

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD

(This the **29th** Day of **January**, 2021)

Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)
Hon'ble Mr. Devendra Chaudhry, Member (Administrative)

Original Application No.330/01095/2014

Hemant Kumar Gupta S/o Late Shri K.C. Gupta. Present working as Technician Grade-I, Ticket No.821 (C&W), North Central Railway, Jhansi Division, Jhansi.

..... **Applicant**

By Advocate: Shri A.D. Singh

Versus

1. The Union of India through the General Manager, North Central Railway, Subedarganj, Allahabad.
2. Divisional Railway Manager (P)/Divisional Personnel Officer, North Central Railway, Jhansi Division, Jhansi.
3. Assistant Personnel Officer – II, Office of Divisional Railway Manager (P)/ Divisional Personnel Officer, North Central Railway, Jhansi Division, Jhansi.
4. Senior Divisional Mechanical Engineer, North Central Railway, Jhansi Division, Jhansi.
5. Shri Manish Shihhare, Technician Grade-I, Under Senior Section Engineer (Admin.), North Central Railway, Jhansi Division, Jhansi.

..... **Respondents**

By Advocates: Shri P.K. Mishra proxy to Shri P. Mathur (R-1 to 4)
Shri Ashish Srivastava (R-5)

O R D E R

Delivered by Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

By means of the present Original Application (OA), filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following relief(s):-

- “(i) *to issue a writ, order or direction in the nature of certiorari quashing the impugned panel dated 11.07.2012 as well as posting order dated 27.11.2013, so far as it relates to the respondent No.5. (Annexure A-1 & A-2 respectively to compilation I of this petition.).*
- “(ii) *to issue a writ, order or direction in the nature of mandamus directing the respondents herein to include the name of the applicant in the panel dated 11.07.2012 and in all other consequential orders including the posting order dated 27.11.2013 and to promote him on the post of Junior Engineer Grade-II granting seniority with effect from 27.11.2013 from which date the Respondent No.5 has been granted and to carry out fixation of pay accordingly and to pay the arrears thereof, within a period as may be fixed by this Hon'ble Tribunal.*
- “(iii) *to issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.*
- “(iv) *to award cost of the application in favour of the applicant.”*

2. We have heard Shri A.D. Singh, learned counsel for the applicant, Shri P.K. Mishra proxy to Shri P. Mathur, on behalf of respondent Nos. 1 to 4 and Shri Ashish Srivastava, learned counsel for the private respondent No.5, in virtual court. All the Advocates had agreed about the proper Audio and Visual quality at the time of hearing.

3. Shorn of unnecessary details, the brief facts of the case as mentioned in the OA, are that the applicant was initially appointed as Apprentice with effect from 16.02.1996. He was posted in the regular capacity in the year 1999 as Technician Grade-III and since then he is continuing as such without any interruption with unblemished career.

4. The respondents initiated a selection vide notification dated 16.11.2011 (Annexure A-3 to the OA) for promotion under 25% Intermediate Apprentice Quota to the post of Junior Engineer – II (C&W) in the Pay Band-2 of Rs.9300-34800 + Grade Pay Rs.4200/- in Jhansi Division, for 07 posts, out of which 06 posts were for General Category and 01 post was for S.T. Category. No post of S.C. category was advertised due to lack of vacancies in that category.

The aforesaid notification dated 16.11.11 is reproduced below for a ready reference.

“दिनांक: 16.11.2011

पत्रांक/328/जेर्सी-11/एल.डी.सी.इ/के0वै0
एसएसई-झाँसी, ग्वालियर, मानिकपुर, धौलपुर जेर्सी खजुराहों एट

विषय के0वै0विभाग (झाँसी मण्डल) पर 25% इंटरमिडिएट अप्रैन्टिस कोटे के अंतर्गत अवर अभि-11 (के0वै0) वे0मा0 रु0 9300-34800+4200 ग्रेड पे के रिक्त पदों को भरने के लिये चयन नामिका बनाने के सम्बन्ध में (एलडीसीई)

झाँसी मण्डल पर कैरिज एवं वैगन विभाग में 25% इंटरमिडिएट अप्रैन्टिस कोटे (एलडीसीई) के अंतर्गत अवर अभि-11 (के0वै0) पी. के0 रु0 9300-34800+4200 ग्रेड पे को भरने के लिये चयन नामिका बनाना प्रस्तावित है।

