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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

ORIGINAL APPLICATION NO.69/2006

Date of Order: 17-5-2010

CORAM:

HON'BLE MR. JUSTICE SYED MD. MAHFOOZ ALAM, JUDICIAL MEMBER
HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER.

Alok Kumar Saxena S/o Shri L.K. Saxena, by caste Saxena, aged 53 years, R/o B/19 Khaturia Colony, Bikaner. At present working as S.S.E. (Senior Section Engineer) (Tele), D.R.M. office, Bikaner.

.... Applicant

For Applicant : Mr. Nitin Trivedi, Advocate.

VERSUS

1. Union of India, through: General Manger (Personnel), North Western Railway, Head Quarter Office, Jaipur.
2. The Chief Personnel officer, NW Railway, HQ office, Jaipur.
3. Chief Signal Telecom Engineer, NW Railway, HQ office, Jaipur.
4. The Divisional Railway Manager, NWR, D.R.M. office, Bikaner.
5. The Divisional Personnel Officer, NWR, D.R.M. office, Bikaner.
6. Rajbeer Singh, at present working as S.S.E., (Senior Section Engineer), D.R.M. office, Bikaner.
7. Ramesh Chandra Jain, at present working as S.S.E., (Senior Section Engineer), D.R.M. office, Bikaner.

.... Respondents.

For Respondents 1 to 5: Mr. Govind Suthar, Proxy counsel for
Mr. Manoj Bhandari, Advocate.

For Respondents 6 & 7 : None present.

ORDER

(Per Mr. V.K. Kapoor, Administrative Member)

Sri Alok Kumar Saxena has filed the present OA against the order dated 10.3.2006 (Ann.A-1) passed by the respondent 1. The applicant has sought the reliefs that are as follows:-

- "(A) That by an order or direction of the appropriate nature, the order dated 10.3.2006 (Ann.A-1) passed by the respondent No.1 General Manager (Personnel) North Western Railway, Jaipur, may kindly be modified and the respondents may kindly be directed to add the name of the applicant in the panel made for the selected candidates of Group 'B' post i.e. A.S.T.E. (Tele) (Regular-70%) and on found suitable, he may be allowed to work on the post, w.e.f. the date when junior employee to the applicant has been promoted, with all consequential benefits.



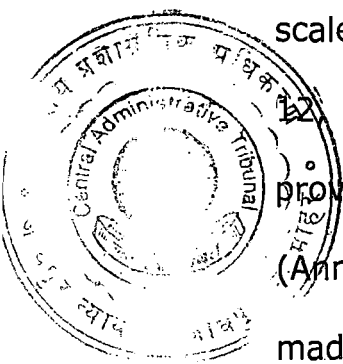
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(B) That any other order or direction, which this Hon'ble Tribunal deems fit and proper, in the facts and circumstances of the case, may kindly be passed in favour of the applicant.

(C) That the cost of Original Application may kindly be awarded in favour of applicant.

2. The brief facts of the case are that the applicant joined services in Railways as Telecom Inspector gr. III in 1976, later promoted as Section Engineer in pay scale of Rs.6500-10000 w.e.f. 17.01.1991. He was promoted on Senior Section Engineer (Tele) post at D.R.M. office Bikaner, in scale of Rs.7450-11500 w.e.f. 15.02.1996. The confidential reports and service record of the applicant are consistently good, he got meritorious awards etc. A notification was issued by respdt 1 GM (Personnel) NW Railway, Jaipur on 11.3.2005 for promotion/selection to the post of Assistant Signal & Telecom Engineer (regular-70%) in scale of Rs.7500-12000, by which 15 vacancies were notified (General-SC-02 & ST-01) (Ann.A-3). His name finds place at sl.12 in provisional eligibility list for selection to the Group B post of ASTE (Ann.A). As applicant was not assigned/ awarded correct seniority, he made representations to official respdts for giving seniority to him above Shri V.K.Agarwal (Ann.A-2,A-4). The written test was conducted by respdt 1; by order dt 26.12.2005, in all 16 candidates were selected out of which applicant's name finds place at sl.3 (Ann.A-5). He was called for viva voce test on 08.3.2006 (Ann.A-6,A-7), in regard to evaluation of personality, address, leadership, academic & technical qualifications of candidates supposed to secure qualified marks as 30 out of 50 in viva-voce test. As per viva-voce test on 08.3.2006, the 11 candidates out of 16 were placed on provisional panel for the post of ASTE (regular-70%) in scale Rs.7500-12000 for the period from 01.7.2004 to 30.6.2006 (Ann.A-1). The applicant made representation before respdts authorities in view seniority position in written

