

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ALLAHABAD BENCH**  
**ALLAHABAD**

**(Allahabad, this the 22<sup>nd</sup> day of September, 2015)**

**Hon'ble Dr. Murtaza Ali, Member-J**  
**Hon'ble Mr. O.P.S. Malik, Member-A**

**Original Application No. 557/2004**  
**(U/s 19, Administrative Tribunals Act, 1985)**

Om Prakash Mishra aged about 46 years son of Shri Kamala Prasad  
Mishra, R/o Village Ramdapur, Post Office Inayatpur, Tehsil and  
District Sultanpur presently posted as Engineer-I (Railpath),  
Northern Railway, Rampur. ....Applicant

By Adv: Shri V. C. Mishra

v/s

1. Union of India, through General Manager, Northern Railway, Head Quarter Baroda House, New Delhi.
2. Central Manager (P), Northern Railway Head Quarters, Baroda House, New Delhi.
3. D.R.M. Northern Railway, Moradabad. ....Respondents

By Adv: Shri P. Mathur

**ORDER**

**Delivered By Hon'ble Mr. O.P.S. Malik, Member (A)**

The applicant has filed this O.A. under section 19 of the Administrative Tribunals Act, seeking the following relief(s):

***(a) to quash the order dated 08.01.2004 passed by D.R.M. Northern Railway, Moradabad (Annexure A-1) and order***

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*dated 22.04.1994 passed by the General Manager Northern Railway, Baroda House New Delhi (Annexure A-2).*

*(b) to direct the respondents to promote the applicant-petitioner since the date of declaration of Result of AEN Examination under 30% quota of 1994 of Northern Railway and also provide all the consequential benefits including arrears of salary and seniority.*

*(c) to grant such other and further relief as this Hon'ble Tribunal may be deem fit in the facts and circumstances of the case.*

*(d) to avoid the costs of petition which the applicant had been compelled to incur for no fault of his.*

2. The brief facts of the case are that the applicant joined railways in 1984 as Permanent Way Inspector. At the time of filing this O.A., he was posted at Rampur. During his service, he completed AMIE (Civil) degree course in 1992 and for this he was awarded a special increment in 1997 w.e.f. 1992. 30% vacancies in the Civil Engineering Department of Indian Railways are reserved for departmental candidates and selection to higher group 'B' posts is from eligible group 'C' employees in accordance with Rules. The respondents vide notification dated 12.07.1994 had notified 28 vacancies against 30% quota for the year 1993-94 and 1994-95 and the schedule of LDCE was circulated vide letter dated 13.07.1994. Being eligible, the applicant appeared in the exam and his name was at serial no. 17, being forth position in the list of selected candidates of written examination [Annexure-A-3]. Viva-voce test was held on 22.05.1995 but in the result declared on 15.05.1995, his name was not shown in the list of successful candidates [Annexure A-4]. On inquiry, it was orally informed

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that there were certain adverse entries in his service record pertaining to year 1992-93. He states that none of these entries were ever communicated to him. He made a representation on 31.12.1997. Duplicate copy of such representation is not available with him but registered postal receipt is [Annexure A-5]. Since no decision was taken on his representation, he approached the concerned authorities through Northern Railway Men's Union. On 12.05.1998, he was conveyed by union that his representation for promotion has been rejected. He pleads that any adverse material with which employee has not been apprised can not come in his career and in support he cites a circular of Railway Board dated 10.03.1989 [Annexure A-1]. The matter was earlier agitated in OA No. 558/1999 wherein the Tribunal issued direction to the respondents to consider the issue by holding Review DPC. The applicant claims that he came to know he has got 13 marks out of 25 in record. He was awarded marks on the basis of 4 years service as excellent but 1 mark on the basis of one year adverse entry which was never communicated to him. In viva-voce, he got 5 marks out of 25 marks which is also not correct as he had 4<sup>th</sup> position in the written examination. The order dated 08.01.2004 is not reasoned and speaking. He submitted a representation against this [Annexure A-9] but no head was paid to it. In nut-shell, his prayer is for promotion which was denied to him on the basis of some adverse remarks which were never conveyed [Annexure A1 & A2].

3. In contra, the respondents have filed a counter affidavit wherein they have stated that the applicant on qualifying the written test was called for viva-voce test but he could not secure the minimum qualifying

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marks in the record of service and viva-voce test and as such he could not be placed on the panel. In compliance of the directions of the Tribunal in OA No. 558/1999, a review DPC was convened on 06.10.2003 but his name was not recommended to be placed on the panel and it was conveyed to him vide letter dated 13.10.2003 [Annexure CA-1]. Respondents have contended that the orders passed by them are self contained and his claim is devoid of merits. In the selection (1995), ACRs for the last five years [31.03.1990 to 31.03.1994] were taken into account and the ACR for the year 1988 was not considered thus ignoring the uncommunicated adverse remarks. In review DPC also, applicant could not secure minimum qualifying marks in record of service and viva-voce. They further state that even if ACR for the year 1991 is graded outstanding and taken into account as one of the five reports under consideration, he could not secure minimum qualifying marks. He was apprised of the position vide letter dated 08.01.2004. Clarifying further, it has been stated that marks for record of service were 25 and for viva-voce 25. The qualifying marks are total 30 including at least 15 marks in the record of service.