कुल पद - 07 (सा0-06, एससी-निल, एस0टी0-01)

उपरोक्त पदों को भरने हेतु कै0एवं वै विभाग (झाँसी मण्डल) में कार्यरत वरि0 टैक्नी, टैक्नी पत्र आंमत्रित किए जाते हैं।

1. कैवै0विभाग में कार्यरत वरि0टैक्नी, टैक्नी ग्रेड-1, 11 एवं 111 जिन्होने 16.11.2011 को 03 वर्ष की नियमित सेवा पूर्ण कर ली है।
2. दिनांक 12.08.2002 की सेवा में मौजूद कर्मचारी मान्यता प्राप्त बोर्ड से मेट्रीकुलेशन उत्तीर्ण हो। (अधिकतम चार बार भाग लेने के पात्र)
3. दिनांक 12.06.2002 के बाद भर्ती कर्मचारी जो आई टी आई/ एक्ट अप्रैन्टिस पास (सम्बन्धित ट्रेड) या विज्ञान विषय में 10+2 मान्यता प्राप्त बोर्ड से उत्तीर्ण हो।
4. कर्मचारी की आयु 16.11.2011 को 47 वर्ष से अधिक नहीं होना चाहिए।
5. कर्मचारी का नाम पेनल पर आने के उपरान्त निर्धारित 18 माह प्रशिक्षण दिया जायेगा।

6. सफलतापूर्वक प्रशिक्षण पूर्ण करने के उपरान्त परीक्षा उत्तीर्ण करने के उपरान्त कर्मचारी को अवर अभियन्ता-11 (कौ०वै०) वे०मा० 9300-34800+4200 के पद पर नियुक्ति किया जायेगा।

अतः कौ० वे० विभाग में कार्यरत सभी आर्टीजन जो उपरोक्त शर्तों को पूर्ण करते हों, वह संलग्न प्रारूप पर आवेदन पत्र संबंधित डिपो प्रभारी के कार्यालय में 25-11-011 तक जमा करेंगे तथा सबंधित डिपो प्रभारी यह सुनिश्चित कर ले कि आवेदक उक्त शर्तों को पूर्ण करता है और उसका आवेदन पत्र सत्यापित कर एक बंच में बनाकर मण्डल रेल प्रबन्धक (का) कार्यालय झाँसी (कौ०बौ० विभाग) में 15-12-2011 तक भेजने की व्यवस्था करें।

अवोदन पत्र के साथ शिक्षा, आयु, जाति संबंधी प्रमाण पत्रों की सत्यापित प्रति भी संलग्न कर दिनांक 15-12-2011 के उपरान्त प्राप्त आवेदन पत्रों पर विचार नहीं किया जायेगा। प्राप्त आवेदन पत्रों की जाँच उपरान्त इस चयन के लिए पात्र पाये जाने वाले कर्मचारियों को सूची दिनांक 30-12-2011 तक जारी करने की सम्भावना है। पात्र कर्मचारी की लिखित परीक्षा की तिथि सूचित की जावेगी। इस अधिसूचना को व्यापक प्रचार करने हेतु पटल पर चस्पा करें।

संलग्नक: यथोक्त ह०/-
(रवीन्द्र कुमार)
कृते म०र०प्र० (का) झाँसी

प्रति— वरिम०यां०अभि०/कौ०वै०/झाँसी
म०यां०अभि०/कौ०वै०/झाँसी
कैरिज एवं वैगन कन्ट्रोलर झाँसी संबिधि को सूचनार्थ
म०का०अधी०(गोपनीय अनुभाग) कार्मिक शाख, झाँसी को सूचनार्थ एवं
आवश्यक कार्यवही हेतु ।

5. A perusal of the above notification shows that the last date for submission of form was 15.12.2011 and the list of eligible candidates was to be published tentatively on 30.12.2011.

6. The applicant along with several other candidates, including the respondent No.5, applied and appeared in the written test conducted on 15.04.2012. Both of them obtained qualifying marks in the written examination. The Service Records of the candidates i.e. the A.C.Rs./Working Reports and awards given to them in the last preceding 3 years, were also evaluated and added in the marks obtained in the written examination by the candidates, while preparing the final merit list. On the basis of total marks so

obtained, six candidates including respondent No.5, all of general category, were empanelled as per the number of vacancies in that category, vide impugned order dated 11.07.2012 (Annexure A-1). However, the name of the applicant could not find place in the selected panel, being lower in merit.

