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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1820/2001

New Delhi this the 10th day of May, 2002.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)  
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Amar Pal,  
S/o Shri Chauhan Singh,  
working as Daftry,  
Ministry of Civil Aviation  
(Commission of Railway Safety),  
Northern Circle,  
Government of India,  
Near Safdarjang Railway Station,  
Chankya Puri,  
New Delhi-110021.

-Applicant

(By Advocate s Shri Chand Kiran and Sh. G.R. Chauhan)

-Versus-

1. Union of India through  
its Commissioner of Railway Safety,  
Northern Circle,  
Near Safdarjang Railway Station,  
Chankya Puri, New Delhi-110 021.
2. Commission of Railway Safety,  
through its Chief Commissioner,  
Govt. of India,  
Ministry of Civil Aviation,  
Ashok Marg, Lucknow (U.P.)
3. V.J. Rao,  
working as Lower Division Work,  
Ministry of Civil Aviation,  
(Commission of Railway Safety)  
Commissioner of Railway Safety,  
Northern Circle,  
Govt. of India,  
Near Safdarjang Railway Station,  
Chanakya Puri, New Delhi-110021. -Official respondents

(By Advocate Shri M.M. Sudan)

4. Sh. Amitabh Dwivedi,  
Section Officer,  
Commission of Railway Safety,  
Govt. of India,  
Ministry of Civil Aviation,  
Ashok Marg, Lucknow (U.P.) -Private respondent

(By Advocate Shri V.S.R. Krishna)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns promotion order of respondent  
No.4, promoting him as LDC under 10% quota after the

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limited departmental examination held on 6.1.2001. He prays for summoning of the records and direction to promote him as LDC w.e.f. 15.1.2001, with all consequential benefits.

2. Applicant, who belongs to a reserved category was appointed as a peon on 9.5.95, whereas respondent No.3 was appointed as a general candidate on 4.7.95. Applicant was further promoted as Daftry w.e.f. 19.5.97 but respondent No.3 remained as a peon. A vacancy arose in the month of April, 2000 in Group 'C' post of LDC on the retirement of one Shri A.B. Kalra and thereafter a limited departmental examination was held on 10.1.2001, in which respondent No.3 who secured more marks than the applicant was further promoted as LDC w.e.f. 15.1.2001.

3. Learned counsel for the applicant alleges malafides against respondent No.3 as well as respondent No.4, a Section Officer, by stating that respondent No.4 humiliated and misbehaved with him with the result he made a complaint regarding breaking of the seal of the answer books. It is also alleged that bungling has <sup>been</sup> taken place during the examination held on ~~16~~<sup>14</sup>.1.2001. Applicant has made a compliant to the National Commission for SC/ST who have taken cognizance of the same but thereafter no orders have been passed.

4. It is contended that he has been discriminated as the seniormost Group 'D' employee, he is eligible for promotion after having completed more than

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five years statutory service prior to respondent No.3 and is entitled for promotion under Articles 16 (4) and 335 of the Constitution of India.

5. It is also stated that as per the recruitment rules 10% of the vacancies in the posts of LDC shall be filled up amongst the Group 'D' employees working in the office. As the applicant was eligible w.e.f. 9.5.2000 and one vacancy had arisen on promotion of Sh. A.B. Kalra as UDC, he should have been promoted w.e.f. 9.5.2000, but as the respondents intentionally wanted respondent No.3 to be promoted, they waited till he has become eligible on 4.7.2000.

6. It is contended that the examination held by the applicant was neither fair nor impartial, resulting in his supersession, despite being senior.

7. It is lastly stated that his representation made against the bungling in the examination has not been responded to by the respondents.

