

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 27/2005

Date of Order: 25-3-2010

HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER
HON'BLE Mr. V.K. KAPOOR, ADMINISTRATIVE MEMBER

R.K.P. Singh S/o Shri Taleshwar Prasad, aged about 55½ years, R/o 8/398, Chopasani Housing Board, Jodhpur. presently working on the post of Senior Sectional Engineer (PW I), MTS, Divisional Railway Manager's Office, NW Railway, Jodhpur Rajasthan.

....Applicant

Mr. S.K. Malik, counsel for applicant.

VERSUS

1. Union of India, through the General Manager, Northern Railway, Baroda House, New Delhi.
2. General Manager (P), Northern Railway, Baroda House, New Delhi.

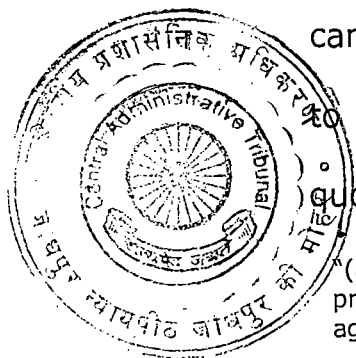
....Respondents.

Mr. Kamal Dave, Counsel for respondents.

ORDER

(Per Hon'ble Mr. V.K. Kapoor, Administrative Member)

Shri R.K.P. Singh has filed the present OA against order/panel dated 08.3.2004 (Ann.A-1) whereby he has requested to get his name included in the provisional panel list of selected candidates. After calling complete records, he has further asked to promote him on the post of AEN group-B post against 70% quota. The applicant has sought the reliefs that are as follows:-



(a) by an appropriate writ, order or direction, respondents may be directed to produce the complete records pertaining to selection for the post of AEN Group-B post against 70% quota, before this Hon'ble Tribunal in the interest of justice.

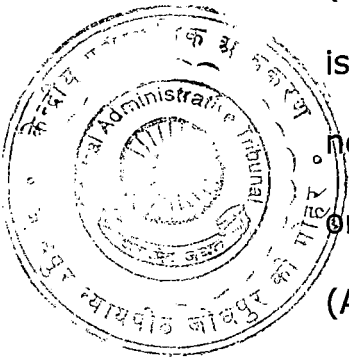
(b) By an appropriate writ, order or direction, respondents may be directed to include the name of the applicant in the provisional Panel of selected candidates and further be directed to promote the applicant on the post of AEN Group-B post against 70 % quota w.e.f. the date from which the persons junior to the applicant have been promoted with all consequential benefits.

(c) Exemplary cost may be imposed on the respondents for causing undue harassments to the applicant.

(d) Any other relief, which is found just and proper, may be passed in favour of the applicant in the interest of justice by this Hon'ble Tribunal."

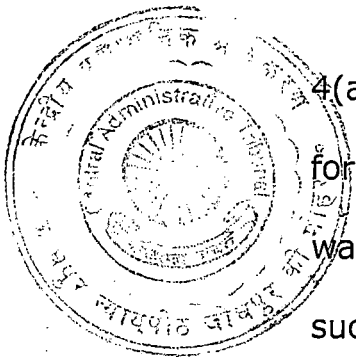
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2. The brief facts of the case are that respondent 2 passed an impugned order/provisional panel dt 08 March, 2004 wherein applicant's name was not included in the panel for promotion to the post of AEN (Civil) against 70% quota vacancies. Applicant was appointed on the post of PW-I grade III (scale Rs.425-700) from 15 May, 1974 after training, he joined at Jodhpur on 09 Aug, 1975. He was further promoted on the post of PWI, grade-I in the pay scale of Rs.2000-3200 w.e.f. 01 March, 1993. He got promoted on the post of senior sectional engineer (railways) in pay scale of Rs.7450-11500 w.e.f. 07 July, 2000. The respondent-2 vide letter dt 05 Sep, 2003 notified 92 vacancies of AEN against 70% quota vacancies in group B for assessment period from 01.12.2002 to 31.3.2003 and from 01.4.2003 to 31.3.2005. In the seniority list of group-C staff, applicant's name is shown at Sl. no.80 (Ann.A-1, A-2). In the written test conducted by HQ office (NR), 23 candidates qualified in the written test; applicant's name finds place at Sl. no.2 (Ann.A-3). The applicant was to appear for viva voce test on 25 Feb, 2004 with other qualified candidates (Ann.A-4). The impugned provisional panel was prepared and issued by respondent 2 on 08 March, 2004; applicant's name does not find place therein (Ann.A-1). No adverse remarks are served on him; he is awarded number of commendations & cash awards (Ann.A-9 to A-15). He submitted his representation on 19 April, 2004 & 05 June, 2004 stating full facts therein besides letter dt 11 Aug, 2004. Applicant has prayed for calling complete records and directions to respondents to include his name in the provisional panel list of selected candidates and promote him on the post of AEN group B post against 70% quota from due date.