7. Vide subsequent impugned order dated 27.11.2013 (Annexure A-2), all the empanelled Technician Grade III Engineers, including the Respondent No.5 were posted on the next higher post of Junior Engineer Grade-II in the Grade Pay of Rs.4200/- in Pay Band-2 of Rs.9300-34800/-.

8. The applicant, feeling aggrieved by his non selection and under the firm belief that he had done well in the examination, moved applications under Right to Information Act, 2005 seeking informations about the marks awarded to him in written examination and also the criteria adopted by the DPC for awarding marks for service records.

9. The minutes of the D.P.C., obtained under Right to Information Act, 2005, by the applicant, have been filed as Annexure A-6 according to which, the criteria adopted by the committee for awarding marks for records of service including APAR/Working Report and awards given to a candidate, in the last three preceding years, was as under:-

<i>Below Average</i>	<i>02 marks</i>
<i>Average</i>	<i>04 marks</i>
<i>Good</i>	<i>06 marks</i>
<i>Very Good</i>	<i>08 marks</i>
<i>Out Standing</i>	<i>10 marks</i>

It was also decided by the selection committee to award two marks for each Cash Award/Merit Certificate, subject to maximum 10 marks and reduction of one mark for each major penalty and 1/2 mark for minor penalty.

10. After perusing the copies of answer-sheet, supplied to the applicant under Right to Information Act, the applicant found that, he was wrongly awarded less marks in the written examination. When he compared his answer-sheet with the answer-sheet of another candidate namely, Kuldeep Singh, he found that despite the fact that both of them had selected the same option i.e. (A)/(अ) for same question, the answer of Kuldeep Singh was been taken to be correct and he was awarded one mark against the same, whereas the applicant was not awarded any mark, ignoring the fact that he had also opted from the same (A)/(अ).

11. In so far as the marks awarded for service records is concerned, the grievance of the applicant is that he was never communicated any APAR in which he was given any entry below the Bench Mark of 'Very Good', due to which, he could not make any representation against it. Whereas, as per the verdict of Hon'ble Supreme Court 'every entry should be communicated to the

employee concerned'. More so, due to wrong calculation of last preceding 3 years, the marks given in respect of awards to the applicant became less, causing his failure in the examination.

12. The applicant earlier, due to wrong advice, had challenged the impugned order /panel, before the Circuit Bench sitting at Gwalior, at Jabalpur Bench of Central Administrative Tribunal, which he was permitted to withdraw with liberty to file fresh OA before appropriate forum having territorial jurisdiction. Thereafter, the applicant is before us by means of the instant OA.

13. Learned counsel for the applicant has contended that before the withdrawal of aforesaid OA, filed wrongly before Jabalpur Bench, counter affidavit was filed by the respondents, a perusal of which substantiates the contentions of the applicant. According to learned counsel for the applicant, a bare perusal of the aforesaid counter reply, copy whereof has been annexed as Annexure A-9 to the compilation No.II of the OA, clearly shows that instead of taking into account the records of service for the immediate preceding three years, which should have been for the years 2008-9, 2009-10 and 2010-11, the advertisement being dated 16.11.20211 and last date for submission of form being 15.12.2011, the respondents have illegally taken into account the record of service for the years 2009-2010, 2010-2011 and 2011-2012. It is vehemently contended that in the instant OA also, the respondents

in their counter affidavit have reiterated the same fact and as a result of this wrong selection of years by the official respondents, the merit position of the applicant got seriously and adversely affected. The reason being that an award given by D.R.M., to the applicant in the year 2008-09, against which the applicant could have secured two additional marks, could not be counted and the applicant could not be empanelled only by a short fall of two marks, in the final panel. It has been contended that admittedly, the applicant had obtained 37 marks in the written examination and 26 marks against records of his service. Had the reward given to the applicant in the year 2008-09, been taken into consideration, the applicant would have obtained two marks for that and his total of marks would have been 28 instead of 26 under the head of service of record and he would have secured 65 marks instead of 63. At the same time, had the service records of the year 2011-12 of the candidates, been not taken into account, which was illegally taken into account as last three immediate preceding years, the respondent No.5 would have got 2 marks less and the applicant would have been selected in his place.

