

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad, this Thursday, the 26th day of November, 2020

Original Application No. 330/00037/2019

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Navin Tandon, Member (A)

Amit Kumar Jha, aged about 39 years S/o Shri Dharam Kumar Jha, R/o RB-2/12-A, Railway Colony, Shankargarh, Allahabad-212108.

. . .Applicant

By Advocate: Shri P.K. Mishra (In Court)
Shri Rajesh Kumar (In Court)

V E R S U S

1. Union of India through Secretary, Ministry of Railways, Railway Board, Rail Bhawan, New Delhi.
2. General Manager, North Central Railway, Headquarters Office, Subedarganj, Allahabad.
3. Divisional Railway Manager, North Central Railway, Nawab Yusuf Road, Allahabad.
4. Divisional Railway Manager (P), North Central Railway, Nawab Yusuf Road, Allahabad.

. . .Respondents

By Advocate: Shri Om Prakash Sharma (In Court)

Reserved on 07.10.2020

O R D E R

By Hon'ble Shri Navin Tandon, Member (Administrative)

Through Video Conferencing.

1. The applicant is aggrieved that he has not been selected for the post of Staff & Welfare Inspector (for brevity, SWI hereinafter).
2. The applicant has made the following submissions in the original application:-

2.1 He is presently working as Signal Maintainer Grade-I in the grade pay of Rs. 2800/- with the respondent department.

2.2 The respondents had issued a notification dated 31.07.2017 to fill up 11 vacancies (UR-7, SC-2 & ST-2) of SWI in grade pay 4200/-. He applied for the selection and appeared for the written examination. The result was declared on 13.04.2018 wherein a total of 19 (UR-7, SC-8, ST-4) candidates were declared successful. He was also one of the successful candidates.

2.3 The final panel was declared on 25.05.2018 for only 10 candidates (UR-6, SC-2 & ST-2). His name was not in the panel, even though one post of unreserved candidate is lying vacant and he belongs to the unreserved community.

2.4 He obtained information under Right to Information Act, wherein he was informed that after adding the marks for record service, he did not obtain 60% marks and, therefore, his name is not included in the panel.

2.5 Meanwhile, a copy of his ACR for the year 2017 was provided to him on 06.06.2018. Not being satisfied with his grading, he moved a representation against it. After consideration of the representation, the competent authority changed the grading from "Good" to "Very good".

2.6 He submitted a representation to respondent no.3 on 31.08.2018 and 09.10.2018 to include his name in the panel after considering his improved APAR grading.

2.7 Respondent no.3 rejected his representation vide order dated 13.11.2018 (Annexure A-1) stating that APAR of 2017 has been upgraded on 25.06.2018, which is after the issue of panel dated 25.05.2018. Therefore, the panel cannot be modified at this stage. No rules have been quoted in this regard.

2.8 He submitted a representation to General Manager/ North Central Railway (Respondent no. 2) on 30.11.2018 (Annexure A/11), which has not been decided so far.

3. The applicant has prayed for the following reliefs: -

"8. Relief Sought

It is, therefore, more respectfully prayed that this Hon'ble Tribunal may graciously be pleased to :-

8.1 Issue an order or direction in the nature of certiorari to quash and set aside the impugned order dated 13.11.2018 (Annexure A-1) passed by the Respondents.

8.2 Issue an order or direction in the nature of mandamus directing to the Respondents to take necessary steps to modify/amend the panel dated 25.5.2018 as per rules and interpolate the name of applicant as per their seniority position will all consequential benefits.

8.3 Issue any further order or direction, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

8.4 Award the suitable costs of the case in favour of the applicant."

4. The respondents in the reply have submitted as under:

4.1 The APAR of the applicant was upgraded after the issue of selection panel on 25.05.2018.

4.2 SDGM/NCR vide their letter No.Vig./System/ improvement/08 dated 21.8.2008 (Annexure CA-1) has clearly mentioned that all the procedures should be completed in APAR grading before the initiation of any selection.

4.3 Modifying the selection panel at a later stage will create corrupt tradition in the administration.

4.4 The process of selection is confidential and if any employee/candidate doesn't find place in the panel because of any reason, this fact it not to be disclosed to any employee/officer during the process of finalizing any panel.

4.5 Modification in grading of APARs was not under consideration during the selection process as his grading was modified on 25.06.2018.

4.6 Invoking of para 219 of IREM is not relevant in this matter as there is no irregularity involved in this selection.

4.7 In response to the applicant's averments in para 4.15 of the OA that adverse remarks should be communicated to the applicant in writing, the respondents have submitted that grading as "Good is not an adverse entry".

4.8 There are no comments for para 5 of the OA (Grounds for Relief) except to say that the grounds are absolutely baseless, incorrect and misconceived as such are denied.

