

**(2014) 07 DEL CK 0078**

**Delhi High Court**

**Case No:** W.P. (C) 1120/2007

Krishan Kumar

APPELLANT

Vs

UOI

RESPONDENT

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**Date of Decision:** July 23, 2014

**Citation:** (2014) 212 DLT 583

**Hon'ble Judges:** Vipin Sanghi, J; S. Ravindra Bhat, J

**Bench:** Division Bench

**Advocate:** Arvind Kr. Sharma, Advocate for the Appellant; Kumar Rajesh Singh, Advocate for the Respondent

**Final Decision:** Allowed

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### **Judgement**

S. Ravindra Bhat, J.

The petitioners are aggrieved by the order of the Central Administrative Tribunal ("CAT/Tribunal") dated 29.10.2003 in O.A. No. 324/2003. The impugned order set aside the selection and appointment to the post of Junior Engineer (C & W) Grade-II.

2. The brief facts of the case are that the petitioners were earlier working as Artisan Grade I, which is one of the posts-incumbents whereof are entitled to compete for 25% quota for the post of Train Examiner/JE Grade II. This was in term of Rule 142 of the Indian Railways Establishment Management (IRD) Volume I.

3. The Northern Railway, on 11.11.2002 advertised 18 posts of JE (C & W) Grade II earlier designated as train examiners to be filled in the 25% quota. The petitioners had served for three years in the feeder grade and, therefore, were eligible to appear in the said examination. Based upon the performance, the respondent Railways offered them the post of JE Grade II and appointed them. The contesting private Respondent nos. 4 and 5, who belonged to other feeder categories felt aggrieved, and approached the Tribunal complaining that the procedure adopted for filling up these vacancies was contrary to the Rules. Their contention was that the railways were bound to follow the procedure outlined in Rule 215(e), of the

Indian Railways Establishment Manual (IREM) by confining the zone of consideration to three times the number of vacancies and that, consequently, since the petitioners did not fall within that zone, their candidature could not have been accepted. The Tribunal accepted their contention and held the appointment of the petitioners to be contrary to Rule 215(e).

4. The Private respondent Nos. 4 and 5—who had approached the Tribunal, were served in the course of these proceedings. Initially, they were represented. However, in the last ten hearings or so, there has been no appearance on their behalf. We have heard learned counsels for the parties today.

5. Learned counsel for the petitioner contended that the Tribunal fell into error in holding that the procedure adopted in filling up the 18 vacancies in question was contrary to Rule 215(e). Premising upon the terms of the advertisement, learned counsel for the Petitioner argued that the Northern Railway called for applications not merely from 54 eligible employees, but all those who fulfilled the eligibility criteria for the post, i.e. three years service in the feeder grade. Consequently, the applications of the petitioner and other such employees were processed, and they were allowed to compete in the written examination. The appointment which followed this event was purely merit based, and the learned counsel contended that the tribunal ought not to have entertained the contesting respondents application before it, because, in the first place, they were not even selected. He further stated that neither their ranking nor their seniority was discussed by the Tribunal.

6. Learned counsel argued that having regard to the facts of this case, Rule 215(e) had no application. The contention of the Northern Railways-official respondent was more or less on similar lines; the counter affidavit filed in this regard virtually supports the petition.

7. Before discussing the rival contentions, it would be essential to extract Rule 142(1), which provides that the source of recruitment and various categories to the post of JE Grade II reads as follows:

142(1) The vacancies in the category of Train Examiners in scale Rs. 1400-2300 will be filled as under:-

(i) 40% by direct recruitment as Apprentice Train Examiners through the Railway Recruitment Boards;

(ii) 20% by Intermediate Apprentices from amongst serving Matriculate employed with three years service in skilled grade(s) and below 45 years of age; and

(iii) 40% by promotion by selection. If the selection/supplementary selected from amongst Mistries/Skilled Grade I & II fails to provide enough candidates, another supplementary selection amongst skilled grades (with 5 years service in skilled grades and 8th class qualification or with 3 years service and Matriculation) will be held the condition regarding qualification applying to staff in skilled grade III

(emphasis supplied). (Read 25% instead of 40% as changed later on)".

