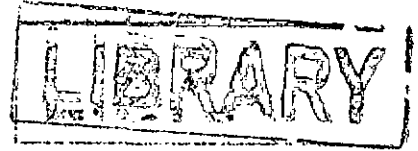


CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA



No.O.A.350/185/2021

Date of order : 11.02.2021

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

SHRI SUNIL KUMAR MONDAL, son
of Late Santosh Kumar Mondal, aged
about 54 years, residing at 884-B,
Domohini Railway Colony, Post Office-
Kalla(CH), Police Station-Asansol(South),
Ward No.23, Pin-713340 and working for
Gain as Technician-I/PSI/Asn./TR-D/Elect./
TR-D/Asn in Eastern Railway at Asansol

.....Applicant

- Versus -

1. **UNION OF INDIA**, service through the Secretary,
Ministry of Railway, Rail Bhawan, New Delhi-110001;
2. **THE GENERAL MANAGER**, Eastern Railway,
Kolkata, 17, N.S. Road, Fairlie Place, Kolkata-700001;
3. **THE DIVISIONAL RAILWAY MANAGER**,
Eastern Railway, Asansol, Post Office-Asansol,
District – Burdwan-713301;
4. **THE SENIOR DIVISIONAL PERSONNEL OFFICER/ASN.**,
Eastern Railway, Asansol, District-Burdwan-713301;

THE SENIOR DIVISIONAL ELECTRICAL ENGINEER/TRD,
Eastern Railway, Asansol, Post Office- Asansol,
District-Burdwan-713301

.....Respondents

For the applicant : Mr. P.C. Das, counsel
Ms. T. Maity, counsel

For the Respondents : Mr. A. Ganguly, counsel



ORDER**Bidisha Banerjee, Judicial Member**

Ld. counsels were heard.

2. This is the second journey of the applicant to this Tribunal. Previously he had preferred O.A.No.308 of 2015. Pursuant to the directions in the said O.A. a speaking order dated 31.08.2020 has been issued. The speaking order dated 31.08.2020 assailed in the present O.A., is reproduced hereunder for clarity:-

SPEAKING ORDER

Persuant to the order of Hon'ble CAT/CAL's order dated 13.09.19 passed in O.A. No. 350/00208/2015 (M.A. No. 350/00501/2017), I being the respondent No. 04 have gone through the representation of the applicant dated 03.02.20 in the light of the available documents and keeping in view ruling provisions it is observed as under.

Shri Sunil Kumar Mondal was appointed as Temp. Chowkidar in Level-1 in Electric TRD department at Asansol under SSE/PSI/TRD/ ASN. He is now working as Sr. Tech in Level-6 under SSE/PSI/ASN.

Shri Sunil Kumar Mondal was considered one of the eligible candidates in the zone of consideration for the Modified Trade Test (Based on ACRs/APARs/Working Reports) for filling up of six (06) vacancies (UR-4, SC-2, ST- NIL) of Tech Gr-I (RC/Fitter) in Level-5 of Elect/TRD department in terms Sr.DPO/ASN's L/No. E/Elect./TRD/Gr.C/Pt.II dated 29.06.05. Shri Mondal was not treated as a reserved (SC) candidate but as a UR candidate in the said Modified Trade Test by virtue of his seniority position.

Shri Mondal was found unsuitable in the modified Trade Test of Tech Gr.I/Elect/TRD in terms of result published vide Sr.DPO/ASN's L/No. E/Elect./TRD/Gr.C/Pt.II dated 17.08.2005. Shri Mondal was found unsuitable for his rating of "Below Average" for the years 2003-04, 2004-05 & 2005-06 in his ACRs/APARs/Working Report given by the Reporting Officers & the Reviewing/Accepting Officers at the material time.

Again Shri Sunil Kumar Mondal was considered one of the eligible candidates in the zone of consideration on the second occasion for the Modified Trade Test (Based on ACRs/APARs/Working Reports) for filling up of five (05) vacancies (UR-3, SC-2, ST- NIL) of Tech Gr-I (RC Group) in Level-5 of Elect/TRD department in terms Sr.DPO/ASN's L/No. E/Elect./TRD/Gr. C/Pt.II/03 dated 01.03.06. Shri Mondal was not treated as a reserved (SC) candidate but as a UR candidate in the said Modified Trade Test by virtue of his seniority position.

This time also Shri Mondal was found unsuitable in the Modified Trade Test of Tech Gr.I/Elect/TRD in terms of result published vide Sr.DPO/ASN's L/No. E/Elect./TRD/Gr.C/Pt.II dated 24.04.06. Shri Mondal was found unsuitable for his rating of "Below Average" for the years 2003-04, 2004-05 & 2005-06 in his ACRs/APARs/Working Report given by the Reporting Officers & the Reviewing/Accepting Officers at the material time.