4. In the Rejoinder Affidavit the applicant has stated nothing substantive new.
5. Heard Shri V.C. Mishra, learned counsel for the applicant and Shri P. Mathur, learned counsel for the respondents and perused records.
6. During the course of hearing, Review DPC proceedings were summoned. The documents have been produced by the respondents.
7. Following observations were made by the Tribunal in OA No. 558/1999:

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"The respondents were directed to produce the original records namely CR file of the official and the selection file of AENs against 30% LDCE quota conducted in the year 1995. Original record was produced before the court. Perusal of the same reveals that the applicant has been given adverse entries in the ACRs as admitted by the respondents in paras 8 & 12 of counter affidavit. Therefore, in view of the settled legal position the adverse entries have to be ignored because the adverse entries were never communicated to the applicant. It appears that system of marking adopted by respondent authorities has affected the result of the applicant and as such it is proper and necessary in the interest of justice that the whole matter is remitted back to the authorities concerned for holding Review DPC for reaching a fair and proper decision in accordance with law.

In the facts and circumstances and our aforesaid discussions the OA is finally disposed of with direction to respondents to reconsider the issue by holding a review DPC. The order of this Tribunal shall be complied with within a period of three months from the date of communication of this order."

8. In compliance, Review DPC was held on 06.10.2003 which was approved by the competent authority. The perusal of the proceedings of the Review DPC reveals that adverse entries in the ACRs of the applicant for the years ending 1988, 1990, 1991 & 1992, which were not communicated to the applicant, were to be ignored for purposes of evaluation. It is seen that for the DPC held in the year 1995 final ACR for

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the period ending 1990 to 1994 were taken into account. Thus, ACR for the period ending 31.03.1988 was of no consequence as it was not taken for purposes of evaluation for the said selection. ACR for the year 1989 [to make up for a total of 5 ACRs] was taken into account as the ACR for the period ending 31.03.1991 was not available [initiated by a retired officer and not taken into consideration]. Based on this, the Review DPC, ignoring the uncommunicated adverse entries, granted 3 marks for each year thus, total 15 marks out of 25 in 5 years ACRs. As the applicant got 5 marks in viva-voce out of 25 his total was 20 out of 50. The Review DPC has further gone into the aspect of even considering applicant's ACR for 1991 [graded as outstanding]. Thus, even if ACR for 1991 is graded as outstanding and taken into account in his favour, the total marks for ACRs will be 17 and the sum total would be 22 out of 50. As rules provide that a candidate is required to obtain minimum 15 marks out of 25 in ACRs and also the minimum of 30 marks out of 50 taken together [ACRs + Viva-voce], applicant does not satisfy the latter condition of minimum qualifying marks i.e. 30. In view of this calculation, the total score (22) being less than 30, the Review DPC did not recommend the applicant to be placed on the panel for the AEN selection held in 1995.

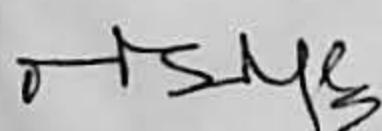
9. The position that emerges from the analysis of rival contentions and records is that the applicant could not secure the minimum qualifying marks i.e. 30 out of total 50 in ACR + Viva-voce. Though, he would secure minimum 15 marks in records which is one of the mandatory conditions for making the grade but as he secured only 5 marks in viva-voce out of 25, his total was at the most 22 which falls short of the total 30 marks

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required as minimum qualifying score. The applicant has agitated his case mainly on the basis of his ACRs but it appears that he could have actually qualified in the assessment of the ACRs. Where he actually failed was in his viva-voce. Since nothing can be commented on his viva-voce score at this stage, it has to be accepted as such.

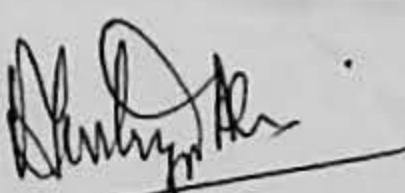
**10.** In view of the facts and circumstances of the case and rule position, we are of the considered opinion that the applicant has not been able to establish his case. The proceedings of Review DPC have to be accepted as they are final and there is no infirmity about them. The OA deserves to be dismissed.

**11.** Accordingly, the OA is dismissed. No costs.



[O.P.S. Malik]

Member-A



[Dr. Murtaza Ali]

Member-J

Sharad/-