[emphasis supplied]

8. Rule 215, which is in general terms, reads as follows:

#### 215. Selection Post

(a) Selection post shall be filled by a positive act of selection made with the help of Selection Boards from amongst the staff eligible for selection. The positive act of selection may consist of a written test and/or viva voce test; in every case viva voce being must. The staff in the immediate lower grade with a minimum of 2 years service in that grade only will be eligible for promotion. The service for this purpose will include service, if any, rendered on ad hoc basis followed by regular service without break. The condition of two years service should stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration.

(b) The selection for promotion to a selection post shall be made on the basis primarily of merits.

(c) Promotion to selection post shall be made by the competent authority in accordance with the recommendations of a Selection Board in the manner detailed in paragraph 216 below. If, in any case, such authority is unable to accept the recommendation, a reference shall be made to the General Manager, who may if necessary constitute a fresh Selection Board at a higher level and whose decision in the matter shall be final.

(d) The Railway Board may adopt a procedure other than the one laid down in para 216 below while deciding individual cases of hardship.

(e) Eligible staff upto 3 times the number of staff to be empanelled will be called for written and/or viva voce test. The staff employed against fortuitous short term or stop gap promotion to the immediate lower grade in the manner otherwise than in accordance with the regular approved method of promotion will not be eligible for consideration. It is desirable to hold written test as part of a selection in respect of all initial selection grade post in the different channels of promotion, but in every case a viva voce test shall be held. If a written test is proposed to be held, advance intimation shall be given to all eligible candidates.

9. Whilst the Tribunal was correct in holding that Rule 142 outlines the source of recruitment, we are of the opinion that it fell into error by holding that the method prescribed under Rule 215(e) had been violated. Rule 215 broadly deals with Selection post, and the Railways' obligation in filling them. Rule 215(a) sets out that selection post shall be filled by "a positive act of selection made with the help of Selection Boards from amongst the staff eligible for selection". It goes on to state that those employees or officers in the immediate lower grade with a minimum of two years service in the grade will only be eligible for promotion. Rule 215(b) states

that, "the selection for promotion to a selection post shall be made on the basis primarily of merits."

10. Facts of this case show that the respondent Northern Railway did not invoke Rule 215 in its terms. In the present case, the advertisement clearly stated that the applications and candidature of all eligible employees would be considered and that all of them would be entitled to participate in the written test. Rule 215 generally outlines the method to be adopted in case of selection and filling of posts. In the present case, however, there was a clear and conscious departure in that all those who were eligible were entitled to and did participate in the written examination/selection and subsequent appointments were merit based.

11. Rule 215(a) itself states that staff in the immediate lower grade with a minimum of two years service in that grade only will be eligible for promotion. As noticed above, Section 215(b) emphasizes the aspect that the promotion to a selection post shall be made primarily on merits. Consequently, to us, it appears that the zone of consideration sought to be limited by Rule 215(e) to "up to three times the number of staff to be empanelled" is not a mandatory Rule-non observance whereof would vitiate the selection process on account of enlargement of the zone of consideration. Pertinently, both the present petitioners and the private respondents took advantage of this advertisement. Had the respondents articulated their grievance at that stage-that throwing open the doors for selection to the larger number of candidates was contrary to Rule 215(e), the matter might have been viewed slightly differently. However, they had not chosen to do so. That alone ought to have alerted the Tribunal in making its determination about the validity of the selection process.

12. In these circumstances, the conclusion of the Tribunal that the Railways violated Rule 215 is clearly erroneous. Had the Indian Railways in the first instance stated that written examination would be conducted only from amongst those eligible candidates of serving officers in the feeder grade falling within the zone of consideration, i.e. three times the number of vacancies, the matter could have been different. Not having done so, the respondents could not be faulted for by proceeding to fill the vacancies post by selection purely on merit.

13. For the above reasons, the conclusions of the Tribunal cannot be sustained and they are hereby set aside. The writ petition is, accordingly, allowed.