Shri Sunil Kumar Mondal on being declared unsuitable on the first and second occasion was again considered as one of the eligible candidates in the zone of consideration on the third occasion for the Modified Trade Test (Based on ACRs/APARs/Working Reports) for filling up of four (04) vacancies (UR-3, SC-1, ST-NIL) of Tech Gr-I (RC Group) in Level-5 of Elect/TRD department in terms Sr.DPO/ASN's L/No. E/Elect./TRD/Gr. C/Pt.II/03 dated 14.11.06. Shri Mondal was not treated as a reserved (SC) candidate but as a UR candidate in the said Modified Trade Test by virtue of his seniority position.



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Shri Mondal again found unsuitable in the Modified Trade Test of Tech Gr.I/Elect/TRD on the third occasion in terms of result published vide Sr.DPO/ASN's L/No E/Elect./TRD/Gr.C/Pt.II dated 21.02.07. Shri Mondal was found unsuitable for his rating of "Below Average" for the years 2003-04, 2004-05 & 2005-06 on his ACRs/APARs/Working Report given by the Reporting Officers & the Reviewing/Accepting Officers given at the material time.

Shri Sunil Kumar Mondal on being declared unsuitable on the third occasion was again considered as one of the eligible candidates in the zone of consideration on the fourth occasion for the Modified Trade Test (Based on ACRs/APARs/Working Reports) for filling up of six (06) vacancies (UR-04 SC-2, ST-NIL) of Tech Gr-I (RC Group) in Level-5 of Elect/TRD department in terms Sr.DPO/ASN's L/No. E/Elect. /G/351/17/Pt.IV dated 31.08.07. Shri Mondal was not treated as a reserved (SC) candidate but as a UR candidate in the said modified Trade Test by virtue of his seniority position.

Shri Mondal was however found suitable for the post of Tech Gr.I/RC/TRD/ASN in Level-5 and got promoted to the post in terms of result of Modified Trade Test published vide Sr.DPO/ASN's L/No.E/Elect./TRD/Gr.C/Pt.I dated 17/18.12.07. He had taken over independent charge of the Post of Tech-I/RC/TRD on 16/01/2008.

It is mentioned that in terms of Railway Board's No. RBE 212/99 circulated vide PCPO/ER's Serial Circular No. 156/99, Modified Trade Test is conducted by the departmental committee consisting of three officers on the basis of Annual Confidential reports (ACRs) instead of Trade Test. It is mentioned that in terms of the aforesaid circular the procedure of promotion from Technician Gr.II in Sc Rs.4000-6000 to Technician Gr.I in Sc Rs.4500-7000 in Artisan Category stands modified only to the extent that instead of arranging promotion from Technician Grade-II to Grade-I through Trade Test (Practical Test & Viva-voce etc) should be made on the basis of Annual Confidential Reports (ACRs). Shri Mondal was given rating of "Below Average" for the years 2003-04, 2004-05 & 2005-06 in his ACRs/APARs/Working Report by the Reporting Officers & the Reviewing/Accepting Officers at the material time.

It is mentioned that ACRs/APARs/Working Reports of Shri Sunil Kumar Mondal for the years 2003-04, 2004-05 & 2005-06 which were taken into consideration for judging his suitability for the above Trade Tests were marked as "Below Average". The Reviewing Officers, the next higher authority had also agreed to the rating of "Below Average" on ACRs/APARs/Working Report given by the Reporting Officers.

On receiving the representation of Shri Sunil Kumar Mondal, all the Reviewing/Accepting officers who had accepted the ACR's for the year 2003-04, 04-05 & 05-06 were approached to review the gradations for the abovementioned years. But the Reviewing/Accepting Officers have upheld the gradations given at the material time.

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As such, the question of depriving of Shri Sunil Kumar Mondal for promotion was not an arbitrary act on the part of the administration but based on assessment of his performance for the years 2003-04, 2004-05 & 2005-06, Shri Mondal was not found suitable in the modified Trade Tests for the post of Tech Gr.I/Elect/TRD dated 29.06.05, 24.04.06 and 21.02.07. Hence the undersigned does not find any convincing reason to accept the upgradation request in ACRs/APARs/Working Reports of the applicant.

Consequently, there is no alteration/change in his career progression/promotions.

This disposes of Hon'ble CAT/KAL's order dated 13.09.19 passed in O.A. No. 350/00208/2015 (M.A. No. 350/00501/2017).

Divl. Personnel Officer(IC),
Eastern Railway/Asansol.