14. The next ground taken by the applicant to challenge the selection of respondent no.5 in the panel, is that, despite the availability of the ACR's of respondent No.5, before the selection committee, his working reports for the same period were considered instead of his ACRs. The contention of learned counsel for the applicant is that a working report cannot be equated with the

ACRs, because representations are invited against the ACRs and the entries are reviewed by the Reviewing Officer, either confirming or expunging the adverse A.C.Rs., whereas in case of working report, there is no such procedure. As a result of aforesaid conduct on the part of the selection committee, the transparency in the selection came under the cloud as it became very easy for the Selection Committee to manipulate the entry in order to give undue favour to a candidate.

15. It is lastly contended that the applicant had made three representations dated 22.10.2012, 27.02.2013 and 13.03.2013 before the respondents, (copies of all these three representations have been annexed as Annexure Nos.11, 12 and 13 respectively to the OA), but no heed was ever paid to any of his representations. It is contended that although, in the minutes of the Selection Committee, it has been mentioned that all the representations have been rejected by the Selection Committee, however, no order passed on any of his representations was ever communicated to the applicant.

16. The respondents have filed counter reply stating therein that as the applicant Hemant Kumar Gupta, got 63 marks out of 85 marks in aggregate, whereas Shri Manish Shihhare, respondent No.5, had secured 65 marks out of 85, the applicant could not be empanelled, being lower in the merit position. Moreover, the applicant belongs to General Category (UR) and the last candidate,

who was empanelled against the 'General category', had secured 64.5 marks, whereas the applicant had secured only 63 marks.

17. In reply to the contention about the non communication of APAR entries, it has been submitted by learned counsel for the respondents that only adverse remarks in APAR are required to be communicated to the individual. So far as the present case is concerned, as there were no adverse remarks given to the applicant in the years 2009, 2010 and 2011, the entries for these years were not communicated to him.

18. It is next contended by the respondents' counsel that since the APAR's of Sri Manish Shihhare, the respondent No.5, for the year ending 2009-10 was not available at the time of consideration and as such the working report was taken into consideration. **On** the other hand the APARs of the applicant for the year ending 2008-09, 2009-10 and 2010-11 was very much available and as such the same was taken into consideration before finalizing of the panel against 25% apprentice quota.

19. In so far as the marks for awards are concerned, it is contended that Sri Manish Shihhare was awarded only two marks and that too for the year 2011-12, but as far as the applicant is concerned his award for the similar years have been considered and accordingly he had been awarded four marks.

20. It is lastly contended that now all the candidates empanelled in the impugned panel, have completed the requisite training and have already been posted and working on the vacancies for which the examination was conducted. Therefore, now the claim of the applicant, which is devoid of merits, should not be entertained. It is liable to be dismissed and should be dismissed.

21. It is pertinent to mention here that **private** respondent no.5 has not filed his counter reply independently.

F I N D I N G S

22. Before proceeding further, it appears necessary to have a glance on the relevant rules/criteria adopted by the Selection Committee for selecting the eligible candidates. All these rules have been mentioned in details in the order passed by Selection Committee while preparing the panel of successful candidates. The applicant has filed the copy of the minutes of meeting of Selection Committee as Annexure SA-II to the Supplementary Affidavit, which is reproduced below:-

***“Sub:-Selection for the post of JE (Mech./C&W) Pay Band-II
Rs.9300-34800 CCS (RP) GP 4200 against 25% LDCE
quota in (Mech. Deptt.) Jhansi Division.***

Assessment of vacancies for promotion to the post of JE (Mech.C&W) PB-2 Rs. 9300-34800 GP 4200 from departmental selection is placed at NP-01 which was approved by the competent authority at NP-01. The assessment of vacancies is summarized as under.

<i>UR</i>	<i>=</i>	<i>06</i>
<i>SC</i>	<i>=</i>	<i>00</i>
<i>ST</i>	<i>=</i>	<i>01</i>

Total = 07

2. The vacancy position along with reservation position was incorporated in the notification dated 16.11.2011 (Sl. No.1) vide which applications were invited to eligible candidates up to 25.11.2011/15.12.2011. Category of feeder grade post from which applications were called is Sr. Tech. grade-I, grade-II and grade-III (Mech. C&W Cadre).

3. In response to the above notification dated 25.11.2011/15.12.2011, 77 candidates have applied for the above selection and only 75 candidates were found eligible. All the eligible candidates were informed the Syllabus vide notification dated 28.02.2012 & 20.-03.12 (CP-9 to 4). Pre-promotional coaching was conducted from 28.02.2012 and 17.07.2011 for all the reserved community candidates (CP-9A to 9B).

