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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1440/1995

New Delhi this the 25th day of July, 2003.

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

Shri Sewa Dass Nimbaker,
Superintendent (Commercial),
Northern Railway,
SD.D.R.M. Office,
State Entry Road,
New Delhi.

-Applicant

(By Advocate Shri K.K. Patel)

-Versus-

Union of India: through:

1. The Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

-Respondents

(By Advocate Shri Rajeev Bansal)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Through this OA applicant has sought placement on the panel of Assistant Commercial Manager (Group 'B') and further promotion and other consequential benefits.

2. Earlier by an order dated 30.9.99, the Tribunal on the basis of satisfaction arrived from perusal of the selection records, dismissed the OA. The aforesaid decision was carried to the Hon'ble High Court of Delhi in CWP-2843/2000. By an order dated 26.3.2000 of the Delhi High Court, by observing as under, the matter was remanded back to us:

"We are unable to agree with learned counsel for the respondents. Admittedly, the reason for his

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non-promotion to the post of Assistant Commercial Manager was not intimated to the petitioner. It is only by virtue of the reply-affidavit filed in these proceedings it has transpired that he was not selected because of his failure to secure minimum qualifying marks in the viva voce test. In our view, the ground on which the petitioner has been ignored in the case of K. Prabhakara Rao (supra).

In this view of the matter, we set aside the impugned order and remit the matter back to the Tribunal for re-consideration of the petitioner's case on merits in the light of the decision in K. Prabhakara Rao (supra). The parties shall appear before the Tribunal on 28 April 2003, for directions.

The writ petition is accordingly disposed of in the above terms."

3. Today, learned counsel for applicant Sh. K.K. Patel contends that the Apex Court in K. Prabhakara Rao v. U.O.I. & Ors., 2001 (4) SCALE 220, has held the fixation of minimum percentage of marks in viva voce test, as provided in para 205 of the IREM, as not in accordance with law and directed consideration of the petitioner therein for promotion, ignoring the qualifying marks in viva voce test.

4. In the aforesaid backdrop, it is stated that the only reason that applicant has not been empanelled come-forth in the reply of the respondents is that he failed to secure the minimum qualifying marks in viva voce test, action of the respondents cannot be countenanced and, per se, is illegal.

5. Sh. Patel further contends that applicant has retired on superannuation on 30.4.2002, as such direction be issued for his notional promotion with all consequential benefits, including revision in the terminal benefits.

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6. On the other hand, respondents' counsel Sh. Rajeev Bansal vehemently opposed the contentions and stated that applicant could not be empanelled, as he failed to obtain minimum qualifying marks in the viva voce test. Accordingly, it is stated that the action of the respondents does not suffer from any infirmity.

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7. We have carefully considered the rival contentions of the parties and perused the material on record. The High Court of Delhi remitted the above case to be disposed of in the light of the decision of the Apex Court in Prabhakara Rao's case (supra). On re-consideration, we find that laying down minimum qualifying marks under paragraph 205 of the IREM has been held to be not in accordance with law and the action of the respondents not empanelling applicant despite the fact that he is qualified in all other respects, cannot be sustained in law. Accordingly, we allow this OA and direct the respondents to hold a review DPC and to consider the case of applicant for being empanelled as Assistant Commercial Manager, Group 'B' from the date of his immediate junior.

8. If applicant is found otherwise fit, he be accorded notional promotion but would be entitled to all consequential benefits, including revision in the terminal benefits. Aforesaid directions shall be complied with, within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

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V.K. Majotra
(V.K. Majotra)
Member (A)