

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 26th day of August 2003.

Original Application no. 1251 of 1995.

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr A.K. Bhatnagar, Member (J).

Tufail Ahmad Khan, s/o sri Manauwar Khan,
R/o 48-A Near Sulabh Complex, Mohalla Chhote Quazipur,
Distt. Gorakhpur.

Working as Chief Reservation Supervisor at computerised
Reservation Centre, Railway Station, Gorakhpur.

... Applicant

By Adv : sri S.K. Om

Versus

1. Union of India, through Secretary, Railway Board,
Rail Bhawan, New Delhi.
2. General Manager, N.E. Rly., Gorakhpur.
3. Chief Personnel Officer, N.E. Rly., Gorakhpur.
4. Deputy Chief Personnel Officer/Gaz, North Eastern
Railway, Gorakhpur.
5. Sri Ramesh Chand Srivastava, Assistant Commercial
Manager/Marketing & Development, Chief Commercial
Manager's Office, North Eastern Railway, Gorakhpur.
6. Sri Ram Chet Assistant Commercial Manager (Refund),
Chief Commercial Manager's Office, N.E. Rly., Gorakhpur.
7. Sri Mohd. Ali Naseem, Assistant Commercial Manager
(Court), Chief Commercial Manager's Office, NE Rly.,
Gorakhpur.
8. Shri Pritpal Singh, Secretary to Chief Commercial
Manager, NE Rly., Gorakhpur.

... Respondents

By Adv : Sri UN Sharma, Sri P Mathur,
Sri GP Agarwal & Sri Anil Dwivedi

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O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member (A).

In this OA, filed under section 19 of the A.T. Act, 1985, the applicant has prayed for quashing of panel dated 20.7.1995 for the post of Assistant Commercial Manager (in short ACM) with direction to the respondents to promote the applicant to the post of ACM in Group 'B' services with all consequential benefits.

2. The facts, in short, are that the applicant was initially appointed as Ticket Collector (in short TC) in North Eastern Railway on 12.12.1982. The applicant applied for Commercial Apprentice in the year 1989, was selected and sent for training in 1991, which he successfully completed in August 1993. In the Training the applicant obtained 1st ^{and} position and secured 75% marks in final phase of Commercial Apprentice. the applicant secured highest marks i.e 71.2% and secured 1st position.

3. The notification was issued on 23.6.1993 for four posts of ACM Group 'B' services against 25% Limited Departmental Competative Examination (in short LDCE). In the said notification, for purpose of eligibility the date 10.8.1992 was to be taken into account and it was prescribed that Group 'C' employees having 5 years non-fortuitous service in the grade of Rs. 1400 was mandatory. The applicant applied for the same, appeared in the written test held on 23.10.1994, qualified and called for viva-voce examination on 20.4.1995. However, due to non availability of service record, viva-voce test was postponed to 20.6.1995 and was finally held on 21.6.1995. As per applicant he came to know from reliable sources that his entire service record was not produced before the Departmental Promotion Committee (in short DPC), nor did the DPC consider the academic qualification of the applicant in terms of para ...3/-

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204.1 read with para 219 (g) of Indian Railway Establishment Manual (in short IREM) Vol. 1. The applicant made representation to this effect on 3.7.1995, but the respondents did not pay any heed to it. The applicant has also stated that the CRs of preceding 5 years from cut off date ie 10.8.1992 were not placed before the DPC and the DPC did not consider the same. The applicant has pleaded that DPC has considered the CRs of the applicant of subsequent date of the period ending 1995 which is not correct in view of the cutoff date i.e. 10.8.1992.

4. It has also been stated by the applicant that during training year ie 1991-92 he was under administrative control of Chief Commercial Superintendent (General) N.E. Rly., who should have written his CR, which had to be outstanding in view of the training performance of the applicant. However, in absence of the same the DPC could not arrive at the correct conclusion. The applicant has also stated that during the year 1989-90 the working of the applicant was commendable and a commendation certificate to this effect was issued on 6.12.1989 and also the same was recorded in the service book of the applicant.

5. The grievance of the applicant is that these facts were not put before the DPC and thus injustice has been caused to him.

