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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

**ORIGINAL APPLICATION NO. 71 of 2007
Jodhpur, this the 29 day of August, 2008**

CORAM:

**HON'BLE MR.JUSTICE M.RAMACHANDRAN, VC(J)
HON'BLE MR.TARSEM LAL, MEMBER(A)**

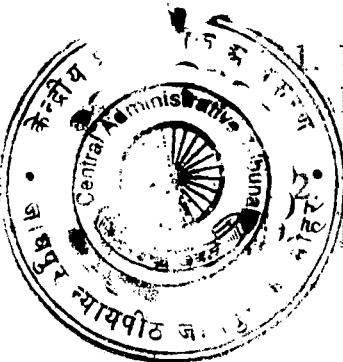
Ajay Singh Sengar son of Shri Vishambhar Singh Sengar, aged 40 years, resident of House No.5, Near Hero Honda Agency, Ganga Shahar Road, Bikaner.

Official Address: Section Engineer (Signal) Planning, Bikaner, Signal & Telecommunication, Railway (NW), Bikaner.

...APPLICANT

BY ADVOCATE: SHRI R.S.SALUJA

VERSUS



1. Union of India, through the General Manager, North Western Railway, Head Quarter Office, Jaipur.
2. The Divisional Railway Manager(P), North Western Railway, Bikaner.

...RESPONDENTS

BY ADVOCATE: SHRI MANOJ BHANDARI

[Signature]

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ORDER

MR. JUSTICE M.RAMACHANDRAN, VC(J):-

The Divisional Railway Manager (P), North Western Railway, Bikaner, on 26.10.2005, had issued a selection notice for promotion to Group 'B' posts of ASTE under the 30% quota, to be filled up by holding a Limited Departmental Competitive Examination (LDCE). In total, six posts were proposed to be filled up. The selection notice indicated that there would be a written test, followed by viva voce.

2. It so happened that out of the 89 candidates who appeared in the written test, only the applicant obtained the qualifying marks prescribed. He was asked to undergo medical examination before appearing for viva voce. Applicant submits that he had been adjudged as outstanding / meritorious all throughout. He had been called for the viva voce, as can be seen from Annexure A-4, but, in due course, he got information that he had not been selected. Applicant contends that there was certain amount of malafides in the working out of the selection. Respondents appear to have failed him intentionally in the viva voce even though he had been declared passed in the written examination. According to him, there are no justifiable reasons to hold out that he was not good enough to be selected. It is in this background, the present O.A. has come to be filed.



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3. Ld. Counsel, appearing on behalf of the applicant, took us through the factual details and submitted that although it may not be possible to identify a specific person who is biased, malafides can be inferred as there has been some amount of foul play in the process of selection. Therefore, the matter requires to be examined by the Tribunal with seriousness. When he had obtained 21.6 marks for the record of service, out of the total marks of 25 marks, it is impossible to assume that he could secure only 5 marks out of 25 marks in viva voce. Such a contention of the respondents is unbelievable and cannot be taken in its face value. The marks, as above, of course, have been supplied by the respondents through counter reply filed.

4. The selection notice, dated 14.10.2005, prescribed the criteria for selection for promotions in question. Maximum marks for record of service was 25 and for viva voce, it was also 25 and the required marks were 30. Submission is that it is, therefore, not possible to accept the contention of respondents that in spite of scoring the qualifying marks with reference to record of service, in the viva voce performance of the applicant was drastically poor. The Ld. Counsel also submits that this circumstance alone is sufficient to show the manner in which the claims of the candidates have been considered and it could be characterized as arbitrary. A prayer has, therefore, been made that this Tribunal should



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hold the action of respondents in declaring the applicant as failed for promotion to the post of Group 'B' ASTE as illegal with a further direction to respondents to promote him to the said Group 'B' post.

5. Ld. Counsel for the applicant, on the strength of a decision of the Hon'ble Supreme Court, reported as STATE OF PUNJAB VS. RAMJI LAL : AIR 1971 SC 1228, submitted that malafides can be inferred from the facts and circumstances of the case and it may not be necessary to pin-point handiwork of a particular person who had played foul. Accordingly, the ld. Counsel argued that when the applicant had been the sole candidate who had been successful in the written test and when his record of service was outstanding, it would not have been justifiable on the part of the Railway administration to have failed him in selection.

6. The respondents, with reference to the reply filed, dated 6.12.2007, have stated that selection was based on performance of the candidates and there was no bias or malafides at all. In fact, the standards of selection were high and only persons who were really meritorious were to be cleared in the Limited Departmental Competitive Examination. In Professional Paper I, applicant secured 90 marks, in Professional Paper II, he secured 90.5 marks. In record of service he secured 21.6 marks and for the viva voce he secured 5 marks out of 25 marks. He only secured 26.6 marks out of 50 marks which is less than 30 i.e. less than 60% percent marks in viva voce which is a Part B examination. He was,



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therefore, considered as not having come up to the mark. Of course, his record of service was good. A fair procedure had been followed but he could not be declared as having met the standards.