4. ADRM/JHS has nominated Selection committee at NP-02 as under:-

5. Written test was held on 15.04.2012 in the Office of DRM(P), Jhansi in which 71 candidates appeared & 4 candidates were absent. Attendance sheet is placed at Sl.No.14. There is no provision of supplementary examination in LDCE. The answer sheets were top initiated by APO(M)/JHS before examinations. After completion of written test, APO (M) marked the code Nos. on the flyleaves and answer sheets.

6. Codified evaluation sheet is placed at Sl.No.20. Result of the written examination with coded Nos. was decoded by DPO and the decoding sheets is placed at Sl.No.22 to 24. Question paper for written test at placed (CP-21).

7. The present selection is a General Selection and as per Rly. Board letter No.E(NG)-1-2006/PM-1/4 dated 22.03.2006 and advance correction slip-183 the General selection consists of 50 marks of professional ability and 30 marks of record of service and qualifying marks is 30 out of 50 (60%) in written examination and 48 (60%) in aggregate (out of 80).

8. In term of HQ letter No.797-E/Policy/Seniority Marks dated 13.09.2006 and Board letter No. E(NG)-1/2006/PM 1/4 dated 22.03.2006 the selection committee has decided that the allotment of marks of Record of service has been distributed on the basis of last three years ACRs/Working report as under:-

Below Average	02 marks
Average	04 marks
Good	06 marks
Very Good	08 marks
Out Standing	10 marks

In addition to above, selection committee has also decided 02 marks for each cash award/Merit certified (Max. 10) and deduction of 01 mark for each major penalty and ½ mark for minor penalty.

Further as per Rly. Board L. No.E(NG)I-2008/PM-7/4 SLP dated 19.06.2009 the Service Records of only those candidates who secured a minimum of 60% marks in 'Professional ability' have been assessed and the final panel should be drawn up in the order of merit based on aggregate marks of 'Professional ability' and 'Record of service'. However, a candidate must secure a minimum of 60% marks in 'Professional ability and 60% marks in the aggregate for being placed on the panel. There will be no classification of candidates as 'Outstanding. The Marks of Record of service to 26 candidates, who qualified in the Written Test is placed at Sl. No.30 to 31.

9. *Selection proceedings is placed at Sl.No.32 to 33 duly signed by all the members of the selection committee in which performance of the candidates has been recorded.*

Completion of written test, APO(M) marked the code Nos. on the flyleaves and answer sheets.

10. *In view of the above, the overall assessment of the candidates & the selection proceedings placed at Sl.No.32 to 33, the selection committee recommends the following 07 employees to be placed on the panel of JE-II(Mech./C&W) PB—2 Scale Rs.9300-34800 GP 4200 CCS(RP) in order of merit:-*

<i>SN</i>	<i>Name (Shri)</i>	<i>Design.</i>	<i>T. No.</i>	<i>Stn.</i>	<i>SC/ST /UR</i>	<i>Marks obtained</i>	<i>Merit No.</i>	<i>Remarks</i>
1	<i>Brijendra Dutt Anjum</i>	<i>Tech-I</i>		<i>JHS</i>	<i>UR</i>	<i>73.5</i>	<i>1</i>	
2	<i>Firoj Anis Ansari</i>	<i>Tech-I</i>		<i>JHS</i>	<i>UR</i>	<i>71</i>	<i>2</i>	
3	<i>Anupum Ku. Rai</i>	<i>Tech-I</i>		<i>JHS</i>	<i>UR</i>	<i>69.5</i>	<i>3</i>	
4	<i>Sanjay Ku. Kushwaha</i>	<i>Tech-II</i>		<i>JHS</i>	<i>UR</i>	<i>66</i>	<i>4</i>	
5	<i>Manish Shihhare</i>	<i>Tech-I</i>		<i>JHS</i>	<i>UR</i>	<i>65</i>	<i>5</i>	
6	<i>Ranjan Bharti</i>	<i>Tech-I</i>		<i>GWL</i>	<i>UR</i>	<i>64.5</i>	<i>6</i>	
7	<i>Santosh Kujur</i>	<i>Tech-II</i>		<i>JHS</i>	<i>ST</i>	<i>54</i>	<i>1</i>	

We have carefully gone through the guidelines provided for selection procedure.

