

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 1 of 2010

Reserved on 1.12.2015
Pronounced on 17th December, 2015

**Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A**

Chandra Sen, aged about 44 years S/o Sri Toley Ram, working as Senior Engineering Assistant, Doordarshan Relay Centre, Hardoi, R/o Near Pihani Chungi, Hardoi

.....Applicant

By Advocate : Sri A. Moin

Versus.

1. Union of India through Ministry of Information & Broadcasting Shastri Bhawan, New Delhi.
2. Chief Executive Officer, Prasar Bharti (Broadcasting Corporation of India), New Delhi.
3. Director General, All India Radio, Akashwani Bhawan, New Delhi.

.....Respondents.

By Advocate : Sri S.B.Singh

O R D E R

By Ms. Jayati Chandra, Member-A

This Original Application has been filed by the applicant under Section 19 of Administrative Tribunals, Act, 1985 seeking the following relief(s):-

- "(a) to direct the respondents to include the name of the applicant in the result dated 30.12.2009 as contained in Annexure no. A-1 to the O.A. of the post of Assistant Engineer with all consequential benefits.
- (b) to direct the respondents to pay the cost of this application.
- (c) any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed."

2. The facts of the case relevant to the relief clause are that the applicant was appointed as Engineering Assistant in All India Radio, w.e.f. 1.11.1989. He was promoted as Senior Engineering Assistant w.e.f. 15.3.2002. The next promotional post for Senior Engineering Assistant is that of Assistant Engineer through

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Limited Departmental Competitive Examination (LDCE). The applicant appeared in LDCE held for the vacancies as notified on 23.4.2007 and 2008 (exact date not disclosed), but remained unselected. The respondents notified 68 vacancies (46 for UR, 7 for SC and 15 for ST) in the year 2008-09 vide notification dated 20.3.2009. The applicant participated in the written examination and was declared successful with 106 marks (Annexure-9). His name finds place at sl. No. 70 alongwith other SC candidates placed at sl. Nos. 58, 67, 68 and 69 (Annexure no.-9). Final result after considering the marks of ACRs was declared on 30.12.2009 (Annexure no.1)in which the name of the applicant does not find place. It is seen from the final result that it has been declared for total 59 vacancies against 68 advertised vacancies. Thus, nine posts remained vacant as on the date of filing of O.A. The name of the persons placed above him in the result of the written examination i.e. at sl. Nos. 58, 67, 68 and 69 have been included in the final result. Admittedly, the applicant has further stated that only five persons have been appointed against 07 SC vacancies, hence there is still 02 vacancies available for SC candidates. The names of S/Sri Tirath Raj, Sube Singh, Mulk Raj Verma and Vinod Kumar have been included in the impugned final list dated 30.12.2009, although their names were not shown in the written result dated 9.4.2009 (Annexure-9).

3. The respondents have controverted the averments made by the applicant through their Counter Reply. The thrust of their contention is that the final selection result in LDCE is based on the total marks obtained in the ratio of 7:3 achieved in written examination and evaluation of ACRs. The applicant had achieved 106 marks in the written examination, but the same when combined with ACRs, marks was lower then the last selected candidate i.e. Sri Vinod Kumar. As adequate number of SC persons had not obtained the minimum cut off percentage in the written examination, the same was lowered by 3% and certain other persons who were not originally in the written result, were included in the list on the basis of their combined written test marks and ACRs were selected. Initially, one merit list was uploaded in the departmental website on 11.11.2009 after adding additional SC persons on the basis of lowering of minimum of cut

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off marks, a second list 24.12.2009 (Annexure no. CR-2) was uploaded on the website of the department. Sri Vinod Kumar, for example, scored 47.87 marks; whereas the applicant has scored 44.73 marks out of 100 after combining the marks obtained in the ACRs. Sri Vinod Kumar stood at sl. No. 8 in the list of selected SC candidates. There being no other vacancy, the applicant could not be accommodated.

4. The applicant has filed Rejoinder Reply refuting the contentions made by the respondents in their Counter Reply and reiterating the averments already made in the Original Application.

5. We have heard the learned counsel for the parties and have also examined the records including original file as "Review DPC" recommendations held on 24.12.2009 under 75% for promotion of Assistant Engineer from Senior Engineering Assistant for the year 2008-09. Additionally, we have seen copy of order dated 11.9.2006 on the subject of backlog of ST vacancies and the copy of Assistant Engineers (Akashwani & Doordarshan Group 'B' Posts) Recruitment (Amendment) Rules, 1985.

6. The facts as admitted by both the parties are that for the year 2007-08, 131 vacancies of Assistant Engineers (UR-84, SC-16 and 31 for ST) were advertised vide circular dated 23.4.2007. The applicant appeared in the written examination and was not finally selected. He appeared in another selection examination in 2008 and was not selected. There were 13 backlog vacancies of ST in these selection. The Government of India has issued detailed guidelines for the procedure for filling up backlog of ST vacancies either by de-reserving them or by carrying them forward.