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3. The respondents in reply have stated that the OA is founded on basis of good service record and his professional ability/written test. He could not secure minimum qualifying marks in overall performance. As per notification dt 05.9.2003, a total number of 308 group-C employees (technical) of civil engineering deptt were called to appear in the written test conducted on 15.11.2003 for filling up 92 vacancies of AEN; for assessment period 01.12.2002 to 31.3.2003 (40) and 01.4.2003 to 31.3.2005 (52). This process was meant for combined selection to the post of AEN against 70% quota vacancies. Applicant appeared in written test & viva voce, his name could not find place in provisional panel list as he could not secure minimum qualifying marks in overall performance and failed to qualify in selection. After considering representation dt 05.6.2004 etc., the factual position was communicated to the Railway Board; procedure for selection of 70% quota posts was followed; applicant failed to qualify in the final selection as he did not secure minimum qualifying marks in overall performance; thus his name could not find place in the provisional panel list.



4(a) Learned counsel for applicant in arguments has stated that for selection to the posts of AEN group-B, 70% quota vacancies was kept vide respondent 2 letter dt 05 Sep, 2003 notified 92 such vacancies in group-B. The combined examination/selection was meant for two assessment years 01 Dec. 2002 to 31 March 2003 and 01 April, 2002 to 31 March, 2005. The written test was conducted on 15.11.2003, in which 23 candidates were selected (Ann.A-3) vide order/letter dt 23.12.2003. Applicant's name finds place at Sl. no.2, viva voce test was taken; his name did not find

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place in final provisional panel. He made a representation to General Manager (f) (NR), New Delhi on 12.3.2004 (Ann.A-5). His overall service career was good; he is recipient of many awards on his name (Ann.A-10 to A-15). The entries in his service record were treated as adverse; its impact on his career was adverse. The applicant has relied on (2008) 2 SCC (L&S) 771 Dev Dutt Vs. UOI & Ors. The average and middle order entries were not communicated to him; in practice these entries being adverse, were to be communicated to him. The applicant was to be given time to improve his working; he was never communicated these entries; or he would have tried to improve his performance. The guidelines of DoPT were not followed in principle; there was an adverse impact on applicant's service career, these entries were to be communicated to him. Thus uncommunicated downgrading report should not be considered against applicant; Shri Shyam Lal vs. UOI & Ors 2005 Vol.45 (1) ATJ 22-CAT (PB) OA no.2894/2002; decided on 25.5.2004 squarely applies in the case. Thus, applicant's representation was to be looked into and an opportunity to defend him should have been given.

