

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 3rd day of April 2002.

QUORUM : HON. MR. S. DAYAL, A.M.

HON. MR. RAFIQUDDIN, J.M.

CA No.546 of 2001 in O.A. No.1399 of 1992.

Sri Vivek Kumar Srivastava s/o Late Sri M.N. Srivastava
r/o 545, Buxipur, Gorakhpur..... Applicant.

Counsel for applicant : Applicant in person.

Versus

1. Sri D.P. Tripathi, Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. Sri V.K. Garg, General Manager, N.E. Railway, Gorakhpur.
3. Sri Kali Shankar, Chairman, Railway Recruitment Board, Gorakhpur.
4. Sri S.C. Gupta, Financial Advisor and Chief Accounts officer, N.E. Railway, Gorakhpur.

..... Respondents.

Counsel for respondents : Sri Lal Ji Sinha.

O R D E R (ORAL)

BY HON. MR. RAFIQUDDIN, J.M.

This review petition has been moved by the applicant in review and respondent in O.A. seeking review of the order dated 22.12.00 passed in O.A. No.1399/92.

The relevant operative portion of the order is as under :-

"It has been urged by the learned counsel for the applicant that since admittedly the applicant had secured 100 marks, he is also entitled for appointment on the basis of principles laid down by this Tribunal in the case cited above. We also agree with this contention and do not find it reasonable to take other views in the matter. The O.A. is, therefore, allowed and the respondents are directed to issue appointment letter to the applicant within a period of three months from the date of communication of this order. It is, however, made clear that the applicant will not be eligible for any pecuniary benefits except notional seniority from the date his juniors in the merit list of selection in question have been assigned. There will be no order as to costs."

It is stated in the review petition that the applicant in O.A. had ^{received} ~~received~~ only 89 marks out of 125 instead of 100

Ry

as alleged by the applicant. It is further stated that after perusing of records of the case, it was found that the applicant had actually secured only 89 marks and not 100 marks as claimed by the applicant. It is further pointed out that in the C.A. respondents had specifically ~~denied~~ ^{the} claim of the applicant stated in Para 4(ix) of the C.A. that he was awarded 100 marks out of total 125 marks in paragraph 10 of the C.A. Therefore, the question of admission on the part of respondents ^{does} ~~has~~ not arise and ^{it} was an error apparent on the face of the record and, therefore, the order requires review.

2. The Opposite Party Sri V.K. Srivastava has filed C.A. in this review and has reiterated that he had secured 100 marks out of 125 marks.

3. We have heard Sri V.K. Srivastava, applicant in person and Sri Lalji Sinha for respondents.

4. It is evident from the facts that relief to the applicant was granted on the presumption that he had secured 100 marks because the respondents had not denied the averments in para 3 of the O.A. Counsel for the respondents has, however, drawn our attention to para 10 of the C.A. in which the same averment has been made in para 4(ix) of the C.A. in which it has been specifically denied. We have also perused the original summary sheet of the candidates for the selection in question in which the name of the applicant appeared at Sl.No.15 in which he had been shown ^{having} received only 89 marks. This summary sheet was prepared on 9.3.91. The Opposite Party/Applicant had, however, contended before us that the applicant/respondents are seeking review of the order after manufacturing this document. We are, however, not impressed by this argument of the applicant because this document has been produced from the custody of a proper authority and no adverse

presumption can be drawn regarding its genuineness. It is ^{not Rn} established from the positive evidence that the same was forged or manufactured by the respondents. We are satisfied from this document that the applicant had actually secured only 89 marks in the written and viva-voce test and his claim of having secured 100 marks is ^{not} borne out from the record. It is stated that no document was filed by the applicant in the O.A. in support of his claim of having secured 100 marks in the examination in question. The finding was given on the alleged admission made by the respondents on the claim of the applicant. It appears that the presumption was made on the basis of the averments made by the respondent in reply to para 3 of the O.A. in which the applicant had asserted having secured 100 marks. However, when the C.A. of the respondents ^{is} read as a whole, it is clear that the respondents had not admitted this fact and on the other hand, they had specifically denied the claim of the applicant of having secured 100 marks. Therefore, the findings of the order in question that the applicant had admitted the facts of the applicant having secured 100 marks is erroneous and, therefore, the same is liable to be corrected.

5. We, therefore, allow this review petition and recall the directions given in para 8 and the same is modified. *As under:*


8. We, however, find that in para 10 of the C.A. the respondents had specifically denied the claim of the applicant and there is no other document to prove that the applicant had obtained 100 marks in the examination in question."

9. Since the original summary sheet prepared by the respondents has been perused in which the applicant has

Rn

been shown to have secured only 89 marks, the applicant is not entitled to any benefit of the order dated 30.11.92 passed in O.A. No.40/92 referred to above. Therefore, we find that the O.A. is devoid of any merit and the same stands dismissed. Let a copy of the modified order be given to counsels for the parties as per rules.

There shall be no order as to costs. "


J.M.


A.M.

Asthana/
5.4.02