6. The respondents have contested the claim of the applicant by filing counter affidavit. The respondents have stated that the applicant's service record was not available, however, the CR for the years from 1986 to 1989 and the work report for the year of 1990 were available besides the CR for the year 1995 and as such the same were considered by the DPC as per Railway Board's direction dated 25.5.1992. The

respondents have also stated that the marks for record of service have been awarded by the DPC as per Railway Board's letters dated 19.9.1988, 20.4.1989 and 17.4.1989. The respondents have further argued that provision of para 219 of IREM Vol 1 are not applicable in the present selection as it was a selection to Group 'B' post, therefore, the provision of para 204 of IREM Vol 1 would apply.

7. The applicant has filed rejoinder affidavit in which the applicant has annexed certificate dated 06.12.1989 as annexure RA 3, issued by the Divisional Railway Commercial Manager awarding cash prize of Rs. 50/- to the applicant. The same is recorded in the 'B' card of the applicant's service.

8. We have heard learned counsel for the parties, considered their submissions and perused the record. The direction was given to the respondents on 11.12.1995 to produce the entire selection proceedings for perusal of this Court at the time of final hearing. The same have been produced which have been closely perused by us.

9. The applicant has argued that the cut off date i.e. 10.8.1992 is crucial and no service record for the period after 10.8.1992 can be considered. Admittedly, in the present case the service record of all the candidates have been considered upto the year 1994. Whereas in case of the applicant the CRs for 1986 to 1989, working report for the year 1990 and CR for the year 1995 have been considered by the DPC. Another ground taken by the applicant is that the selection held was pertinent to the year 1992 as is evident from the notification dated 22.6.1993 that examination for 75% for the posts held in August 1992 and due to this very reason the

date of eligibility has been reckoned as 10.8.1992. Therefore, as per applicant, the respondents are stopped from considering the CRs for the subsequent years. In support of his contention the learned counsel for the applicant has placed reliance on the judgment reported in 1997 SCC (L&S) 1194 Union of India & Others Vs. NR Banerjee & Ors. In this case in regard to certain vacancies pertaining to the year 1993 zone of eligibility was fixed as ^{as in} ~~much~~ 1993. The DPC was actually convened on 15.3.1995 and considered the CRs upto the year 1995. In these circumstances, the selection was challenged before Jabalpur Bench of this Tribunal, who quashed the selection in question. Thereafter, the matter came up before the Apex Court by way of Civil Appeal and the Hon'ble Supreme Court in para 13 of the judgment held as under :-

".....these were anticipated vacancies likely to arise on permanent basis and promotion to them was to be made on regular basis. In other wards, they were all clear vacancies. So they were ~~to~~ to be finalised before April, 1994 and the Confidential Report should have been approved before 31st March, 1993 and all eligible candidates within zone of consideration as on the date of Departmental Promotion Committee were entitled to be considered. The direction given by the Tribunal referred to above is clearly in accordance with the procedure indicated herein before. Therefore, we do not find that the orders are vitiated by any error of law warranting interference."

Relying on the aforesaid judgements the applicant's counsel stated that the respondent's arguments, that the CRs of all the candidates were considered upto the year 1995 uniformly, and no prejudice has been caused to the applicant, is not sustainable. It was an arbitrary consideration in violation of guidelines given by the Railway Board. Such a selection is bound to be vitiated as CRs, final gradings and comparative merits can always vary for the period. Learned counsel for the applicant also submitted that once the eligiblitiy

criteria has been fixed there is no jurisdiction for the DPC to consider subsequent CRs. In support of his submissions learned counsel for the applicant has relied upon the judgment of Lucknow Bench of this Tribunal, reported in 1996 (33) ATC 180, Ashutosh Prasad Vs. Union of India & Ors, wherein the selection for the post of Commissioner of Income Tax, 17 years service record was to be considered by the DPC and instead of 17 years only 8 years CRs were considered. Lucknow Bench of this Tribunal has observed as under :-

"We may now discuss the various contentions raised by the respondents before us. Their first contention is that no prejudice has been caused to the applicant as 8 years ACRs were examined in case of all the officers. This argument is obviously fallacious as the final grading and comparative merit can vastly vary with the period for which the ACRs are assessed. The applicant's contention is that both the I.R.S. Rules of recruitment and instructions of the Government of India require consideration of 17 years A.C.Rs."