7. The impugned notification included 14 ST backlog vacancies. The applicant was working as Senior Engineering Assistant w.e.f. 15.3.2002 and was eligible for promotion as Assistant Engineer through the LDCE. As per Recruitment Rules, the process of such promotion consists of two distinct processes – of written examination and the assessment of ACRs. The marks obtained in both the process is totaled in the ratio of 7:3.

8. Vide notification dated 20.3.2009, 68 vacancies were notified (46 General, 7 SC and 15 ST) for the year 2008-09. The applicant appeared in a written test carrying a total of 300 marks. He was placed at sl. No. 70 in the result declared on 9.4.2009 having obtained 106 (Annexure-9). The perusal of the list shows that S/Sri Kulbhushan Kumar, Tala Ram, Bani Singh, Ram Surat (all of them were SC candidates alongwith the applicant) were placed at sl. Nos. 58, 67, 68 and 69 having achieved 122, 114, 108 & 108 marks respectively. From the documents produced by the respondents (page-11) a revised result of written examination has been downloaded from AIRNET (date not disclosed) in which the name of the SC candidates are sl. No. 64 -Kulbhushan Kumar (122 marks), Sl. No. 70 Tala Ram (116 marks), Sl. No. 71-Bani Singh (109 marks), sl. No. 72 – Ram Surat (108 marks) and Sl. No. 73 applicant (106 marks). There are no other names of SC candidates except one at sl. No. 9 Pramod Kumar, who is not counted against the reserved vacancies.

9. So far, between the original and the revised lists, there is no difference in the sequence of names and except for Sri Tala Ram and Sri Bani Singh, no change in marks obtained in the written examination. Thus, against the advertised 07 SC vacancies, 5 persons were qualified in the written test. Against 15 ST vacancies in the revised list, only 08 persons had qualified in the written test as per the list contained at Annexure no.9. Two names Sri Mordi Prasad and Sri Auchuk Dorji were placed at sl. No. 23 and 47 respectively. In view of this position, such persons who were within the 46 General vacancy would be counted against those vacancies. In the revised list too, Sri Auchuk Dorji was placed at sl. No. 51 and 08 others were placed between Sl. Nos. 74-81. To sum up, as per the revised result of the written examination, 5 SC persons were successful against 07 (notified) SC vacancies and 09 ST persons were successful against 15 vacancies. We have perused the file pertaining to the Review DPC for the promotion from Senior Engineering Assistant to Assistant Engineer for the year 2008-09. This file includes apart from the minutes of the meeting, three photocopied uncertified pages of F No. 1/2/2009-8-IV(B). These pages include certain notings in which it clearly stated that as per the minimum qualifying marks (40% for

General, 35% for SC and 15% for ST) only 05 SC persons have qualified and that the SC vacancy is 08. In view of inadequate number of SC candidates and on the basis of DoP&T O.Ms. dated 13.12.1970, 21.1.1977 the minimum qualifying marks for SC candidate is lowered by another 3%. Thus, six more persons (in addition to the earlier 5) have qualified in the written examination. The names of six additional persons viz. S/Sri Mulk Raj Verma, Tirath Raj, Sube Singh, Rajendra Kumar, Vinod Kumar and Sawarn Singh, who had obtained 102, 102, 101, 100, 98 and 96 marks respectively were announced in the website (AIR NET) on 24.12.2009. In the selection meeting, it was decided to award six marks for 'Outstanding' entry, 5 for 'Very Good', 4 for 'Good' and 3 for 'Average'. The committee assessed the ACRs of 84 candidates- as per Annexure no. II enclosed with minutes and declared the result at Annexure no. IV (for SC candidate). The list of 84 candidates at Annexure no.II does not include the name of the applicant despite the fact that he had scored above the cut off marks in the original result and the revised result of written examination.

10. In a separate sheet (unsigned and un-authenticated) we were handed a table by the learned counsel for the respondents in which it is shown that the applicant was awarded only 20 marks on the basis of his ACRs, which brought up his total (with 70% of his 106/300 scored in written examination) to only 44.73% i.e. lower than 47.87% of Sri Vinod Kumar (last SC candidate) in the impugned select list dated 30.12.2009. However, no reliance can be placed in this document as it is unauthenticated. The crucial fact is that the selection committee examined 84 ACRs. It selected 43 UR (Annexure-III) against 46 vacancies. In the case of UR category, in all 66 persons were assessed. But in the case of SC candidates, only 08 persons were assessed. The selection committee as per Annexure-II of their minutes did not examine that of the applicant, who had achieved higher marks in the written test.

11. This appears to be unjustified exclusion. But we are handicapped in interfering in this matter in terms of the relief claimed. By means of this O.A., the applicant has limited his prayer to inclusion of his name in the list of 2008-09 as per

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present position. From the impugned order, 8 persons had been promoted against 08 SC vacancies (one more than advertised). The applicant has neither prayed for any quashing of the list, nor has impleaded any other person. The general relief of "any other relief" cannot be extended to a relief which does not arise from the main relief.

12. In view of the above, the O.A. fails and is accordingly dismissed. No costs.

J. Chandra
(Ms. Jayati Chandra)
Member-A

VR. Agrawal
Navneet Kumar)
Member-J

Girish/-