

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 10th day of July 2003.

Original Application no. 558 of 1999.

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

Om Prakash Mishra, s/o Sri K.P. Mishra,
inhabitant of Vill. Ramdashpur, Post Inayatpur
Tehsil and District Sultanpur.
Presently posted as Junior Engineer- I
(Permanent Way) N. Rly. Roza Jn.
Distt. Shahjahanpur.

...Applicant

By Adv : Sri A.B.L. Srivastava

Versus

1. Union of India, through General Manager,
N. Rly., Headquarters, Baroda House,
NEW DELHI.
2. General Manager (P), N. Rly., Headquarters,
Baroda House,
NEW DELHI.
3. The Divisional Manager, N. Rly., Moradabad Division,
Moradabad.

... Respondents

By Adv : Sri A.V. Srivastava

ORDER

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 direction to quash the impugned orders dated 2.4.1998 and 22.4.1998 and also direction to the respondent no. 2 to promote the applicant alongwith other officials named in the order dated 15.5.1995 (Ann A3).

2. The facts, in short, are that the applicant joined the respondents establishment as Permanent Way Inspector (in short PWI) in May 1984, having passed Intermediate with

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science and Diploma in Electrical Engineering. The applicant also passed A.M.I.E. (Civil) in the year 1984 and was granted two special increments in 1997 w.e.f. 1992 in accordance with Rule 637, 638 (1) Note 1 and 3 thereunder and 640 (d) of I.R.E.M. Vol I. The applicant was promoted as Section Engineer (P. Way) in the pay scale of Rs. 6500-10500 vide memo dated 30.6.2000 pursuant to the direction of this Tribunal dated 29.4.2002, in OA no. 1407 of 1998. The respondents notified 28 vacancies in Group 'B' of Civil Engineer relating to year 1993-94 and 1994-95 under 30% quota through Limited Departmental Competitive Examination (in short LDCE) vide notification dated 12/13.7.1994. The applicant applied for the ~~same~~^{same} and appeared in the written examination on 5.3.1995. The applicant was declared qualified vide memo dated 30.3.1995. The applicant appeared for viva-voce test held on 22.5.1995, but was not selected. Aggrieved by his non-selection, the applicant represented the issue through General Secretary Northern Railway Men's Union (in short NRMU). The ~~applicant~~^{respondents} gave a suitable reply vide their letter dated 22.4.1998. Not satisfied with the same, the applicant has filed this OA which has been contested by the respondents by filing counter affidavit.

3. Sri A.B.L. Srivastava, learned counsel for the applicant submitted that the action of the respondents is arbitrary and illegal as he was not selected on account of alleged adverse entries and awarded less marks in the record of service. Learned counsel for the applicant referred^{to} the provision of Rule 219 (C) and (D) of IREM Vol I and submitted that the respondents have not complied with the same. The adverse entries were awarded to the applicant in his ACRs for the year ending 31.3.1988, 31.3.1990, 31.3.1991 & 31.3.1992 as accepted by the respondents in para 8, 12 and 17 of the counter affidavit. These adverse remarks were never communicated to the applicant

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and, therefore, they had to be ignored while considering the case of the applicant for promotion by D.P.C. The respondents have committed error of law and, therefore, the DPC proceedings are illegal and incorrect. The applicant should have found place in the panel declared vide letter dated 25.5.1995 (Ann A3). Learned counsel for the applicant placing reliance on the judgment of Hon'ble Allahabad High Court in case of Mata Deen & Ors Vs. State of UP & Ors, (1996) 3 UPLBEC 2227 and Dr. Sheo Narain & Ors Vs. State of UP & Ors (1996) 3 UPLBEC 2229, submitted that selection not held in a proper manner cannot withstand the ^htest of law.

4. Resisting the claim of the applicant Sri A.V. Srivastava, learned counsel for the respondents ^hsubmitted that respondents ^hhave committed no error of law. He pointed ^hout that attitude of the official ^hthat instead of representing to the D.R.M. Moradabad, through proper channel the applicant took up the case through Unions. Learned counsel for the respondents further submitted that there were adverse entries in the ACRs of the applicant which were considered for his promotion. Since the applicant could not secure the minimum qualifying marks in the record of service and viva-voce, he could not be placed in the panel of AENs against 30% quota vacancies held in the year 1995. Learned counsel for the respondents finally submitted that non selection does not debar the applicant from appearing in the future selections and there has been no illegality or violation of any rule in this regard and as such the applicant is not legally entitled for any relief claimed. ^h

5. We have heard learned counsel for the parties, considered their submissions and perused records including the written arguments ^hfiled by the learned counsel for the applicant. We have also perused the ACRs of the applicant and also selection file placed before us by the learned counsel for the respondents.

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6. The main grievance of the applicant regarding his non selection is that as per respondents he was given adverse entries which were never communicated to him. In case of non communication of adverse entries, they have to be ignored and the applicant mentions that if the adverse entries were not taken into consideration by the DPC, he would have been selected and placed in the panel. We entirely agree with the submission of the applicant's counsel that uncommunicated adverse entries have no effect with regard to promotion of an employee. The legal position is well settled that only the communicated adverse entries are to be taken into account while considering the case of a person for promotion/selection/deputation etc.

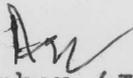
7. The respondents ^{to} were directed to produce the original records namely ^{the} ACR file of the official and the selection file of AENs against 30% LDCE quota conducted in the year 1995. Original record was produced before the Court. Perusal of the same reveals that the applicant has been given 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 ^{the} making ^{the} 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.



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8. In the facts and circumstance and our aforesaid discussions the OA is finally disposed of with direction to respondents to re-consider 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.

9. There shall be no order as to costs.


Member (J)


Member (A)

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