

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 16th Day of December, 2016

Hon'ble Mr. Justice Dinesh Gupta, Member J.

Hon'ble Mr. O.P.S. Malik, Member A.

Original Application No. 330 of 2005

Tufail Ahmad Khan, S/o Sri Manauwar Hussain Khan, Aged about 47 years, R/o 42-N, Singharria, Post Kurraghat, District – Gorakhpur, Working as Chief Reservation Supervisor, N.E. Railway, Basti.

.....**Applicant**

VERSUS

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Chairman, Railway Board, Rail Bhawan, New Delhi.
3. General Manager, North Eastern Railway, Gorakhpur.
4. Chief Personnel Officer, North Eastern Railway, Gorakhpur.
5. Dy. Chief Personnel Officer (Gaz), N.E. Railway, Gorakhpur.
6. Sri Ramesh Chand Srivastava, Divisional Commercial Manager, N.E. Railway, Lucknow Division, Ashok Marg, Hazratganj, Lucnow.
7. Shri Mohd. Ali Naseem, Senior Commercial Manager (Ticket Checking), Chief Commercial Manager's Office, North Eastern Railway, Gorakhpur.
8. Shri Pritipal Singh, Senior Commercial Manager / Statistical Officer, North Eastern Railway, Gorakhpur.

.....**Respondents**

Advocates for the applicant:- Shri S.K. Om

Advocate for the Respondents:- Shri R.K. Rai



ORDER**DELIVERED BY:-****Hon'ble Mr. O.P.S. Malik, A.M.**

By way of the present original applications the applicant has prayed for following main reliefs : -

“(i). To issue a writ order or direction in the nature of certiorari quashing the panel dated 20.7.95 and the impugned order dated 13.10.2004 passed by respondents (Annexure No. 13 and 15).

(ii). To issue a writ order or direction in the nature of mandamus commanding the respondents to grant the seniority in Group B service as Assistant Commercial Manager and entire arrears of his salary including interest w.e.f. 20.07.95.

(iii). To fix the salary of the petitioner in Gr. B service w.e.f. 20.7.95 on notional and pay the actual arrears of salary along with interest & other consequential benefits w.e.f. 11.10.2004.”.

2. The brief facts of the case are that the applicant, who is working as Chief Reservation Supervisor, North East Railway, applied for Commercial Apprentice in the year 1989 and on his selection, he was sent for training in June 1991. The applicant completed the training in August 1993. He secured first position and was awarded a merit certificate. During training period L.D.C.E was notified on 23.06.1993 for a panel of post of Assistant Commercial Manager. The cut off date for the purpose of eligibility was 10.08.1992 (Annexure-3). The applicant, being eligible applied for the same and qualified the written examination held on 23.10.1994. As per the practice, ACRs of



five years preceding on cut off date were called for appearing in viva voce held on 20.04.1995. Four persons were selected including respondent nos. 6, 7 and 8. Later on, the applicant came to know that though the cut off date for eligibility was but the respondents had considered the ACRs of the period even upto the year 1995. It is contended by the applicant that considering the service record of the candidates beyond the cut off date was illegal and violative of Article 14 and 16 of the Constitution of India and against the law laid down by the Hon'ble Supreme Court in the case of **U.O.I Vs. N.R. Banerjee – 1997 SCC (L&S) 1194**. It is averred that the ACRs of the applicant during training period should have been written by the Chief Commercial Superintendent and in absence of ACR, the training performance should have been considered by the DPC, which was not supplied by the respondents to the DPC. Aggrieved, the applicant submitted an appeal to the Secretary, Railway Board on 28.07.1995 (Annexure-5) but the respondent no. 5 illegally rejected the appeal on the ground that all points raised therein have been considered in the light of present rules (Annexure-6). Further, aggrieved by this, the applicant filed O.A No. 1251/1995. It is alleged that in the Counter Reply therein, the respondents admitted to have considered the service record beyond cut off date upto 1995 and in the case of the applicant, the ACRs of six years were considered. His

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outstanding performance in the training and commendation certificate in 1989 were also not placed before the DPC. The O.A was allowed vide order dated 26.08.2003 with direction to the respondents to conduct Review DPC. The Tribunal made certain observation in para 10 and 11 of the order, which are reproduced below : -

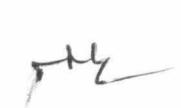
“10. On perusal of entire record, we find that the DPC while giving marks considered the ACRS for the year ending from 1991 to 1995 whereas with regard to the applicant, the same were considered for 1986, 1987, 1988 and 1995. We also find that although in para 14 & 15 of the ACR it has been stated that the DPC has considered the applicant's ACRs from 1986 to 1988, working report for the year 1990 and ACR for the year 1995, but the ACR for the year ending 1989 has not been produced before us on the ground that the same is missing. It is not understood as to how the same is missing especially when this Tribunal had directed the respondents in the year 1995 itself to produce the record. This certainly creates doubt.

