

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No. 145 of 2006

Order Reserved On 08.01.2014

Order Pronounced on 11-02-2014

HON'BLE SHRI NAVNEET KUMAR MEMBER (J)
HON'BLE SHRI SHASHI PRAKASH, MEMBER(A)

Meraj Ahmed aged about 38 years S/o Sri Khaleel Ahmed R/o Ka Subhani Khera Telibagh Lucknow.

Applicant

By Advocate: Shri A. Moin.

VERSUS

1. Union of India through General Manager, Northern Railway Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj Lucknow.
3. Divisional Railway Manager (P) Northern Railway Lucknow.

Respondents

By Advocate Sri B.B. Tripathi.

ORDER

By Hon'ble Sri Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- (a) To direct the respondents to post the applicant as Loco Pilot Goods grade Rs. 5000-8000/- w.e.f. 8.2.2005 i.e. the date when the applicant's juniors were posted with all consequential benefits including seniority, arrears of pay etc.
- (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 brief facts of the case are that the applicant was initially appointed as Apprentice Diesel Assistant and was subsequently confirmed. After serving for a quite long time, a notification for the post of Driver Goods was issued and a list was circulated in which the name of the applicant does not find place. The applicant submitted the objections and

when nothing was heard, he preferred an Original Application No. 193 of 2004. The said O.A. was disposed of by the Tribunal by means of an order dated 12th September 2005 wherein, the Tribunal granted permission to the applicant to appear in the selection process to be notified in future or notified during the pendency of the O.A. Subsequently, a notification was issued in 2005 and the applicant appeared and has also qualified the written examination and accordingly the panel was prepared. Finally, the name of the applicant did not find place, whereas, the number of juniors to the applicant find place in the panel. Feeling aggrieved by the said in action of the respondents, the applicant preferred the present O.A.

3. The learned counsel appearing on behalf of the respondents have filed the preliminary objections as well as the counter reply. Through their preliminary objections, it is pointed out by the respondents that the name of the applicant could not find place in the list of eligible candidates as per the list declared on 16.2.2004 published on the basis of the written examination for the post of Driver Goods that is why, the applicant was not allowed to appear in the test. An order was passed by the Tribunal in O.A. NO. 193 of 2004 and a fresh notification was issued on 21.12.2005 and a written examination was also conducted and the applicant qualified in the said examination. But his name could not find place in the final list. As such, his name was not appearing in the result declared on 8.3.2006. Through their counter reply, it is pointed out by the respondents that in the earlier notification, the name of the applicant could not find place in the list of eligible candidates as such, he was not allowed to appear, but in terms of the direction of the Tribunal, he was allowed in the subsequent notifications. But when he could not succeed in the final selection, his name could not find place in the final panel declared on 8.3.2006 as such he preferred the present O.A. The respondents categorically pointed out that there was a direction of the Tribunal to allow the applicant to appear in the next selection or the selection to be held during the pendency of the O.A. which was allowed

by the respondents and when the applicant could not found successful in the examination, the name of the applicant was not included in the panel.

4. The applicant filed the reply to the preliminary objections as well the rejoinder to the counter reply filed by the respondents and it is pointed out by the learned counsel for the applicant that though the post of Loco Pilot is a selection post still the applicant was wrongly deprived for appearing in the selection for the said post and has also relied upon para 228 of the Indian Railway Establishment Manual and pointed out that each such cases should be dealt with on its merits. The staff who have lost promotion on account of administrative error should on promotion be assigned correct seniority vis-à-vis their juniors already promoted.

5. Heard the learned counsel for the parties and perused the record.

6. Admittedly, the applicant is working with the respondents organization and an advertisement for the post of Loco Pilot Goods was issued and a list of eligible candidates was also published. In the said list, which was published in the year 2004, the name of the applicant could not find place as such, he has preferred an O.A. before this Tribunal vide O.A. No. 193/2004 which was finally disposed of by means of an order dated 12th September, 2005 wherein, the Tribunal observe as under:-

“In the above view of the matter, having regard to the fact that requirement of 60000 Kilometer running footage would not apply to the applicant who has worked as a Diesel Assistant for 6 years, he is eligible to appear in the selection held by the respondents for the post of Driver Goods. Necessary consequences would follow i.e. the applicant would be accorded permission to appear in the selection process to be notified in future or notified during the pendency of the O.A. the issue of seniority is not adjudicated. No costs. O.A. is accordingly disposed of.”

