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OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

ORIGINAL APPLICATION NO.484 OF 2002

ALLAHABAD THIS THE 06TH DAY OF May 2009

HON'BLE MR. JUSTICE A.K. YOG, MEMBER-J
HON'BLE MRS MANJULIKA GAUTAM, MEMBER-A

Ghanshyam Chaurasia, aged about 38 years, son of Shri Ram Kumar Verma, R/o Shivapuram Basaratpur East, Gorakhpur, presently working as Section Engineer (Design) in the office of Chief Engineer, N.E. Railway, Gorakhpur.

.....Applicant

By Advocate : Shri S.K. Om

Versus

1. Union of India through Chairman, Railway Board, Rail Bhawan, New Delhi.
2. General Manager, N.E. Railway, Gorakhpur.
3. Chief Personnel Officer, N.E. Railway, Gorakhpur.
4. V.K. Gupta, A.E.En/Assistant, Ex-En. N.E. Railway, Darbhanga.

.....Respondents

By Advocate Shri D. Awasthi

ORDER

HON'BLE MR. JUSTICE A.K. YOG, MEMBER-J

Heard Shri S.K Om, Advocate appearing on behalf of the applicant and Shri D. Awasthi, Advocate appearing on behalf of the Respondents.

2. Applicant, Ghanshyam Chaurasia, claims to have been initially appointed on 13.2.1987 as Assistant Draftsman in



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North Eastern Railway; later promoted as Draftsman (now redesignated as Junior Engineer Grade II); later promoted as Junior Engineer Grade I and finally on 10.6.1996, he was promoted as Section Engineer (Design). Respondents floated a scheme for promoting meritorious Railway Employee on various promotional posts under 25% quota and the scheme was known as LDC Exam.

3. Without entering into the merit of the case, it is suffice to mention that applicant was not declared 'selected' on the basis of test. It is not disputed that one Shri V.K. Gupta (respondent NO. 4) had secured equal marks and there was tie. Relying upon some circulars, respondents provided that a person, who is senior in the feeder cadre, was to be given preference. We find no arbitrariness in such principle being adopted, inasmuch as seniority in the parent feeder cadre' is to a relevant consideration-unless otherwise provided under statutory Rules/Circulars. Provisional panel of persons was to be declared and notified vide order dated 8.11.2001 (Annexure A-7/Compilation I to the O.A.). For convenience, relevant extract of para is being reproduced:-

"Sub:-Selection for the post of AEN (Gr. 'B') against 30% of vacancies.

Ref:- This office notification of even No. dated 16.2.1998, 21.10.1998, 27.11.1998, 20.1.1999 and 18.03.1999.

As a result of written test and viva-voce test held on 18.4.1999 and 2.8.99 respectively, a provisional panel of 8 candidates which was approved by GM on 2.9.1999 was published vide this office letter of even no. dated 3.9.99 subject to the final outcome of OA No. 1267/98. Two vacancies were kept reserved as per Hon'ble CAT/Allahabad's order dated 26.6.2000 in O.A. NO. 1267/98 and further it was continued vide Hon'ble High Court, Allahabad's order dated 20.6.2000 in writ petition No. 27488/2000. Hon'ble High Court/Allahabad vide their order dated 1.2.2001 modified their earlier order dated 20.6.2000 and directed to fill in the two posts which were directed to be kept vacant by order dated 20.6.2000 but this



order will be subject to final selection of writ petition no. 27488/2000.

In compliance to Hon'ble High Court's order dated 01.02.2000, G.M has approved the inclusion of the name of S/Shri A.N Singh and Vinod Kumar Gupta in the provisional panel against serial No. 9 and 10 for the post of AEN (Group 'B') against 30% of vacancies (LDCs) subject to the final decision of the Writ Petition No. 27488/2000. Therefore, the provisional panel will now be as under:-

1. *Shri K.K. Pandey.*
2. *Shri N.K. Chaudhary*
3. *Shri N.K. Singh*
4. *Shri P.K. Singh*
5. *Shri P.R. Singh*
6. *Shri Krishna Singh*
7. *Shri Vinay Kumar Srivastava*
8. *Shri Ravindra Mehra.*
9. *Shri A.N.Singh*
10. *Shri Vinod Kumar Gupta.*

The aforesaid provisional panel will be subject to the final decision of the writ petition No. 27488/2000.

The panel is duly approved by General Manager provisionally on 7.11.2001.

Sd/

(.....)

.....

For General Manager".

4. Perusal of aforesaid order shows that it has been provided in pursuance to the order being passed by High Court, Allahabad in writ petition NO. 27488/2000 arising out of O.A. No. 1267/98. Applicant admits that he had filed representations dated 26.11.2001 (Annexure 9) and 6.2.2002 (Annexure 10), (as stated in para 4.23 of the O.A.). Para 4.23 has been replied vide para 14 of the counter reply filed on behalf of respondents. There is no averment that said representations were filed or the same were considered and rejected. There is no averment that decision taken on the representation was communicated to the applicant.

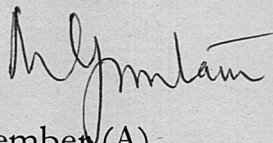
5. In view of the above fact, provisional panel sought to be challenged in this O.A. has been prepared in pursuance to the order of the High Court, Allahabad in writ petition NO.

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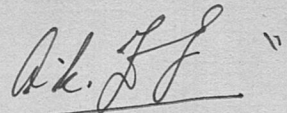
27488/2000 and that applicant had filed representation, which has been decided.

6. We find that no ground to interfere particularly in absence of records of the 'writ petition' and 'order' of the High Court.

7. In view of the above, O.A. is rejected without entering into the merits of the case with the observation that if applicant files a certified copy of the order within 4 weeks from today, the concerned respondents shall decide said representation in accordance with law within 2 months from the date of receipt of a certified copy of this order. No costs.



Member (A)



Member (J)

Manish/-