

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

R.A. No. 201/2003 IN OA NO. 2244/2002

MEW DELHI THIS 24TH DAY OF JULY 2003

HON'BLE SHRI KULDIP SINGH, MEMBER (J)
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Mukut Behari Sharma S/o late Sri Ram Sharma

.....Applicant

VERSUS

Union of India & Others : Respondents

O R D E R (IN CIRCULATION)

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

R.A. 201/2003 calls for the recall and review of our order dated 21.4.2003, issued dismissing OA 2244/2002.

2. We have carefully considered the matter. OA No. 2244/2002 was filed by the applicant a Sr.. Sectional Engineer in Northern Rly. , challenging his non-promotion as Addl. Electrical Engineer. It was alleged in the OA that he had been denied promotion as were than permissible number of candidates had been called for selection. According to him there having been 18 vacancies, 54 persons only could have been called. We had examined the position as well as the explanation given by the respondent and were convinced by its rationale. We had also observed that the applicant himself could be called only because the respondents went beyond 54, as his number was at 67. Accordingly we dismissed the OA on 21.4.2003 with the following observations:-

" 8. We have carefully considered the matter and perused the documents brought on record. The applicant, who was one of the aspirants for promotion to the post of Assistant Engineer against 70% quota promotion from class-III, is unhappy that the respondents had called as many as 84+25 candidates for filling up of 18 vacancies and have also committed number of irregularities

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in the selection. All these are totally denied by the respondents. They point out that in terms of instructions contained in IREM for vacancies exceeding 4, the consideration zone would extend to three times the vacancies. Accordingly, 54 candidates were to be called for the selection but additional 30 persons were also called as they had failed in the previous two tests and were entitled to be called in terms of the instructions. Names of 25 persons were added purely in a reserved capacity and the same did not affect the selection in any manner. Respondents had also pointed out that the applicant was at rank No.67 and has been considered for viva voce on his passing the written test, but as he has not succeeded in the viva voce, he lost out in the aggregate and, therefore, he was not selected. He cannot complain that he had been denied what due to him. We find that the pleas raised by the respondents are correct as far as the eligibility of the candidates, who have been called for the test, is concerned. In fact if the respondents had confirmed the selection to just three times the vacancies, i.e., to 54, the applicant, who is at rank No.67, would not have been called. What remains to be seen is whether the applicant, in such consideration also, was given a fair deal. The applicant having cleared the departmental test was called for the viva voce. However, his performance in viva voce was below par. The applicant had scored the least total marks among all the 18 candidates, who had appeared for the viva voce by scoring 116.6 marks as against the requirement of 120. His performance in viva voce alone was at the last but second position. That being the case, the respondents could not have selected him and he cannot have a legitimate claim that he has not been selected. The applicant's claim that his less colourful ACR had apparently come in the way of his being selected, is also not correct and, therefore, the assistance he seeks from the judgments cited by him, is misplaced and is not available to him. The fact remains that the applicant had not cleared the viva voce and, therefore, the respondents could not have considered him for promotion. The applicant has stated that even though he is a failed candidate, he could still challenge the selection procedure, as has been pointed out in the decisions of the Hon'ble Supreme Court. But the same would not come to his assistance, as he has not been able to prove that any procedural infirmity had been committed or any specific violation of prescribed requirements of law as well as enshrined in IREM had occurred. The applicant not having passed the test and made the grade cannot claim now that the procedure was faulty.

9. In the above view of the matter, we are convinced that the applicant has not made out any case for our interference. OA fails and is accordingly dismissed."

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3. Now the applicant is trying to have the matter re-argued for which no provision exists in law and such an exercise is clearly based by section 22(3)(f) of the AT Act, 1985. Such exercise have also been frowned upon by the Hon'ble Supreme Court in the case of Avtar Singh Sekhon Vs. UOI [1980 SC 2041].

(Govoindan S. Tampi)
Member (A)

Patwal

(Kuldip Singh)
Member (J)