11. We would like to observe that when the vacancies for the present selection were pertaining to the year 1992 and the selection against 25% vacancies was held in that very order then there was no jurisdiction for the DPC to consider the ACR for the subsequent years merely because the ACRs of

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all the candidates have been considered upto the year 1995 uniformly. It will not rectify the action of the respondents as two wrongs will not make one right. We are in respectful agreement with the judgment of Lucknow Bench of this Tribunal in case of Ashutosh Prasad (Supra). The facts of the present case are identical with the case of N.R Banerjee (Supra) and therefore, we are inclined to hold that the DPC should not have considered the ACR after the year 1992."

3. However, against this order the respondents file Writ Petition No. 758/2004 before Hon'ble High Court, Allahabad, which was dismissed vide judgment dated 12.01.2004 (Annexure-8). Thereafter, the respondents referred the matter for filing SLP but it was rejected by the Railway Board vide letter dated 13.04.2004 (Annexure-9). Thus, failing in its attempts the respondent no. 5 vide letter dated 20.09.2004 directed the DRM, N.E. Railway, Izatnagar to examine the possibility of writing ACR for the year 1990-91 and 1991-92 and sent the same to him (Annexure-11). It was a malafide move as the ACRs cannot be written after a gap of 12 years. On applicant's representation, the respondent no. 5 informed the applicant vide order dated 13.10.2004 that in the Review DPC, the petitioner could not be selected (Annexure-13) It is alleged by the applicant that this Review DPC was also defective as it considered the service record of only the applicant whereas,



the direction of the Tribunal to conduct a Review DPC of all the candidates. Thus, the Review DPC did not do the uniform consideration of the service records of all the candidates involved particularly in considering the ACRs of other candidates after the year 1992.

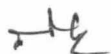
4. The respondents have filed Counter Reply stating that the claim of the applicant that his Annual Confidential Reports were throughout very good is not correct. It is the contention of the respondents that the applicant was censured during the year 1988, 1989 and reduced in rank from Head Ticket Collector to Ticket Collector. Though the said punishment was canceled on 17.12.1992 but during the period under review of Departmental Promotion Committee, the applicant was undergoing the punishment. It is stated that the applicant was sent for training for Commercial Apprentice in June 1991 and his result was not declared till completion of penalty. However, at the time of viva voce, the ACRs of the applicant for the year 1986, 1987, 1988 and 1989 as well as working report for the year 1990. Besides latest ACR for the year ending 1995 was considered by the Selection Committee as per policy of the Railway Board dated 19.09.1988, 20.04.1989 and 29.09.1989 to complete the requisite numbers of ACRs. However, the applicant could not be empanelled in the panel dated 20.07.1995 due to lower merit

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position based on written examination, viva voce and record of service. It has been clarified that the applicant underwent Commercial Apprentice Training from June 1991 to August 1993. Hence, the ACR for the period ending 1992-93 were not prepared. The ACR of the applicant could not be written for the period 1993-94 as he was under punishment from 08.11.1993 to 07.11.1994. The contention of the applicant that the Selection Committee considered the ACRs of six years has also been denied by the respondents. It is further stated that the Review D.P.C was constituted by the General Manager as per the direction of the this Tribunal dated 26.08.2003 in O.A No. 1291/1995. The review DPC Committee considered the applicant's ACRs for the period 1985-86, 1986-87, 1987-88 and working report for the year 1989-90 and his other service records including reward, punishment and achievements in its meeting held on 11.10.2004 for assessment of performance for the period prior to 10.08.1992 which was the cut off date for determination of eligibility. It also considered the result of training of Commercial Apprentice. However, the review DPC, after this assessment of applicant's performance for the period prior to 10.08.1992 did not find him fit for empanelment. The result of the review DPC was informed to the applicant on 13.10.2004. It is the contention of the respondents that it was the order of the Tribunal not to disturb the promotion of persons

done as per panel dated 20.07.1995, therefore, the review DPC was conducted as per the direction of this Tribunal and there is no illegality in the order dated 13.10.2014.

5. In the Rejoinder Reply, the applicant has stated that the punishment awarded by the respondents were quashed by this Tribunal hence it would be deemed that the same has never been awarded to the applicant. But the respondents still considering the punishments which were quashed on 17.12.1992, to be enforced upon the applicant and even the same has been considered by the DPC on 21.06.1995 which is wholly unreasonable and unjustified. The applicant has also controverted the contention of the respondents that during the period of review DPC, the applicant was undergoing punishment. Counsel for the applicant has drawn our attention to the Review DPC proceeding dated 11.10.2004 (Annexure RA-1) and stated that it considered the punishment dated 13.02.1989 but at the same time it did not consider the cash award, awarded to the applicant vide order dated 06.12.1989. He also stated that while considering the applicant in Review DPC, the same was not conducted fairly inasmuch as punishment, which has been quashed and cancelled, have been arbitrarily considered.



