A., accordingly stands disposed of. No costs”

3. For selection to the post of JEE in Level-5 against the 25% promotional quota a notification was published on 16.1.2018. The applicant applied in response thereto. The eligibility list was published on 14.03.2018 containing 31 selected senior Technicians and Technicians-I for being considered for 8 vacancies on the post of JEE in TRS (EMU) in Level-5 carrying Grade pay of Rs. 4200/-. The applicant's name appeared at Serial No. 7 in the eligibility list. Thereafter a select list was published on 21.8.2018. the applicant was placed on Serial No. 6 at the select list. Nearly more than a month thereafter a provisional select list was prepared wherein the applicant's name was not included.

4. The applicant is aggrieved by his exclusion in the subsequent select list dated 11.9.2018. According to him the same is in violation of RBE 31/2005 dated 22.02.2005. The applicant's exclusion in the select list according to the applicant was also in violation of judgment of the Apex Court in the case of ***N. Ramjayaram Vs. General Manager South Central Railway and ors.*** Reported in ***AIR 1996 SC 3126***. The applicant contended before the Tribunal that the Apex Court in the decision has held that if employees come from different seniority units then overall merit is to be the sole criteria for selection. This aspect has been reiterated in the Board's order dated 19.06.2009. Ignoring this settled procedure and despite the fact that that applicant was figuring in the select list prepared on the basis of merit, he has subsequently been excluded by giving weightage on account of seniority to others who had scored less than him in the process of selection. According to the applicant the process of selection was a general selection governed by Para-C of the Railway Board Establishment circular No. 17/2014. The selection was thus to be guided by and based on the basis of *inter se* assessment of merit of the candidates. Seniority was not a relevant consideration. Applicant complained, that in spite thereof the authorities proceeded to recast the select list to the prejudice of the applicant's by giving weightage for seniority.

5. The applicant referred to the notification dated 16.01.2018 as well as one communication dated 19.06.2009 issued by the Railway Board to all General Managers to submit that it is clear from a harmonious reading of these two documents, as well as the provisional select list dated 11.09.2018 that the selection in the present case was to be considered as general selection since the notification dated 16.01.2018 was giving option to employees of different categories (Senior Technicians-II and Technicians-I). The selection process therefore was required to be carried out as per Clause -C of RBE No. 17/2014. Referring to the provisional select list dated 11.09.2018 the learned counsel submitted that from the select list also it is obvious that persons participated from Howrah as well as Bandel and have been considered. According to the avenue Chart as per Indian Railway Establishment manual annexed as Annexure P-6 to the writ petition, selection in the post of Junior Engineer of Grade Pay of Rs. 4200/- is a general selection. Reliance has also been placed by the applicant's counsel on the Railway Board's communication dated 14.09.2019 annexed to the second supplementary affidavit to submit that JEE is subject to a general selection. Relying on this documents it is the case of the applicant that the final select list is not as per the circular of the Railway Board that is RBE No. 17/2014. The selection is also in

violation of the judgment of the Apex Court in the case of N. Ramjayaram (*supra*).

6. The Tribunal has considered these submissions of the applicant as well as the submissions on behalf of the respondents and has arrived at a conclusion that the selection process has ignored the merit of the applicant in the selection process and added additional marks for seniority in violation of the RBE No. 17/2014. As a result the private respondents in the O.A. have been allowed to steal a march over the applicant's. The Tribunal has thus directed the respondents to recast the panel strictly in terms of Para-219 (j) of IREM and RBE 17/14.
7. The present writ petition has been filed by the Union. The learned counsel for the petitioner submits that the applicants before the Tribunal were technicians Grade-I in Grade Pay of Rs. 2800/-. The respondents on the other hand were senior technicians working in Grade Pay of Rs. 4200/-. As per RBE Railway Board establishment letter dated 06.02.2014 the seniority was to be given due weightage in the process of selection under question. The petitioners therefore had rightly taken into consideration the performance in the written test, entries in the ACR as well as seniority of the applicants to prepare the final select list. As a result of such process

undertaken under the RBE letter the selection was finalized. Merely because the petitioners have not emerged successful in the process held under the extant instruction/circular issued by the authorities, they cannot be permitted to raise an objection regarding the panel. It is the case of the petitioners herein that the present selection was rightly conducted by an assessment in terms of Clause -A of RBE 17/2014. The issue that emerges for our consideration is whether the selection was required to be conducted as per Clause-A of RBE No. 17/2014; or as per Clause C of RBE No. 17/2014. We therefore consider it appropriate to take note of RBE 17/2014 , which reads as follows:

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S. No.	Subject	Clarification
A	<i>Selection of posts as per avenue of promotion by restricting field of eligibility to 1:3 times</i>	<i>Normal Selection with seniority marks and 60% pass marks in the aggregate including marks of written examination, record of service and seniority. Panel being made as per seniority with 80% and above classified as Outstanding in order of their seniority allowing</i>

		<i>them to supersede not more than 50% of total field of eligibility.</i>
B	<i>Selection to posts as per avenue of promotion not restricting the field, but by calling for volunteers, like LDCE</i>	<i>Normal Selection without seniority marks. Panel to be formed as per merit.</i>
C	<i>General Selection posts: Selection to posts in which the volunteers are called across cadres/departments without restriction of field and all eligible candidates called for selection.</i>	<i>Selection without seniority marks. Panel to be arranged as per merit.</i>
D	<i>For promotion from erstwhile Group D to Group C</i>	<i>All erstwhile Group 'D' categories in GP Rs. 1800, since upgraded as Group 'C' will continue to be eligible for selection to Group 'C' posts as per the AVC already provided, if they possess the prescribed educational qualification and residency period etc. For 33^{1/3}% quota - all staff having completed 3 years and above regular service are allowed to appear. Selection shall be</i>