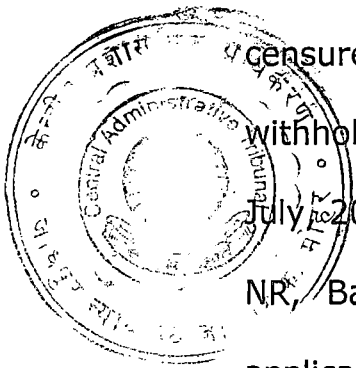
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examination and good service record, his name was not found in the panel of selected candidates for gr. B post. The applicant has prayed to modify order dt 10.3.2006 (Ann.A-1) passed by respdt 1 who be directed to add/include applicant's name in the panel of selected candidates for gr. B post of Assistant Signal and Telecom Engineer.

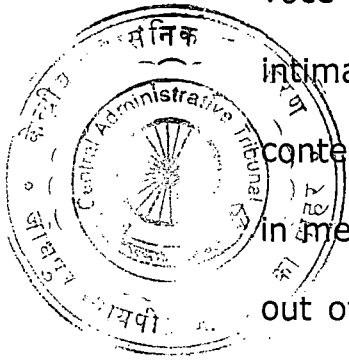
3. Learned counsel for official respdts in written reply has stated that applicant was promoted TCI gr.I (Tele) on adhoc basis on 10 Feb, 1993 in gr. Rs.2000-3200 (RP), later promoted as CTCI gr.Rs.2375-3500 vide letter dt 15.02.1996, the revised designations are Section Engineer/Tele & Sr. Section Engineer (Tele) respectively. The service record of applicant was by and large normal, but he was awarded censure punishment on 29 June, 2001 and a punishment of withholding of increment temporarily for one year vide order dt 27 July 2005. The seniority list issued as per directions issued by GM (P), NR, Baroda House, New Delhi vide letter dt 11.8.2003 whereby applicant's seniority is shown at sl. 74 and Shri V.K. Agarwal at sl.63. In the panel for TCI gr.I post issued on 12.02.1993, applicant's name finds place at sl. 7. Shri V.K. Agarwal was appointed RRB in 1991, with a regular pay scale w.e.f. 03.10.1991 (Ann.R-2). Both these employees have come from Northern Railway to Bikaner Division. The written test for post of ASTGE conducted on 19.11.2005, applicant's name finds place at sl. 3 vide declared on 02.12.2005. In the list, successful candidates were shown in order of service seniority, not according to merit. After medical test, applicant was called for viva-voce on 08.3.2006 in which he did not secure required qualifying marks, his name did not find place in selection panel. The official respdts adopted the procedure as per law, same cannot be questioned.



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4(a). Learned counsel for applicant in arguments has stated that vide seniority list (Ann.A-2), applicant's name finds place at sl.116 & that of Shri V.K. Agarwal at sl 136, applicant's seniority was above Shri V.K. Agarwal. Vide order dt 10.3.2006 (Ann.A-1) respdts 6,7 names find place in selection list for Asstt Signal & Telecom Engineer post (regular 70%) in scale Rs.7500-12000. The respdt-7 is placed at sl.3, the seniority of respdt 6 (SC) is mentioned separately. Vide order dt 11.3.2005 (Ann.A-3), for selection on ASTE post, notification was issued for 15 candidates (General-12, SC-02, ST-01). In the written test, applicant was selected & placed in seniority list at sl. 3. In viva-voce test on 08.3.2006 his name does not appear, he was not intimated as to why his name was not included in the panel. His contention is that besides good service record, he was placed at no.3 in merit in written test; in interview/vive-voce he was given 09 marks out of 50. This smacks of malafide intent and is clearly indicative of inimical & arbitrary action on the part of the official respondents.