6. On the other hand, the respondents have filed Suppl. Counter Reply reiterating that the review DPC considered the entire proceedings of 25% LDCE held on 21.06.1995 and ACRs for the period 1985-86, 1986-87, 1987-88 and the working report for the year 1989-90 and service records including service book and have observed that the grading for the year as noted against each comes as under: -

ACR 1985-86	Good
ACR 1986-87	Good
ACR 1987-88	Good
Working report 1989-90	Good

From the above, in terms of Railway Board's letter No. E(GP)87/2/123 dated 19.09.1988, the total marks come to 12 for four years. The average comes to 03 for each year. Thus, taking three as average marks for each year, the total marks for five years prior to 10.08.1992, for service record comes to 15 only. Learned counsel for respondents vehemently submitted that on the basis of marks awarded in written exam, viva voce and performance report i.e. ACR of the applicant, the review DPC did not find any ground to change in marks given to the applicant against record of service in the proceeding held on 21.06.1995 and as such his name was not recommended in the panel of ACM against 25% quota (Group 'B') LDCE published on 20.07.1995.

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7. We have heard Shri S.K. Om, learned counsel for the applicant and Shri R.K. Rai, learned counsel for respondents. We have also perused the relevant records.

8. Learned counsel for the applicant has vehemently argued that the order dated 13.10.2004 is illegal because a perusal of this order appears that the review DPC has examined the service record of the applicant only and no review DPC with regard to respondent nos. 6 to 9 was conducted. In this regard, learned counsel for the applicant has submitted that while passing the order dated 26.08.2003, this Tribunal had specifically directed to consider the applicant's performance from 1990 to 1992 as well as the ACRs of all the candidates uniformly. Learned counsel further argued that while conducting the review DPC, the respondents have considered the zone of consideration of the applicant as "service record upto 10.08.1992 (cut off date) whereas, with regard to respondent nos. 6 to 8, different yardstick was adopted inasmuch as their "service record" upto the year 1995 was examined. He went on to argue that while conducting the review DPC, the punishment awarded to the applicant was examined whereas, the said punishment had already been quashed by this Tribunal in O.A No. 972/1989 and thereafter no



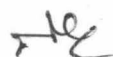
further punishment was ever awarded to the applicant. Thus, the action of the review DPC is illegal and arbitrary.

9. Learned counsel for respondents has supported the impugned order and submitted that the review DPC considered the entire proceedings of 25% LDCE held on 21.06.1995 and ACRs for the period 1985-86, 1986-87, 1987-88 and the working report for the year 1989-90 and service records including service book. He further argued that in terms of Railway Board's letter dated 19.09.1988, the total marks come to 12 for four years. The average comes to 03 for each year. Thus, taking three as average marks for each year, the total marks for five years prior to 10.08.1992, for service record comes to 15 only. Learned counsel for respondents vehemently argued that on the basis of marks awarded in written exam, viva voce and performance report i.e. ACR of the applicant, the review DPC did not find any ground to change in marks given to the applicant against record of service in the proceeding held on 21.06.1995 and as such his name was not recommended in the panel of ACM against 25% quota (Group 'B') LDCE published on 20.07.1995.

10. Vide order dated 26.08.2003, this Tribunal had directed the respondents to hold review DPC as regard awarding of



marks in respect of record of service and finalize the result. This order was confirmed by the Hon'ble High Court. The Railway Board also directed to hold a review DPC and for this purpose the assessment of performance of the applicant for the year 1991-92, when he was on training, was to be considered as a special case. The review DPC considered the entire proceeding held on 21.06.1995 and ACRs for the period 1985-86, 1986-87, 1987-88 and working report for the year 1989-90 and other service records. It was computed that as per the instruction, the total marks for four years would be 12. Hence, the average comes to 03 for each year. After recording the punishment, and awards to the applicant, it was observed that the applicant's working was not upto the mark. Though his performance in the Commercial Apprentice Examination was on the higher side but the result was declared on 03.09.1993, which was after the cut off date i.e. 10.08.1992. Hence, it was discarded from consideration. As there was no ACR in working report for the year 1990-91 and 1991-92, the average marking for the year 1990-91 and 1991-92 could be taken as 03 each only. Thus, taking three years average mark for each year, the total marks for five years of service record would be 15 only. The DPC opined that it did not find any ground to change marks of the applicant against "record of service" column and, hence, it did not make recommendation for empanelling the applicant



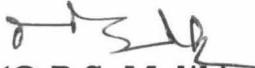
for the said panel. The DPC proceedings were approved by the competent authority i.e. GM, Railways.

11. The contention of the applicant, as canvassed in Suppl. R.A, is based on calculation that his total marks would be 235 instead of 231 and he would be eligible for empanelment as in that eventuality he will have more marks than Shri Prit Pal Singh, who secured only 234 marks. Even if the contention of the applicant for his course report being higher is considered, his score would be increased by two marks only, thus making his total score in record of service as 17 and sum total as 233. In that case also, his score would still be less than last candidate empanelled. In the ~~m~~maze of calculations and counter calculations on the basis of presumptions, the applicant does not seem to be making the grade.

12. Under the facts and circumstances of the case, we are of the considered opinion that the applicant has not been able to establish a case for himself. There appears no ground for interference in the proceeding of review DPC, which was conducted as per direction of this Tribunal. The O.A deserves to be dismissed.



13. Accordingly, the O.A is dismissed. No costs.


(O.P.S. Malik)
Member-A

Anand...


(Justice Dinesh Gupta)
Member-J