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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application Nos.129/2006

Date of decision: 03-08-2007

Hon'ble Mr. Kuldip Singh, Vice Chairman,

Hon'ble Mr. Tarsem Lal, Administrative Member.

Om Prakash Saini, S/o shri Ram Lal Saini, aged about 58 years, resident of Railway Quarter No. 32-B Zonal Railway Training Institute, Near Sukhadiya Circle, Udaipur- Presently working on the post of Chief Health Inspector (CHI) in the office of Medical Superintendent, Railway Hospital, NWR, Rana Pratap Nagar, Udaipur (Rajasthan).

Applicant.

Rep. By Mr. S.K. Malik : Counsel for the applicant.

Versus

1. Union of India through the General Manager, North Western Railway, (NWR) Jaipur.
2. General Manager, (P), North Western Railway, NWR, Jaipur.
3. Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer.

: Respondents.

Rep. By Mr. Manoj Bhandari : Counsel for the respondents.

ORDER

Per Mr. Kuldip Singh, Vice Chairman.

The applicant has filed this O.A seeking the following reliefs:



"a) That by an appropriate writ, order or direction impugned order dated 22.08.2005 (Annex. A/1) be declared illegal and be quashed and set aside.

(b) by an order of direction respondents may be directed to produce the entire selection proceedings to the post of AHO also service record of the applicant before the Hon'ble Tribunal for kind perusal.

(c) by an order or direction, the respondent may be directed to place the name of the applicant in the panel for selection/promotion to the post of Assistant Health Officer Group B and promote him to the said post with all consequential benefits.

(d) any other relief, which is found just and proper may kindly be passed in favour of the applicant."

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2. The facts in brief, as alleged by the applicant, are that vide Annex. A/2 dated 03.05.2005, an advertisement was issued for selection of one Group B post of Assistant Health Officer, Medical Department to be filled from among general category candidates. The selection consists of two parts (i) Written examination (ii) Viva voce test. The applicant has stated that he had qualified in the written examination as well as viva voce also and he was also declared medically fit. However, vide Annex. A/1 dated 22.08.2005, it was informed that no one has found suitable to be placed on the provisional panel for the post of AHO against 100% quota. The applicant has submitted a representation on 15.10.2005, stating that he had qualified in the written examination, viva voce and declared fit in the medical examination. But no reply was given to him. He made another representation on 16.03.2006, but of no avail. He stated that the action of the respondents in not placing him in the panel is violative of Art. 14 and 16 of the Constitution of India. Therefore he sought a direction be issued to the respondents for placing him in the panel of AHO.

3. The respondents are contesting the O.A by filing a detailed reply. It is stated that the applicant has qualified only in the written examination and not in viva voce and therefore he was not placed in the panel.



4. We have heard the learned counsel for both the parties and perused the pleadings very carefully. We have also called for the records to know whether the applicant has qualified in the viva

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voce test. The other facts are not in dispute. Therefore the controversy is narrowed down. If the applicant has qualified in the viva voce, he will swim otherwise he will sink.

5. It is seen from the advertisement that for viva voce the maximum mark prescribed is 50 and the qualifying marks prescribed is 30. The maximum 50 marks has been split into two equal parts 25 marks each for viva voce and for Record of service. It is also stated that out of the qualifying 30 marks one has to secure at least 15 marks under the head the record of service. It has been gathered from the reply that the applicant did not qualify in the viva voce test and that is why he has not been placed in the panel. After he was informed that he did not qualify in the viva voce, to know the exact marks he obtained in the viva voce, he invoked the jurisdiction of RTI Act, in which he was informed that he had secured 34.8 marks out of 50 marks meant for Viva Voce, but no split up detail was given as to how many he has secured under the head 'record of service'. In this regard he produced Annex. A/9 dated 18.06.2007. As we could not gather any thing from Annex. A/9, we called for the official records vide order dated 04.07.2007. From the records produced by the respondents at the time of argument, we find that the applicant had obtained 14.8 marks under the head record of service and 24 marks under the head viva voce. Thus the total marks obtained by the applicant under the viva voce part is 34.8. The essential condition of obtaining 15 marks under the head 'record of service' was still not met by him.



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6. At this juncture, the learned counsel for the applicant argued that the 14.8 marks should be rounded off to 15 marks. The learned counsel for the respondents, relying on the Railway Board Circular No. RBE No. 4/2001 dated 16.01.2001, submitted that no rounding off in the calculated marks for "Record of Service" shall be done. For assessment of record of service, a procedure has been prescribed under para 5 of the above circular, wherein how the overall average is to be arrived at, has been illustrated. We have made the assessment of the applicant following the illustration and we also arrived at the total of 14.8 only and not 15. Now the question remains is can the same to be rounded off to 15 since 0.8 is more than half. As per the Railway Board circular no rounding off in the calculated marks for 'Record of Service' is permissible and therefore the learned counsel for the respondents submitted that no fault can be fastened with the action of the respondents. The learned counsel for the applicant stressed on the point that as per general rule if one has secured more than .5, he should be granted rounding off to the next integer and as such the applicant could be treated as having secured 15 marks and could be placed in the panel. The learned counsel for the respondents submitted that general rule will not apply here because of the instructions issued by the Railway Board, which is akin to the rules framed under 309 of the Constitution of India. He contended that since there is a specific bar for rounding off the Court cannot substitute its views. In support of his contention he relied on the judgement of the Apex Court in the case of **UOI and Anr. Vs. Devaram and Anr** [Civil Appeal No. 12260 of 1996]- decided on 18.12.2002. The above judgement had been rendered by the Apex



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Court relying on a earlier judgement of the same Court in the case of **Railway Board and others vs. P.R. Subramaniam and ors.** [(1978) 1 SCC 158], wherein their Lordships of the Supreme Court have held as under:

" In the Indian Railway Establishment Code, Vol. I are the Rules framed by the President of India under Article 309 of the Constitution. Contained in the said code is the well-known Rule 157 which authorized the Railway Board, as permissible under Article 309 to have "full powers to make rules of general application to non-gazetted railway servants under the their control". The Railway Board have been framing rules in exercise of this power from time to time. No special procedure or method is prescribed for the making of such rules by the Railway Board. But they have been treated as rules having the force of rules framed under Article 309 pursuant to the delegated power to the Railway Board if they are of general application to non-gazetted railway servants or to a class of them."

The Apex Court has held that the Rules mentioned in Railway Establishment Code Vol.I are equivalent to the Rules framed under Art. 309 of the Constitution of India. These rules prohibits rounding off marks. Therefore the applicant cannot be given the benefit of rounding off to next integer. Though we have sympathy with the applicant, since the rules do not permit rounding off marks, we are constrained to dismiss the O.A. Accordingly the O.A is dismissed. No costs.



Tarsem Lal
(Tarsem Lal)
Administrative Member

Kuldip Singh
(Kuldip Singh)
Vice Chairman.

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Recd copy at
6/8/07

Recd
S. K. Mahab
Adw
07/8/07

Part II and III destroyed
in my presence on 04-6-14
under the supervision of
section officer (1) as per
order dated 26-3-14.

Section officer (Record)