3. The applicant has assailed the speaking order on the ground that his ACRs/APARs for 2003-2004, 2004-2005 and 2005-2006 had adverse remarks. Ld. counsel for the applicant would claim that the authorities had failed to consider the representations of the applicant in the light of the law laid down in **Dev Dutt Vs. Union of India & Others [(2008)2 SCC(L&S)-771]** and in the case of **Abhijit Ghosh Dastidar vs. Union of India & Others [(2009)16 SCC-146]** wherein the Hon'ble Apex Court observed that *"Uncommunicated adverse remarks could not form the basis of denial of rightful promotion."*

Ld. counsel would vociferously argue that the said ACRs/APARs for the period 2003-2004, 2004-2005 and 2005-2006 were not served at the material time and, therefore, the below average bench marks could not be objected to. He would further argue that the respondents having already acted upon the adverse remarks of the said ACRs, any representation against the same would be an empty formality.

4. Per contra, ld. counsel for the respondents would submit that the applicant agitated non-extension of promotions only on 03.02.2020 as contained in representation at Annexure A/14 and at the material time when the adverse remarks were given, there was no provision for communicating the adverse remarks and making representation thereupon. It is only after the decision of Hon'ble Apex Court in **Dev Dutt**, the adverse ACRs were directed to be communicated to the employees. The ld. counsel for the respondents would submit that at this belated stage, the applicant could not ask for expunging the



adverse entries of 2003-2004, 2004-2005 and 2005-2006 . Referring to the speaking order Id. counsel would further submit that at the material time when the applicant was being considered for promotion, he was found unsuitable in the trade test, result whereof was published on 17.08.2005 and was not promoted due to the adverse entries for the year 2003-2004, 2004-2005 and 2005-2006. The relevant portion of the speaking order reads as under:-

"Sri Mondal was found unsuitable in the modified Trade Test of Tech Gr.I/Elect/TRD in terms of result published vide Sr.DPO/ASN's L/No.E/Elect./TRD/Gr.C/Pt.II dated 17.08.2005. Shri Mondal was found unsuitable for his rating of "Below Average" for the years 2003-04, 2004-05 & 2005-06 in his ACRs/APARs/Working Report given by the Reporting Officers & the Reviewing/Accepting Officers at the material time."

5. We have considered rival contentions and perused the orders on record. We would note from the extracts supra that in the speaking order the respondents have emphatically admitted that the applicant was found unsuitable in the year 2005 for the adverse entries of 2005-2006. 4th Para of the speaking order reads as under:-

"Shri Mondal was found unsuitable in the modified Trade Test of Tech Gr.I/Elect/TRD in terms of result published vide Sr.DPO/ASN's L/No.E/Elect./TRD/Gr.C/Pt.II dated 17.08.2005. Shri Mondal was found unsuitable for his rating of "Below Average" for the years 2003-04, 2004-05 & 2005-06 in his ACRs/APARs/Working Report given by the Reporting Officers & the Reviewing/Accepting Officers at the material time."

Under no stretch of imagination we could comprehend how a subsequent ACR (2005-2006) would have a bearing on a selection held in the year 2005. However, in regard to subsequent years i.e. 2006-2007 we note that the below average gradings of 2003-2004, 2004-2005 and 2005-2006 were taken into account and the applicant was



found ineligible or unsuitable for the post in question. Another astonishing feature is that the applicant, ^{an} SC candidate was considered as an UR despite availability of SC vacancies only because of his seniority position, which is incomprehensible. The speaking order however mentions that after three chances the applicant was found suitable for the post of Technician Gr.I and was granted such promotion in terms of modified trade test published on 17/18.12.2007 and he was allowed to take independent charge of the post on 16.01.2008. The speaking order also mentions that the working reports of 2003-2004, 2004-2005, 2005-2006 on being communicated to the applicant he had preferred representations which were considered by the reviewing/accepting authorities and were upheld at the material time. Although such statement was made in the speaking order, no scrap of paper has been annexed with the speaking order to show that in fact the said authorities had applied their mind on the representations preferred by the applicant in terms of the liberty granted by this Tribunal in O.A.208/2015.

6. In view of such observations, we quash the impugned speaking order dated 31.08.2020 as communicated on 01.09.2020 and remand the matter back to the authorities to pass an appropriate order strictly in terms of the directions of this Tribunal and communicate the applicant the orders passed by the competent officers who has considered the representations of the applicant. This exercise be



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completed within a period of three months from the date of receipt of a copy of this order.

7. The O.A. accordingly stands disposed of. No order as to costs.

(Dr. Nandita Chatterjee)
Administrative Member

sb

(Bidisha Banerjee)
Judicial Member