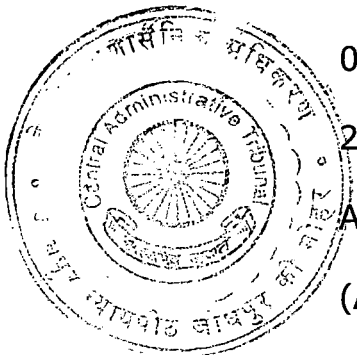
4(b) Learned counsel for respdts in arguments has reiterated facts and legal points inherent therein. It is contended that applicant got selected as per written examination and his name could find place in the provisional list of selected candidates; but in interview/viva voce, he could not succeed. Out of 308 group C employees (technical), only 23 could succeed; later some more candidates were eliminated including applicant. In the interview, minimum of 15 marks were fixed for qualifying, but he would not reach this level. There is no prejudice caused to applicant; same

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criteria and norms for selection were followed. His service record was perused; proper opportunity was afforded to him. The system of selection was known to all concerned, this is incorrect to say that an improper methodology was adopted in selection process; assessment of the candidates was made as per service record and interview. The universal principle of selection was adopted; there were no malafides or prejudice adopted in the case. In the case (2008) 2 SCC (L&S) 771, the directions are complied with. The judgment of Apex Court dt. 12 May, 2008 is not retrospective; this throws light on the selection process and future scheme of things to come. In short, a proper and suitable selection method was adopted; there are no malafides or arbitrary action adopted so as to eliminate the applicant wilfully from the contest.

5. The applicant was working on the post of Senior Section Engineer (Railway) in pay scale of Rs.7450-11500 w.e.f. 07 July, 2000 vide DPO's letter dt 04 Jan, 2002. The respondent 2 vide letter dt 05 Sep, 2003 notified 92 vacancies of AENs against 70% quota vacancies in group B Schedule; two assessment periods i.e. 01 Dec, 2003 to 31 March, 2003 and 01 April, 2003 to 31 March, 2005 were taken for group-C technical staff in the eligibility list. Applicant's name was shown at Sl. no.80 in group-C seniority list (Ann.A). A written test on 15 Nov, 2003 was taken as per respondent 2 letter dt. 05 Sept, 2003 wherein 92 such vacancies in group-B for promotion to the post of AEN were notified. The written test was conducted on 15 Nov, 2003 as per directions of respondent 2 in which applicant's rating was at Sl.no.2. Out of 23 candidates selected as per order dt 23.12.2003 (Ann.A-3), vive voce test was organized on 25 Feb, 2004 with some other

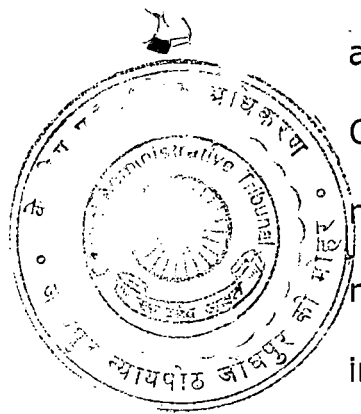
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qualified candidates. A letter dt 10 Feb, 2004 was issued on 08 March, 2004; applicant's name did not find place in this list. He contended that no adverse remarks were served on him; he was given cash awards & commendations by senior railway officials (Ann.A-9 to A-15). The applicant has given representations/ letters on 12 March, 2004; 19 April 2004; 05 June, 2004, & 11 Aug, 2004 (Ann.A-5 to A-8) to press his cause.

6. The crux of the matter is that the applicant got selected in written test held on 15 Nov, 2003. Out of 308 candidates eligible (group-C), 23 candidates qualified in this written exam as per order dt 23.12.2003 (Ann.A-3). But in viva voce test, he could not find place in provisional panel of select list on 08 March, 2004. He had professional ability and technical qualifications; he was selected in written examination and was at Sl. no.2. His version is that he was not communicated any adverse entry and his record of service has throughout been excellent. On perusal of records, this is clarified that there were 15 marks fixed for qualifying; applicant did not attain this level after interview/viva voce test. Clearly enough, applicant could not secure minimum qualifying marks, thus failed to figure in selection. In overall performance, record of service and viva-voce, the applicant could not find place in combined panel for selection to the post of AEN against 70% quota vacancies declared on 08 March, 2004. Mere qualifying in written examination is not enough; viva voce test, service records etc. are to be seen; an overall performance of eligible candidates is to be assessed. No malafide is manifest in the case, selection process is prepared as per earlier prescribed norms.