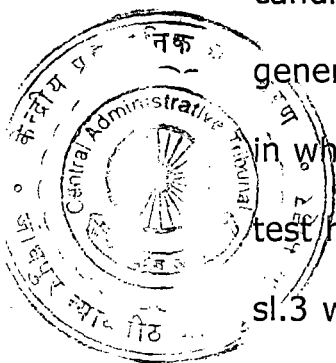


4(b). Learned counsel for official respdts in arguments has stated that applicant was selected in the written examination dt 02.12.2005. After medical test, viva-voce test was held in which applicant was not selected. In selection made by official respdts, the regular procedure was adopted and prescribed norms were followed. There exists no ground for applicant to raise any objection on this count.

5. During the period in question, applicant was working on the post of Senior Section Engineer (Tele) in pay scale of Rs.7450-11500 from 15.02.1996 at DRM office, Bikaner. As per applicant, his service record was above mark, during this period he received meritorious

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awards from official respdts deptt. The next promotion was to the post of Assistant Signal & Telecom Engineer (regular-70%) in scale of Rs.7500-12000. For this gr.B post, notification was issued by respdt 1 on 11.3.2005 for filling up 15 vacancies (General-12, SC-02, & ST-01). The applicant's seniority position is at sl.12 as per Ann.A, he made further representation to official respdts of assigning correct seniority above Shri V.K. Agarwal (Ann.A-2). In the seniority list, applicant's name finds place at sl.116 & Shri V.K.Agarwal at 163. As per representation dt 01.4.2005 (Ann.A-4) pursuant to notification dt 11.03.2005 (Ann.A-3), written exam was conducted on 19.11.2005 & result was declared on 02.12.2005. The names of successful candidates by selection figure in the provisional eligibility list as per general seniority for selection to the gr.B post of ASTE was published in which applicant's name was placed at sl.12 (Ann.A). In the written test held on 19.11.2005 for gr. B post, applicant's name finds place at sl.3 which the official respdts have quoted as per seniority, this is not selection as per merit but as per seniority. Later, viva voce test was held on 08.3.2006, in this test applicant was given 09 marks out of 50. This viva-voce test for 50 marks is included service record, covers personality, address, leadership, academic & technical qualification etc. The qualifying marks for viva-voce are fixed at 30 out of 50 whereas applicant could secure 09 marks. This is the main reason, his name did not find place in final panel list dt 10.3.2006 (Ann.A-1). The applicant has contended that his service record was unblemished and basically good, thus it was a deliberate attempt of official respdts to downgrade him, thus in the process he could not find place in selection for gr. B post. But no such malafide intent or arbitrary action is manifest in the selection record presented by official respdts. The official respdts took



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viva-voce test as per prescribed norms and gave 09 marks to the applicant. The name of respdt 7 finds place in the list (Ann.A-1) and respondent 6 being SC category was also considered for promotion. There is no force in applicant's contentions; he miserably failed to prove malafide intention on behalf of official respondents.

6. During the course of arguments, applicant's counsel wanted to amend the application on 10.5.2010 on the basis of selection in written exam in the present OA alleging malafide on the part of official respdts. The malafide intent or arbitrary bias on the part of the official respdts should have been alleged at the very initial stage of filing the present OA. But there is no statement in record to malafide in this OA thus, at the fag end of the proceedings, this prayer on the part of the applicant cannot be allowed. Thus, the prayer by the applicant on this point was rejected on 10.5.2010. To reiterate, there is no malafide intent or colourful exercise of power on the part of official respdts. Admittedly, the applicant could not get requisite marks in viva voce test and so he was not selected, therefore, there appears no illegality in this action of the official respondents.

7. In the light of deliberation made above, there is not much of strength in grounds put forth by the applicant. There appears to be no ground/reason to interfere in the order dt 10.3.2010 (Ann.A-1). Thus, the present OA is hereby dismissed with no order as to costs.



[V.K. Kapoor]
Administrative Member


[Justice S.M.M. Alam]
Judicial Member

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दिनांक 17/11/18 को आवेदनानुसार
मेरी उपस्थिति में दिनांक 10/2/16
को भाग-II व III में उद्घाटित किया गया।

अनुपम अधिकारी
केन्द्रीय प्राथमिक अधिकरण
जोधपुर न्यायमंडल, जोधपुर