8. On the other hand learned counsel for the respondents Shri M.M. Sudan contended that being a small circle having three posts of LDC and on promotion of one Sh. A.B. Kalra post has become vacant on 2.6.2000. As per the recruitment rules against 10% quota, all Group 'D' employees have been informed through notification dated 28.9.2000. In pursuance thereof applicant as well as R-3 applied for the post and participated in the examination held on 6.1.2000 without any protest. The question papers of written examination were prepared in three sets by the

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PS to Chief Commissioner of Railway Safety, LDC, Technical Wing as well as Assistant, Railway Safety Commission and were placed before the Chief Commissioner, who in turn, without opening the sealed cover selected one set of paper which was opened at the time of examination before the applicant and R-3. Thereafter the copies were checked on the same day by one LDC (Technical) and thereafter re-checked by Assistant, Railway Safety Commission and by Office Superintendent of Railway Safety Commission. On the basis of marks evaluated R-3 was promoted as LDC by an order dated 15.10.2001.

9. As regards representation it is contended that the applicant has not made any representation on the date of the examination, i.e., 6.1.2001 and the representation made on 10.1.2001 is not received by them. It is also stated that having participated in the selection it is not open for him to challenge the same. Applicant has failed to establish any illegality of procedure or malafide on the part of respondents 3 and 4. As such having regard to the rival merits of the applicant and R-3 the incumbent who secured more marks has been promoted as per the recruitment rules.

10. Respondent No.3 as well as respondent No.4 have denied any malafide and stated that they adopt the reply filed by the official respondents. It is also stated that R-3 wrote answers at the time of examination and there was no interpolation or breaking of the seal of answer books. Being a peon accompanying the officers to Lucknow is his duty, as directed by the superior authorities.

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11. We have carefully considered the rival contentions of the parties and perused the material on record.

12. We do not find any illegality in the action of the respondents by notifying the post of LDC not immediately the applicant acquired eligibility, i.e., on 9.5.2000, as the post of LDC arose on the promotion of A.B. Kalra, who on account of leave joined the post of UDC only on 2.6.2000 and thereafter the notification was issued after completing all the formalities on 28.9.2000. The notification having not been challenged immediately by the applicant, he has no legitimate grievance to assail the same in this OA.

13. As regards malafides alleged and the allegation of breaking the seal of answer book is concerned, the question papers were selected amongst the three by the Chief Commissioner himself and were in a sealed condition, opened at the time of examination. Applicant having participated in the same and has not scored well in comparison to R-3 cannot challenge the selection process without establishing any illegality of procedure or malafides. Although, we are not satisfied with the respondents' action of getting the answer sheets for the post of LDC to be checked by the LDC, but having regard to the fact that the answer sheets were re-checked and further checked by the higher authorities, i.e., Assistant and Office Superintendent, the contention of the applicant regarding malafide and illegality of the procedure cannot be countenanced.

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14. As regards the plea that the answer sheets have been opened and tampered with by R-3 who accompanied the officials to Lucknow, cannot be countenanced, as it was an order of the higher authority to respondent No.3 to accompany the officers as a peon and he performed his duty. Nothing on record has been brought to our notice by the applicant to show that in any manner the answer sheets have been tampered. We do not find any interpolation or irregularities in the procedure adopted by the respondents.

15. Furthermore, we note that the applicant has not made any complaint immediately on the date of the examination, i.e., on 6.1.2001. Making a grievance after four days certainly is an after thought and the applicant has come to know that he has not performed well in comparison to R-3, although respondents have denied receipt of this representation.

16. Applicant has miserably failed to point out any malafide against R-3 and R-4. The action of the respondents to subject the applicant and R-3 to a limited departmental examination under 10% quota for Group 'D' employees and promotion of R-3 on the basis of better performance than the applicant cannot be found fault with. No procedural irregularity or infirmity has been pointed out before us.

17. In the result and having regard to the foregoing discussion, we do not find any merit in the present OA. The same is accordingly dismissed. No costs.

S. Raju  
(SHANKER RAJU)  
MEMBER (S)

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V.K. Majah  
(V.K. MATJAH)  
MEMBER (A)