7. It is further submitted that as per the notification all necessary steps have been carried out in making selection scrupulously. A committee had been constituted for holding viva voce. The applicant has failed to point out any particular interest having interfered in the process of selection. When he himself did not satisfy the minimum bench mark, there is no justification in asserting that the Committee had been biased. It is further pointed out that the averments made in the O.A. are without any basis. The averment made by the applicant in Para 5(i) that "The respondents appeared to have failed the applicant intentionally in the viva voce test so as to deprive him the benefit of promotion to higher post." is too vague, ambiguous and such pleas require to be rejected out right.

8. Respondents have also suggested that there was a deliberate omission on the part of the applicant in producing Annexure A-1 in full, but, we find that this could be due to an omission and the matter is to be left there. Mr.Bhandari, 1d. Counsel for respondents, also invited our attention to a case of the Hon'ble Supreme Court titled N. LOKANADHAM VS. CHAIRMAN TELECOM COMMISSION & OTHERS : 2008 (5) SCC 155 which is an authority on the principle that having participated in the selection process, a candidate is precluded from

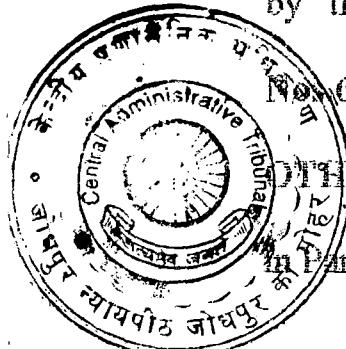



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challenging the selection. It is also highlighted that applicant had not challenged the selection notification and, therefore, in any case, the reliefs prayed for cannot be granted to him. Respondents have also referred to the case titled GUNANIDHI MARTHA VS. GOVERNMENT OF ORISSA & OTHERS : 2003(4) SCC 661, as also a decision of the Rajasthan High Court in UNION OF INDIA VS. CENTRAL ADMINISTRATIVE TRIBUNAL & OTHERS, reported in 2004(1) CDR 516 to point out that in case the applicant was not satisfied about the selection process, the notification could have been subjected to challenge by him. The concise effort on the part of respondents is to show that it was a normal selection, satisfying all requisite formalities. When the authorities found that there were no persons sufficiently, it had been decided that no relaxation was to be given to anybody at all. A fresh selection, as per the rules prescribed, would be held.

9. We may, at this juncture, also take notice of the observations made by the Hon'ble Supreme Court while disposing of Civil Appeal No. 6934-6946 of 2005, UNION OF INDIA VS. PUSHPA RANI & OTHERS and other connected cases. The relevant observations appear in Para 29 of the decision which we extract herein below:-

"29. ... , we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts,



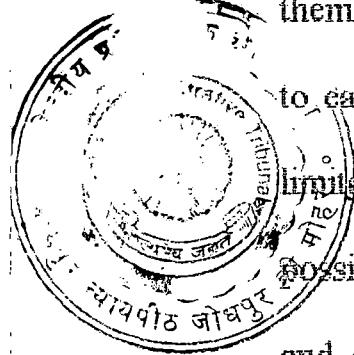
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formation and structuring/restructuring of cadres, prescribing the source/ mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to malafides. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open for the Court to make comparative evaluation of the merit of the candidates. The Court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration.”

The position, undoubtedly, is that the Court has no role in the methodology of the departmental recruitment, laying down of criteria of selection, and it is also not expected of the Court to make comparative evaluation of the merit of the candidates.

10. Ld. Counsel for the applicant submitted that there is no challenge to the selection notification but the circumstances of the case show by themselves that a meritorious candidate has been overlooked. As referred to earlier, in matters of selection, the jurisdiction of the Tribunal is very limited. In the absence of violation of any rules or procedure, it is not possible for this Tribunal to interfere in the selection process. In the facts and circumstances of the present case, we are not to assume that there was presence any bias or malafides on the part of the Selection



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Committee, so much so to fail a candidate who was meritorious. When a candidate does not satisfy the prescribed standards, it is not be possible to make adverse comments on the process of selection and selection itself. We find no merit in this O.A. It is hereby dismissed. No costs.



Karen Lal
(TARSEM LAL)
MEMBER(A)



JUSTICE M.RAMACHANDRAN
VICE CHAIRMAN(J)

Dated: August 29, 2008

'bss'

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~~VS~~
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Part II and III destroyed
in my presence on 15/12/2016
under the supervision of
Section Officer () as per
order dated 19/8/2016
Section Officer (Record)

PL
Remy Aen
19/10/16