5. The applicants have filed the rejoinder in which it has been submitted that SDGM/NCR's letter No.Vig./System Improvement/08 dated 21.8.2008 is not a rule but a system improvement regarding completion of ACR of non-gazetted staff required for a selection. It has been highlighted that even after the knowledge of these instructions, the respondents have again repeated the irregularity. Also, no comments have been offered by the respondents against para 4.19 to 4.22, hence these paras are assumed to be admitted.

6. Heard the arguments of learned counsel of both the parties and perused the pleadings available in PDF form. The arguments were along the lines of the written pleadings. While the learned counsel for the applicant averred that an irregularity has occurred in the selection proceedings, learned counsel for the respondents submitted the reverse. Learned counsel for the applicant brought our attention to

para 219 (1) of Indian Railways Establishment Manual (for brevity, IREM hereinafter) wherein procedure exists to modify the panel in case of irregularity.

FINDINGS

7. The applicant has cited antiquated provisions, rules and judicial pronouncements of Annual Confidential Reports to buttress his point. Unfortunately, the respondents have not helped matters as they have failed to bring out the correct provisions. While the applicant has averred that adverse remarks in the Confidential Report should be communicated, the respondents in the counter affidavit state that "Good" is not an adverse entry. The fact is that the provisions have changed completely, as brought out in subsequent paragraphs.

8. The extract of relevant instructions from DOPT and Railway Board regarding the system of Annual Performance Appraisal Reports (for brevity, APAR hereinafter) is given in subsequent sub paragraphs.

"8.1 Copy of DOP&T's OM No. No. 21011/1/2005-Estt (A) (Pt-II) dated 14th May, 2009

Sub:- Maintenance and preparation of Annual Performance Appraisal Reports communication of all entries for fairness and transparency in public administration.

...

1. *The undersigned is directed to invite the attention of the Ministries/Departments to the existing provisions in regard to preparation and maintenance of Annual Confidential Reports which inter-alia provide that only adverse remarks should be communicated to the officer reported upon for representation, if any. The Supreme Court has held in their judgement dated 12.5.2008 in the case of Dev Dutt vs Union of India (Civil Appeal No.7631 of 2002) that the object of writing the confidential report and making entries is to give an opportunity to the public servant to improve the performance. The 2nd Administrative Reforms Commission in their 10th Report has also recommended that the performance appraisal system for all services be*

made more consultative and transparent on the lines of the PAR of the All India Services.

2. Keeping in view the above position, the matter regarding communication of entries in the ACRs in the case of civil services under the Government of India has been further reviewed and the undersigned is directed to convey the following decisions of the Government:-

(i) The existing nomenclature of the Annual Confidential Report will be modified as Annual Performance Assessment Report (APAR).

(ii) The full APAR including the overall grade and assessment of integrity shall be communicated to the concerned officer after the Report is complete with the remarks of the Reviewing Officer and the Accepting Authority wherever such system is in vogue. Where Government servant has only one supervisory level above him as in the case of personal staff attached to officers, such communication shall be made after the reporting officer has completed the performance assessment.

(iii) The Section entrusted with the maintenance of APARs after its receipt shall disclose the same to the officer reported upon.

(iv) The concerned officer shall be given the opportunity to make any representation against the entries and the final grading given in the Report within a period of fifteen days from the date of receipt of the entries in the APAR. The representation shall be restricted to the specific factual observations contained in the report leading to assessment of the officer in terms of attributes, work output etc. While communicating the entries, it shall be made clear that in case no representation is received within the fifteen days, it shall be deemed that he/she has no representation to make. If the concerned APAR Section does not receive any information from the concerned officer on or before fifteen days from the date of disclosure, the APAR will be treated as final.

(v) The new system of communicating the entries in the APAR shall be made applicable prospectively only with effect from the reporting period 2008-09 which is to be initiated after 1st April 2009.

(vi) The competent authority for considering adverse remarks under the existing instructions may consider the representation, if necessary, in consultation with the reporting and/or reviewing officer and shall decide the matter objectively based on the material placed before him within a period of thirty days from the date of receipt of the representation.

(vii) The competent authority after due consideration may reject the representation or may accept and modify the APAR accordingly. The decision of the competent authority and the final grading shall be communicated to the officer reported upon within fifteen days of receipt of the decision of the competent authority by the concerned APAR Section.

3. All Ministries/Departments are requested to bring to the notice of all the offices under them for strict implementation of the above instructions.

8.2 Copy of Railway Board's letter No.2009/SCC/3/6 dated 18.08.2009

Sub: Revised instructions regarding maintenance and preparation of Annual Performance Appraisal Report [APAR] [hitherto known as ACR]- communication of entries recorded in the APAR to the officer reported upon-reg.

...