		<i>governed by para (A) above. For 16^{2/3}% quota selection, rules against para B above will be applicable for staff with a minimum of 2 years regular service. This is as per para 189 of IREM and ACS 154 & 155.</i>
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- 8.** From a bare perusal of RBE 17/2014 it is apparent that the selection can be said to be under Clause-A only if the field of eligibility is restricted. Otherwise, if the field is not restricted but volunteers are called across cadres / departments and they are considered eligible candidates, then the process is required to be carried on without giving weightage to the seniority and the panel is to be prepared as per merit.
- 9.** As per Ld. Senior Counsel Mr. Ali who represents Respondent Nos. 5 and 6 the recruitment process was initiated specifically for Tech-I TRS (EMU) Howrah and not anyone else. The process therefore is not a general selection. This aspect was clear from the notice dated 16.01.2018 in response to which the candidates including the applicants had applied. According to him it is thus apparent that candidates had applied only from Technicians in

TRS (EMU). Even from the result dated 19.01.2018 it is apparent that the provisional select list was for the post of JEE under TRS (EMU) department and no other department. He has also referred to the same letter issued by the Railway Board dated 14.09.2009 which has earlier been referred to by the learned counsel for the applicants. According to him as per this circular No. 155/2009 the selection for the post of JEE under the 25% promotional quota is not earmarked as general and therefore the authorities have rightly proceeded to consider it as selection under Clause-A of RBE 17/2014. All the candidates have been called only from Howrah and therefore it cannot be said that it is a general selection.

10. Mr. Ali has also submitted that it is the employee who is competent to consider the intention of these orders which were issued by them. Since they have concluded the selection process not to be a general selection there was no scope for the Tribunal to interfere in the matter, since the selection was limited exclusively to electrical JEE (EMU) department of Howrah division. It is the only avenue of promotion for senior technician and technician-I to the post of JEE against 25% promotional quota.

11. He further submits that the applicants have also participated in subsequent selection process of JEE /TRS/EMU

against 25% inter apprentice quota in response to the notification dated 17.12.2018 and were not declared selected. The sum and substance of the submissions advanced on behalf of the private Respondent Nos. 5 and 6 by the Ld. Senior counsel is the same as the Ld. Counsel for the petitioner that the selection process was not for applicants across cadres/departments without any restriction of field and therefore seniority was required to be given due weightage as per Clause -A of RBE 17/2014.

12. We have considered the submission of the parties and gone through the documents referred to as taken note of above. From a bare perusal of the final result itself we find that candidates from Howrah as well as Bandel have been declared provisionally selected for the post of JEE under TRS (EMU). The candidates have applied in response to the notification dated 16.01.2018 which is in continuation of an earlier office notification dated 05.12.2017.

13. It is an admitted position that the applicants before the Tribunal were technicians whereas the private respondents who have been selected were senior technicians and both were considered eligible for participating in the selection in question . We therefore are unable to accept the submission of the petitioners or the private respondents that the field of eligibility for participating in the process of selection was restricted. In fact,

we find that it was a process open to others apart from senior technicians (respondents) to participate in the recruitment process. Such view is also supported by the avenue Chart as per IREM, Annexure P-6 to the writ petition. As per the chart the post of junior engineer for which the selection process was carried on has been shown as a general selection. Similar is the situation in the Railway Board's letter dated 14.09.2009. The petitioners during the process of selection came out with a list of candidates who were directed to appear in the written test. In this list of candidates it can be seen that amongst the candidates there are senior technicians as well as Technician-I from Howrah and Bandel.

- 14.** We also find that the Tribunal had taken note of the background that senior technicians were either reluctant to appear in the selection or did not qualify in the written test. They were unwilling to seek promotion to the post of JEE and adequate number of senior technicians were not available. Taking into consideration this brief background before the current process of selection, which is in question, the Tribunal has taken note of the fact that Technician-I, the applicants before the Tribunal were thus made eligible for participating in the promotion to the post in question. The post of JEE carrying Grade Pay of Rs. 4200/- was thus resolved to be filled up through senior

technicians (private respondents) who were already in the Grade Pay of Rs. 4200/- as also Tech-I (applicants before the Tribunal) in the Grade pay of Rs. 2800/- . Thus the feeder categories belonged to diverse seniority groups. There was disparity in the seniority of the candidates eligible for the process of selection under question.

15. Considering these factors the Tribunal has rejected the claim of the respondents/writ petitioners that Clause-C of RBE 17/2014 would not apply . Para-C envisages selection to a post in which the volunteers/ applicants across cadres/departments are considered eligible, as in the present case.

16. We are of the view that the Tribunal has thus rightly concluded that the selection process was to be conducted as per Clause-C of RBE 17/2014 and the panel was to be arranged strictly on merit. The conclusion of the Tribunal relying upon RBE 17/2019 as well as the judgment of the Apex Court in the case of N. Ramjayaram (supra) therefore in our opinion does not require any interference.

17. The writ petition being No. **WP.CT 18 of 2023** is **disposed of without any cost.**

18. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

- 19.** Urgent certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree,

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)