

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW

BENCH LUCKNOW

Original Application No.440/2009

Order Reserved on 18.3.2015

Order Pronounced 31/3/15

HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Majid Hussain aged about 58 years son of late Sri Sajid Hussain, r/o c/o Adil Abbas, House No. 391/7A, Chotae Sahab Alam Road, Noorbari Sahadatganj, Lucknow.

Applicant

By Advocate: Sri Sanjay Srivastava

Versus

1. Union of India through its Secretary, Ministry of Railways, New Delhi General Manager, N.E. Railways, Gorakhpur.
2. Divisional Railway Manager Personnel, North Eastern Railways, Ashok Marg, Lucknow.
3. Additional Divisional Railway Manager, NE Railways, Ashok Marg, Lucknow.

Respondents

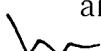
By Advocate:- Sri Narendra Nath

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act with the following reliefs:-

- i) To direct the opposite parties to include the applicant in the panel dated 8.8.2006 with all consequential benefits.
- ii) To direct the opposite parties pay the arrears of difference of pay and allowances as permissible to the applicant on the post of Guard Passenger like other similarly situated persons.
- iii) Any other order or direction which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case be also passed in the interest of justice.



2. The brief facts of the case are that in pursuance of an advertisement/ notification for filling up the post of Guard Passenger, the applicant appeared in the examination but in the final result, his name could not find place whereas number of juniors and who have secured lesser marks were given appointment whereas the applicant has been deprived of giving appointment. It is also indicated by the applicant that the applicant belongs to general category candidate and his representation in regard to discrepancy in the selection was also not examined and the respondents have passed the impugned order in 2009 rejecting the claim of the applicant.

3. On behalf of the respondents, reply as well as Supple. Counter Reply is filed and through which it is indicated by the respondents that the applicant is only High School pass candidate and the marks so awarded to the applicant are correct. It is also indicated by the respondents that no person who have secured lesser marks than the applicant is given appointment as such the allegation of the applicant is not correct.

4. On behalf of the applicant, Rejoinder Reply as well as Supple. Rejoinder Reply is filed which is taken on record and through which the applicant mostly reiterated the averments made in the O.A. and denied the contents of the counter as well as Supple. Counter reply . Apart from this, the learned counsel for the applicant has also filed tabulation sheet obtained under Right to Information Act and has indicated that the applicant has secured 58 marks whereas the persons who have secured lesser marks are given appointment. This fact however, denied by the respondents.

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

6. The respondents issued a notification for filling up the post of Guard Passenger in the pay scale of Rs. 5000-8000/-. The said

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departmental examination consists of written examination and those who will be found successful in the written examination, their service records would be assessed and those who will secure higher marks would be kept in the panel. The date of examination was to be intimated separately. Subsequently, the respondents issued the date of examination and examination was conducted and on the basis of that examination, those names who were placed in the panel, their service records were assessed and file list was prepared.

7. Admittedly, in which the applicant has secured 58 marks. It is also to be indicated that the applicant belongs to general category candidate. On the basis of final assessment of service records, the respondents issued a list/panel vide their notification which is contained at Annexure no. 5 to the O.A. and on the basis of such list, the name of the applicant could not find place. The applicant feeling aggrieved by the said panel, preferred the representation and the representation of the applicant was duly examined and the decision was communicated to the applicant. The applicant has also obtained tabulation sheet under RTI and has indicated that the persons who have secured lesser marks were given appointment whereas the applicant has been denied the benefit of placing him in the final panel.

8. It is also to be indicated that the currency of the panel was for two years from the date of approval of the same by the competent authority or till it exhausted whichever is earlier. Upon query from the learned counsel for the applicant to indicate any name of a person of general category candidate in the panel who have secured lesser marks than the applicant. The learned counsel for the applicant is unable to indicate any name of such person of general category who have secured lesser marks than the applicant.

9. The Hon'ble Apex Court in the case of **Shankarsan Dash**

Vs. Union of India reported in (1991) 3 SCC 47 has been

pleased to observe that “Candidate including in the merit list has no indefeasible right to be appointed even if the vacancy exists.”

10. In the case of **Chandra Prakash Tiwari and others Vs. Shakuntala Shukla and others** reported in (2002) 6 SCC 127, the Hon’ble Apex Court has been pleased to observe that “*no right can be claimed when a candidate appeared in the examination without any protest.*”

11. In the case of **Indian Airlines Corporation Vs. Capt. K.C. Shukla and others** reported in (1993) 1 SCC 17, the Hon’ble Apex Court has been pleased to observe as under:-

“2. Whether the decision of the High Court is well founded on various aspects shall be examined presently but the alternative relief granted by the High Court probably in an anxiety to be fair and just to those others who had been selected by reducing the interview percentage to 12.5% then working out proportionally the marks obtained by respondent on ACR evaluation and interview and directing to promote him as by this method he would secure the minimum required cannot be accepted as proper exercise of jurisdiction under Article 226. Adjusting equities in exercise of extraordinary jurisdiction is one thing but assuming the role of selection committee is another. The Court cannot substitute its opinion and devise its own method of evaluating fitness of a candidate for a particular post. Not that it is powerless to do so and in a case where after removing the illegal part it is found that the officer was not promoted or selected contrary to law it can issue necessary direction. For instance a candidate denied selection because of certain entries in his character roll which either could not be taken into account or had been illegally considered because they had been expunged the Court would be within jurisdiction to issue necessary direction. But it would be going too far if the Court itself evaluates fitness or otherwise of a candidate, as in this case.”

12. In the case of **Mehmood Alam Tariq and Others vs. State of Rajasthan and Others** reported in 1988 3 SCC 241, the Hon’ble Apex Court has been pleased to observe that “in the selection process interference is normally not called for in mode of conducting a selection by the authorities.”



13. The Hon'ble Apex Court also observed that the Court cannot assume the role of selection committee and evaluate the fitness of the candidate for a particular post.

14. It is also to be pointed out that the process of selection begins with the issuance of advertisement and ends with the filling up of notified vacancies. The process consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment. Normally the task of selection is assigned to a selection committee and the function of such a committee is to select those amongst the eligible candidates on the basis of merit adjudged by adopting fairly laid down criteria and finally preparing a panel or select list of the successful or selected candidates. The persons having better grade were including in the select list. In the case of **K. H. Siraj Vs. High Court of Kerala and Others reported in (2006) 6 SCC 395**, the Hon'ble Apex Court has been pleased to observe that "**apart from the fact that the appellant petitioners who are not eligible candidates are not entitled to contest the validity of the select list on this ground.**" In the Constitution Bench decision in the case of **Shankarsan Dash Vs. Union of India (supra)**, the Hon'ble Apex Court has been pleased to observe that "**though a candidate has passed an examination or whose name appears in the list does not have an indefeasible right to be appointed, yet appointment cannot be denied arbitrarily nor can the selection test be cancelled without giving proper justification.**"

15. Admittedly, the applicant appeared in the selection and when his name was not found place in the final list, he has agitated the same. In fact, the applicant could not be placed in the merit list on

account of marks obtained by him, as such, he was not given appointment on the post of Guard Passenger.

16. Considering the observations of the Hon'ble Apex Court as well as submissions of the parties and after perusal of records, we do not find any reason to interfere in the present O.A.

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

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

Navneet Kumar
(Navneet Kumar)
Member (J)

HLS/-