1. The matter regarding communication of entries in the Annual Confidential Reports {hereinafter called Annual Performance Appraisal Reports [APAR]} of the Government employees has been reviewed by the Department of Personnel & Training, Government of India. As per the revised guidelines circulated vide DoP&T.s O.M.No.21011/1/2005-Estt.(A)(Pt-II) dated 14.05.2009, all entries in the APAR-for the year 2008-09 onwards should be communicated to the employees concerned. A copy of the O.M. is enclosed herewith.

2. It has been decided that above guidelines issued by Department of Personnel & Training should- be implemented on Indian Railways and Public Sector Undertakings under the Ministry of Railways.

3. It is requested that the revised guidelines regarding communication of all entries in the APARs and the procedure to deal with and decide upon the representations received from the employees against entries in their APARs, may be followed scrupulously with effect from the reporting year 2008-09 onwards.

4. It may be mentioned that all entries in the APAR shall be communicated to the officer reported upon by providing him scanned/Photostat copy of his APAR by the Railway or its Unit, where the APAR has been accepted.

5. It may also be mentioned that a number of APARs for the year 2008-09 in respect of Selection Grade and Senior Administrative Grade officers (with less than 23 years of service in Group 'A') finalized at Railway's level have already been received in Board's office. Therefore, wherever a representation by such an officer against entries in his APAR is received, the same may be considered and decided upon by the Accepting Authority (i.e., GM). Board may invariably be apprised of this at the earliest so that the relevant APAR is updated in Board's office.

8.3 Copy of Railway Board's letter No.E(NG)I-2009/CR/2 dated 18.08.2009

Sub: Maintenance and preparation of Annual Performance Appraisal Report - communication of all entries for fairness and transparency in public administration.

...
Ref CPO[A]/Western Railway's letter No. EP 246/0 Vol.IV dated 07.04.2010

In reference to the above, it is hereby clarified that instructions issued vide Board's letter No. 2009/SCC/3/6 dated 18.08.2009 laying down the procedure for maintenance and preparation of Annual Performance Appraisal Report [APAR] and communication of all entries recorded in APAR for fairness and transparency in public administration etc., are applicable mutatis mutandis in the case of non-gazetted staff also. Railway may please ensure compliance of the same."

9. The above communications by DOPT as well as Railway Board spell out the whole system of maintenance and preparation of APARs, which has been made effective from the year 2008-09 onwards. The most important change from the earlier system of Annual Confidential Reports (for brevity, ACR hereinafter) being that the whole APAR is to be disclosed to the employee and representation invited. The representation received, if any, is to be decided and communicated to the employee. It is only after these steps are completed, that the APAR is final.

10. In any selection, one of the prerequisite is that the APARs of the employees under consideration are completed before being put up to Departmental Promotion Committee (For brevity, DPC hereinafter). The letter dated 21.08.2008 of SDGM/NCR (Annexure CA-1) also point out the same thing that the ACR should be completed before any selection is considered.

11. In the present case, the sequence of events shows that the result of the selection was declared on 25.05.2018 whereas the APAR for the year 2017 for the applicant was not completed before that. This fact has not been controverted by the respondents. This is definitely

an irregularity in the selection proceeding and, therefore, the remarks of the respondent department that there is no irregularity in the selection does not have any merit.

12. The applicant has addressed his representation dated 09.10.2018 to Divisional Railway Manager (respondent no.3). We find that the response dated 13.11.2018 (Annexure A-1) has been signed by another functionary. Perusal of the same does not make it clear whether the said representation has been considered by the respondent no. 3 or by the Competent Authority. Representation dated 30.11.2018 to the General Manager (respondent no. 2) has also not been decided so far.

13. Para 219(1) of the IREM reads as under:-

Para-219(1) After the competent authority has accepted the recommendations of the Selection Board, the names of candidates selected will be notified to the candidates. A panel once approved should normally not be cancelled or amended. If after the formation and announcement of the panel with the approval of the competent authority it is found subsequently that there were procedural irregularities or other defects and it is considered necessary to cancel or amend such a panel, this should be done after obtaining the approval of the authority next higher than the one that approved the panel.

(Authority-Railway Board's L.No.E(NG) 1-67 PM 1-47 dt. 5-2-69)"

14. Perusal of the above mentioned para of the IREM indicate that there are provisions to make amends in case of a procedural irregularity. It is also to be noted that there is one vacancy of unreserved candidate in the final panel issued.

15. In view of the circumstances described above, the impugned order dated 13.11.2018 (Annexure A-1) is quashed and set aside. We

feel that it would be appropriate for the respondent department to invoke para 219(1) of IREM in the present case to make amends for the procedural irregularity and accordingly, the same is ordered. The action should be completed within four weeks from the date of receipt of certified copy of this order.

16. The original application is disposed of in above terms. No costs.

(Navin Tandon)
Member (Administrative)

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(Justice Vijay Lakshmi)
Member (Judicial)