It is certified that none of our close relatives are under consideration for promotion and that we have no interest in any candidate.

ADRM, JHS is requested to kindly accord approval for empanelment of the following candidates on the panel of JE (Mech/C&W), GP 4200, PB-II, Pay Scale Rs.9300-34800 CCC (RP) in Mech. Deptt. JHS Division. As mentioned in Para 10.”

23. A bare perusal of para 8 of aforesaid order clearly shows that the allotment of marks had to be distributed on the basis of last three years of ACRs/working reports and awards. Therefore, in view of the fact that Notification for selection was issued in the month of November/December 2011, the last preceding three years should have been 2008-02, 2009-10 and 2010-11. But the respondents have wrongly taken into consideration the service record including the working report and awards of respondent No.5 of the year 2011-12, which is admitted by them in Para 25 of counter affidavit.

24. Moreover, the discrepancy in awarding the marks is also obvious on a perusal of the answer sheets. A bare perusal of copies of answer-sheets filed by the applicant shows that despite the fact that both the applicant and the other candidate namely Kuldeep Singh, have opted for the same answer for the Question No.5(2), Kuldeep Singh has been awarded one mark whereas the applicant has not been awarded any mark only for the reason that Kuldeep Singh had also written the full answer in brackets after opting 'A', whereas the applicant had only written (A). It is noteworthy that the requirement was only to opt for (A), (B), (C) and there was no such requirement that a candidate has to write full answer in brackets. Why the applicant was not awarded the same marks, has not been properly explained by the respondents either in their counter affidavit or in their supplementary counter affidavit.

25. Although, in the Supplementary Counter Reply filed by the respondents, they have explained the reason for not taking into account the award given to the applicant in the year 2008-09 by stating that it was a 'Hindi Award' given for working in Hindi under the policy of Rajbhasha (Hindi) and as this award was not given on account of performance in the day to day working, therefore, it was not considered in the selection and only two awards given to the applicant were taken into account and he was awarded four marks accordingly.

26. We do not consider the aforesaid explanation given by the respondents satisfactory. It is noteworthy that no such Rule or Circular has been annexed by the respondents in support of aforesaid contention. In the notification there was not even a whisper of any such fact that if any award is granted for knowledge of 'Hindi' it will not be considered. In this regard Para-8 of the minutes of meeting of Selection Committee is quoted once again, which is as under: -

"8. In term of HQ letter No.797-E/Policy/Seniority Marks dated 13.09.2006 and Board letter No. E(NG)-1/2006/PM 1/4 dated 22.03.2006 the selection committee has decided that the allotment of marks of Record of service has been distributed on the basis of last three years ACRs/Working report as under:-

<i>Below Average</i>	<i>02 marks</i>
<i>Average</i>	<i>04 marks</i>
<i>Good</i>	<i>06 marks</i>
<i>Very Good</i>	<i>08 marks</i>
<i>Out Standing</i>	<i>10 marks</i>

In addition to above, selection committee has also decided 02 marks for each cash award/Merit certified (Max.

10) and deduction of 01 mark for each major penalty and ½ mark for minor penalty.”

27. Thus, a bare perusal of the aforesaid Para shows that two marks of each cash award/merit certified (Max 10) was to be given to a candidate without any distinction between the Hindi award or any other award. It is well settled principle that “Rules of a game cannot be changed after the game is over”. Above all, why the marks for year 2011-2012, were considered by the respondents, while selecting the candidates, has not been replied by them.

28. Considering all the facts and circumstances of the case and on the basis of a clear finding that the respondents have not allotted the marks as per the notification and rules and have wrongly taken into account the Annual Entry/Service of Record/APAR/AWARDS for the year 2011-12, which in no case can be said to be a year coming under the last preceding three years of the notification issued in November/December 2011, the Original Application deserves to be allowed and is accordingly allowed. The respondents are directed to reconsider the applicant's position in the impugned panel in light of the findings recorded by us and to place him in the panel if he is found otherwise eligible to it.

29. Before parting with the judgment, it is made clear that the marks awarded to the respondent no.5 and the applicant shall only be revised and rest of the panel shall not be disturbed and shall remain as it is, because we are not inclined to disturb the other

candidates, who are already working on the promotional post since the year 2013.

30. In the circumstances of the case, there shall be no order as to costs.

(Devendra Chaudhry)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

Sushil