Learned counsel for the applicant also stated that the ACR of the applicant for the period ending 1989 was 'Out Standing' but the same has not been considered by the DPC.

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 & 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 records. 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 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.

12. The respondent's counsel submits that the applicant's previous ACRs were considered only because the applicant's ACRs for the year ending 1990 to 1992 were not available. It does not hold good in as much as during that period the applicant's working report was available wherein he was awarded for 'outstanding' performance and in 1991-92 the applicant was in training where he obtained 1st position and was declared 'outstanding'.

13. We also find substance in the submission of the applicant that as per para 204 of IREM Vol I, the DPC should have considered the record of the applicant for awarding marks out of maximum of 25 in regard to personality, address, leadership and academic technical qualification. The respondents have not refuted the contention of the applicant that no record pertaining to these heads were supplied to the DPC and as such DPC did not consider the same.

14. Another submission of learned counsel for the applicant is that in the year 1990 he was awarded for 'Outstanding' performance and the same has been recorded in his service record (Ann 3 to RA). Moreover in training also the applicant has been declared as 'Outstanding' and secured highest marks. All these facts had to be considered by the DPC, which has not been done. In support of his contention, the learned counsel for the applicant has placed reliance upon the judgment in the case Mrs. Saroj Ghai Vs. General Manager, N. Rly., N. Delhi 1997 (1) ATJ 13. It is a case of selection for the post of Office Supdt. Grade II wherein it was alleged that academic record was not furnished before the DPC and as such the applicant who was graduate could not get any marks against this head. The Principal Bench of this Tribunal, in para 15 of the judgment of Mrs. Saroj Ghai (supra) has held as under:-

"As a result, the Tribunal has come to the conclusion that in the procedure adopted by the Selection Committee for awarding marks, specific provision as contained in later part of 219 (h) has not been adheared. Similarly in allotment of marks under personality and academic qualification, the additional academic qualification (graduate) does not seem to have been specifically taken into account in assessing the marks in these heads. With the commendation certificates and cash awards received by the applicant should have found a reflection in the record of service professionally ability assessment as 219 (h) provides for award of marks for such a record....."

In the present case also, on perusal of record, we have noted that the commendation certificates clearly points out the award for outstanding service. It is also significant that no marks against personality column for special assessment of marks based on academic qualification of the candidates are available. Besides, it is not denied that the applicant was declared

as 'Outstanding' in the training of Commercial Apprentice and secured highest marks. The Outstanding performance secured by the applicant is the additional qualification and the same should have been considered by the DPC.

15. It is also noticed that para 210 (h) of IREM Vol I is similar to the provision of para 204 of IREM Vol I and, therefore, there is no justification for us to defer with the judgment of the Principal Bench in case of Mrs. Saroj Ghai (supra).

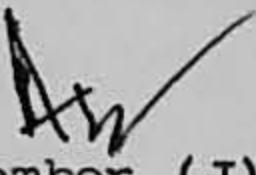
16. The respondent's counsel has contended that once the applicant appeared in the selection and was not selected, he cannot challenge the selection after declaration of the panel. We are not inclined to accept this submission of learned counsel for the respondents. We have already observed that the irregularity was committed at the time of viva-voce, wherein the DPC considered the ACRs of the subsequent periods and, therefore, there was no occasion for the applicant to abandon the selection. The applicant immediately, thereafter, filed the present OA.

17. In the facts and circumstances and our aforesaid discussions the OA is partly allowed. While we would not like to disturb the promotion of persons done as per panel dated 20.7.1995 at this belated stage as the panel would have been operated upon long back, in the interest of justice we direct the respondents to hold Review DPC as regards awarding marks in respect of record of service in view of our discussions and then finalise the result. In case the applicant makes

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the grade for promotion as ACM, he shall be entitled for all consequential benefits including seniority except the backwages. However, if the applicant does not make the grade he shall be informed accordingly. Compliance of the above order shall be done within a period of 04 months from the date of communication of this order.

18. There shall be no order as to costs.


Member (J)


Member (A)

/pc/