

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 18TH DAY OF OCTOBER, 2011)

Present

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. SHASHI PRAKASH, MEMBER (A)

Original Application No.407 OF 2005
(U/S 19, Administrative Tribunal Act, 1985)

R.K. Saxena, S/o Late Shri Ishwari Prasad Saxena,
R/o 164-B Civil Lines, Chaubey Ji Ki Gali near Lallo Yadav,
Bareilly (U.P.) presently working as Welder Grade-I in any
Railway Workshop Izatnagar, Bareilly (U.P.)

.....Applicant

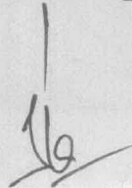
V E R S U S

1. Union of India through General Manager (P) N.E. Railway
H.Q. Gorakhpur (U.P.),
2. The Chief Workshop Manager, N.E. Railway, Izatnagar,
Bareilly.
3. The Chief Workshop Manager (P),
N.E. Railway, Izatnagar, Bareilly.
4. Shri Neerinder Singh, Welder Grade-I N.E. Railway
Workshop Izatnagar Bareilly (U.P.)
5. Shri Wahiuddin Welder Grade-I, N.E. Railway Workshop
Izatnagar, Bareilly (U.P.)

.....Respondents

Advocate for the Applicant:- Sri M.K. Dhruvanshi for Sri R.C. Pathak

Advocate for the Respondents:- Sri Avnish Tripathi



ORDER

(DELIVERED BY MR. SANJEEV KAUSHIK, MEMBER (J))

Sri M.K. Dhrubvanshi, holding brief of Sri R.C. Pathak, learned counsel for the applicant. Sri A. Tripathi, learned counsel for the respondents.

2. By way of the instant original application filed under section 19 of Administrative Tribunal's Act, 1985 the applicant seeks following reliefs:-

- "i) Issue suitable order or direction by way of certiorari quashing the orders dated 28.02.2005, 03.03.2005, 11.01.2005, 03.05.2004 and 12.05.2004 shown as Annexure A-1 to Annexure-5 to this OA.
- ii) Issue suitable order or direction by way of mandamus commanding the respondent no.3 to follow up the Railway Board order dated 30.04.2004 for declaring the applicant suitable in cadre re-structuring in the pay scale of Rs.5000-8000.
- iii) Issue suitable order or direction by way of mandamus commanding the respondent no.3, properly scrutinized the service records and CR's of the applicant for declaring the suitability of the applicant in cadre re-structuring in the pay scale of Rs.5000-8000.
- iv) Issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper upon the circumstances of the case of the applicant.
- v) Toward the cost of the application to the applicant."

3. At the very outset, Sri Dhrubvanshi, counsel for the applicant made a statement at the Bar that he restricts his claim with regard to order dated 28.2.2005 only.

4. That the applicant initially joined the respondents' department as Welder on 17.06.1974. Thereafter he was given promotion as Welder Highly Skilled Grade-II in the year 1991. In the year 1995 he was further promoted to the post of Welder Highly Skilled Grade-I. By an order dated 13.5.1999 respondents circulated the seniority list of Welder Grade-I wherein the name of the applicant placed at serial no.20. On 09.10.2003, Railway Board issued a notification for restructuring of Group 'C' and 'D' which includes the cadre of the applicant. In pursuance to that the respondent no.3 issued an order on 22.10.2003 for cadre restructuring. Respondent no.1 issued a letter dated 30.04.2004 declaring the selection procedure in restructuring of cadre in group 'C' and 'D' i.e. on the basis of service record/confidential reports, copy of which has been appended as Annexure A-10. It is submitted by Sri Dhrubvanshi, learned counsel for the applicant that vide letter dated 09.10.2003 under the heading *Procedure for Fitment* the procedure for promotion has been set up i.e. for scrutiny of service record. This notification was circulated by the respondents to all the divisions by order dated 22.10.2003. Despite the above criterion, the case of the applicant for promotion was rejected by the respondents against which the applicant submitted a representation on 19.02.2005. In reply to that the respondents issued a letter on 28.02.2005 whereby

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the applicant was informed that his case has been rejected on the ground that he has not qualified the viva-voce and he has not having the up to mark ACR's. He further submitted that no ACR/entries have ever been communicated to the applicant. Therefore, the same cannot be relied upon. He placed reliance upon the judgment of the Apex Court in the case of Dev Dutt Vs. Union of India. Hence the OA. On the other hand Shri A. Tripathi, appeared on behalf of respondents submitted that the case of the applicant was considered in pursuance to the restructuring guidelines and he was not found suitable, therefore the case was rejected. He referred to para nos.6 and 7 of the counter affidavit and submitted that in terms of the notification dated 3.5.2004 and 7.1.2004 the respondents have subsequently decided to adjudge the suitability of the candidates by taking viva-voce, therefore, the claim of the applicant was rejected. Counsel for the respondents did not produce the subsequent notification issued in this behalf for taking viva-voce. Sri Tripathi learned counsel for the respondents also raised objection that the affected persons have not been made a party, therefore, the OA is liable to be dismissed.

5. We have considered the rival submissions made by counsel for the respective parties and gone through the record. Admittedly, by a letter dated 9.10.2003 under the subject of re-

structuring of group 'C' and 'D' instructions the respondents have laid down the guidelines for promotion. Clause 13.2 under the heading of Procedure for fitment is reproduced below:-

"13.2 The placement of the existing incumbents will be regulated as per the procedure given below:-

- (a) The existing regular incumbents of the posts of Supervisors (including Supervisors/P.Way to the extent of upgradation of posts) will be placed in grade Rs.5000-8000 without subjecting them to normal selection procedure, their suitability shall be adjudged by following modified selection procedure acceding to which the selection will be based on scrutiny of service records and confidential reports only."*

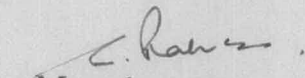
From the perusal of the above, it is clear that respondents have laid down the criterion for promotion that the same will be made after scrutinizing service record and confidential report only. In the instant case, admittedly the case of the applicant was rejected by an order dated 28.2.2005 on the ground that he was not found suitable as he failed in viva-voce and his ACR is not up to mark. The relevant part read as under:-

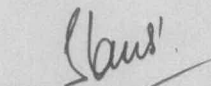
विषयाकितं मामले में अवगत कराया जाता है , कि साक्षात्कार तथा गोपनीय रिपोर्ट के आधार पर समिति की संस्तुति में आपको अयोग्य घोषित किया गया है ।

It is clear from the above relevant part of the order, the case of the applicant has been rejected as he did not qualify in the viva-voce which is against the guidelines for promotion, thus the respondents have acted against their own guidelines for promotion. Even the counsel for the applicant has submitted that he was never communicated any adverse ACRs throughout

his service career. Once the adverse entries have not been communicated then the same cannot be relied upon.

6. In view of the above, we are satisfied that the impugned order is against the guidelines for promotion and thus the same is set aside. The matter is remitted back to the respondents to re-consider the case of the applicant vis-à-vis the other candidates to whom the promotion was granted in accordance with law i.e. as per rules and jurisdiction. Notice be also issued to affected person and thereafter the final decision with regard to promotion be passed. The above exercise will be carried out within a period of three months from the receipt of certified copy of this order.


Member-A


Member-J

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