7. It is made clear by the Tribunal that the issue of seniority is not adjudicated in the O.A. After the said decision of the Tribunal, the respondents have issued a notification for filling up vacancy for the post of Loco Pilot Goods Grade Rs. 5000-8000/- and the written test was held on 23.1.2006, 27.1.2006, 30.1.2006, 2.2.2006, 7.2.2006 and thereafter supplementary written examination was held on 15.2.2006 for

the aforesaid post. The name of the applicant find place at Serial No. 102 in the result of written test. The said written test also clearly provides as under:-

“Mere passing in Written test does not entitle anyone for empanelment, for which these names will be further subjected to ultimate overall assessment by the Committee based on relevant considerations like Records of Services rendered, personality, address, leadership, academic and technical qualification, D&AR/SPE/Vig clearance and attaining minimum standard cum seniority etc.”

8. It is also to be noticed that after the written examination, and the result declared on 8.3.2006, the office order dated 10.3.2006 was issued and by virtue of the said order, the officials mentioned in the said list were temporarily appointed to officiate on promotion as loco pilot (Goods) in grade 5000-8000/- and they were posted accordingly. Unfortunately, the name of the applicant could not find place in the said list. As such, the applicant filed the present O.A. The bare reading of the result of the written test dated 8.3.2006 clearly provides that mere passing in Written test does not entitle anyone for empanelment for which the names will be further subjected to ultimate overall assessment by the committee based on relevant considerations like Records of Services rendered, personality address, leadership, academic and technical qualification, D&AR/SPE/Vig clearance and attaining minimum standard cum seniority. The arguments advanced by the learned counsel for the applicant cannot be accepted to the extent as once he was allowed to appear in the selection process, he is bound to get promotion from the date when his juniors were promoted. The applicant was given due opportunity to appear in the examination. He was found eligible in the written test but there were certain conditions imposed in the result of the written test. As such, those who are qualified and found successful in the said conditions, their names were included in the final panel issued on 10.3.2006.

9. Undisputedly, the applicant was allowed to appear in the examination for promotion to the higher post and the right of an

employee to get promotion is also explained by the Hon'ble Apex Court in the case of **Jagdish Prasad Vs. State of Rajasthan and Others reported in (2011) 7 SCC-789** as well as in the case of **Hardev Singh Vs. Union of India and Another reported in (2011) 10 SCC-121**. It is observed by the Hon'ble Apex Court that the Government servant only gets right to be promotion for which, he is eligible in accordance with law and that right is not indefeasible. Apart from this, it is also observed by the Hon'ble Apex Court as under:-


“It cannot be disputed that no employee has a right to get promotion; so the appellant had no right to get promotion to the rank of Lieutenant General but he had a right to be considered for promotion to the rank of Lieutenant General and if as per the prevailing policy, he was eligible to be promoted to the said rank, he ought to have been considered. In the instant case, there is no dispute to the fact that the appellant's case was duly considered by the SSB for his promotion to the rank of Lieutenant-General.”

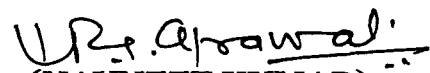
10. As observed by the Hon'ble Apex Court in the case of **Shankarsan Das Vs. Union of India reported in (1991) 3 SCC-47** **“the candidate included in merit list has no indefeasible right to appointment even if a vacancy exists.”** Not only this, as observed by the Hon'ble Apex Court in the case of **C.P. Kalra Vs. Air India reported in 1994 Supp (1) SCC 454** **“process of selection cannot be interfered with on the basis of vague allegations of an unsuccessful candidate.”** In the case of **Dr. Basavaiah vs. Dr. H. L. Ramesh and Others reported in 2010 SCC-372**, the Hon'ble Apex Court is pleased to observe that **“courts have a very limited role in academic matters particularly when no mala fides have been alleged against experts.”**

11. In the instant case, it is absolutely clear that as per the eligibility list, the name of the applicant could not find place. After the observation of the Tribunal, the applicant was allowed to appear in the subsequent selection. He appeared in the written examination, but on account of certain other conditions imposed in the result of the written examination, his name could not find place in the final select list. As such, there

appears to be no illegality in the same, and we are not inclined to interfere in the present O.A. and the O.A. is fit to be dismissed.

12. Accordingly, the O.A. is dismissed. No order as to costs.


(SHASHI PRAKASH)
MEMBER (A)


(NAVNEET KUMAR)
MEMNER (J)

v.