

Central Administrative Tribunal, Principal Bench

Original Application No. 2332 of 1998

New Delhi, this the 1st day of November, 2000

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)
Hon'ble Mr.V.K.Majotra, Member (A)

Sadashiv Narain Sharma, Senior Section
Engineer, Northern Railway, Jagadhari
Workshop, Jagadhari

- Applicant

(By Advocate Shri S.C.Sharma)

Versus

1. General Manager, Northern Railway, Baroda House, New Delhi.
2. General Manager, Personnel, Northern Railway, Baroda House, New Delhi.
3. General Manager (Mechanical), Northern Railway, Baroda House, New Delhi. - Respondents

(By Advocate Shri O.P.Kshatriya)

O R D E R

By V.K.Majotra, Member(A) -

The applicant is at present Senior Section Engineer. He took part in a written test held on 17.5.1997 in connection with selection for promotion to Group-B Service for filling up 30% vacancies in Mechanical Engineering Department through Limited Departmental Competitive Examination for the post of Assistant Works Manager (Workshop Stream). He qualified in the same vide Annexure-B dated 11.8.1997. However, he was not placed in the select panel on the basis of the viva voce test. According to the applicant as per rules for promotion ACRs for five years were to be taken into consideration. Whereas no adverse ACRs for the relevant period were communicated to him, he was not placed in the panel on the basis of the same ACRs. Obviously, the ACRs must have been average and that is why they were not communicated to him. The present OA

15

challenges the letter dated 13.9.1997 which is the provisional panel omitting the applicant's name. His representation dated 20.10.1997, 12.6.1998 and 4.7.1998 have not been paid any attention. He has sought direction to the respondents to promote him to the post of Assistant Works Manager (Workshop Stream) in Group-B Service.

2. According to the respondents a panel of 12 persons was declared on 18.9.1997 in which the applicant's name was not included as he was not found fit on merit. The respondents have averred that the final empanelment is made on the basis of overall performance of the candidate in the written test, record of service, viva voce etc. They have further stated that the applicant's representation dated 4.7.1997 was examined and rejected as per Annexure-R-5 dated 11.8.1998.

3. We have heard the learned counsel of both sides and seen the material on record.

4. Referring to rules governing promotion of subordinate staff (Group-B post), the learned counsel of the applicant has drawn our attention to Para 204.1 of the Indian Railway Establishment Manual, Vol.I, relating to selection procedure stating that maximum and qualifying marks for record of service are 25 & 15 respectively. The learned counsel submitted that if his record had been considered as above average, he would certainly have been allocated 15 qualifying marks and

would have been placed in the panel. Obviously his record was not considered above average and the applicant could not obtain the qualifying marks. He relied on the case of U.P.Jal Nigam & others Vs. Prabhat Chandra Jain and others, (1996) 2 SCC 363 wherein it was held that "if the graded entry is of going a step down like falling from 'very good' to 'good' that may not be ordinarily an adverse entry since both are a positive grading. All that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on the personal file of the officer concerned and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, not be reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The downgrading is reflected by comparison. This cannot sustain".

5. The learned counsel of the respondents referred to respondents' letter dated 24.7.2000 in connection with another OA No.586/2000 filed by the

applicant whereby the applicant had been informed about his grading in ACRs for the years 1992-93 to 1996-97. These gradings are as follows:-

Year	Gradings given by		
	Reporting Officer	Reviewing Officer	Accepting Authority
1992-93	Average	Average	Average
1993-94	Average	Average	Average
1994-95	Good	Very Good	Very Good
1995-96	Good	Good	Good
1996-97	Average	Average	Average

6. Even on applying the principles enunciated in the case of Prabhat Chandra Jain (supra) we cannot find fault with non-communication of gradings for the years 1992-93 up to 1995-96. However, we find that there is a visible conspicuous step down in the grading made for the year 1996-97 which seems to have adversely affected the promotional chances of the applicant. In this view of the matter and in the interest of justice we dispose of this OA with a direction to the respondents to communicate the ACR for the year 1996-97 to the applicant within a period of 15 days from the date of receipt of a copy of this order. The applicant may represent against the same within the next 15 days and thereafter the respondents should decide upon the representation within a period of another one month and in case ^{they} decide to upgrade the ACR of the applicant for 1996-97 they should review the case of the applicant for promotion to the post of Assistant Works Manager (Workshop Stream) with consequential benefits. In the facts and circumstances of the case the parties shall bear their own costs.

V.K.Majotra

(V.K.Majotra)
Member (A)

Lakshmi Swaminathan

(Mrs.Lakshmi Swaminathan)
Member (J)