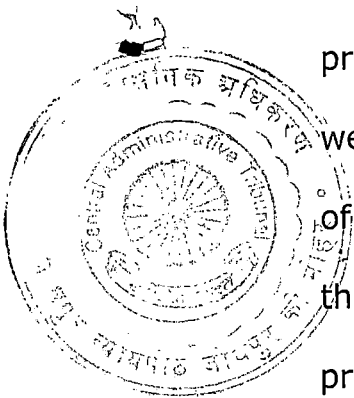


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7. On service record, applicant has relied upon Dev Dutt vs. UOI & ors. (2008)2 SCC (L&S) 771, head note reads as follows:-

- "A. Confidential reports-Adverse entries/remarks- Held, whether an entry is adverse or not, depends upon its actual impact on employee's career and not on its terminology- so even a "good" entry can be adverse in the context of eligibility for promotion.
- B. Confidential reports- Gradings- Communication of- Held, all grading whether "very good", "good", "average" or "poor" required to be communicated to employees working in government offices, statutory bodies, public sector undertakings, or other State Instrumentalities where constitutional obligations and principles of natural justice and fairness apply-Military however excepted- gradings to be communicated within a reasonable period so that employee concerned get an opportunity of representation for improvement of his grading- Representation to be decided fairly and within a reasonable period by an authority higher than the one which made the entry- This requirement flows from constitutional obligations of fairness non-arbitrariness and natural justice- Recommendation made for conveying of "outstanding" grading also as it would boost morale of a meritorious employee."

In fact, an entry is adverse or not, depends upon its factual impact on employee's career. The applicant is not communicated an adverse entry; but communication of an entry like average/good is not from retrospect. On perusal of record, no arbitrary action or malafide is manifest, applicant's representation is considered, a suitable/proper reply is given to him. Similar is the case of Shri Shyam Lal vs. UOI & Ors. 2005 (1) Vol.45 ATJ 22; in OA no. 2894/2002 (PB), decided on 25 May, 2004. This speaks of the fact that in promotion matter, downgrading in ACR must be communicated to concerned employee. But in the instant case, prescribed norms for selection were suitably followed; promotions were made as per service record & overall assessment. The ACRs of lower gradation could not come in the zone of consideration, thus in overall assessment, his name could not find place in final provisional panel. In the selection process, marks were fixed for each entry, the applicant could not get place as per this formula. The theory of prejudice does not operate in this case and no prejudicial action is reflected on the face of record. A proper methodology is adopted; system of selection is as per norms; universality of action is there; there are no malafide or arbitrary action on the part of respondents. There is no deliberate attempt



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to eliminate the candidate from contest, no colourful exercise of power is perceptible on the part of respdts. Applicant was given proper opportunity of hearing; the means of fairness & transparency were suitably adopted, besides natural justice.

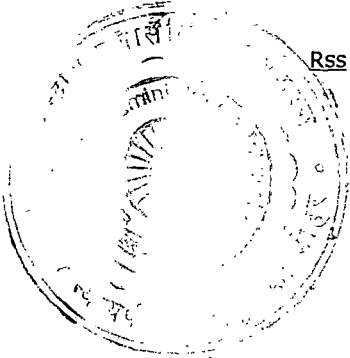
8. In the light of deliberations made above, no interference is called for in the order/panel dt 08.03.2004 (Ann.A-1). Resultantly, present OA is hereby dismissed. No order as to costs.



(V.K. KAPOOR)

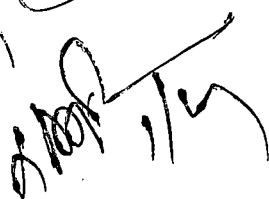
ADMINISTRATIVE MEMBER


(Dr. K.B. SURESH)

JUDICIAL MEMBER



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S. K. Mallick
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दिनांक 17/2/15 के आदेशानुसार
मेरी उपस्थिति में दिनांक 10-2-16
को भाग-II व III कट कर दिए गए हैं

अनुभाष अधिकारी
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर

