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62/89

Dated: 20/12/94.

None for the applicant.
Respondents by Sh. V. G. Rege.

This matter be kept before a Bench of which Sh. P. P. Srivastava is not a member.

Adjourned to 17/1/95.

(P. P. Srivastava)
MCA)

(B. S. Hegde)
MCJ)

17/1/95

None for the appheant.

Shri. V. G. Rege for the respondents.

Judgment reserved.

(M. R. Kolhatkar)
MCB)

(B. S. Hegde)
M(J)

24.4.95

Sh. GK Masand Adv fd the applicant Sh. VG Rege Adv fd the respondents.

Judgment pronounced in open court.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.Nos. 65/89, 66/89 and 67/89

O.A. 65/89

S.S. Verma

O.A. 66/89

S.S. Amrite

O.A. 67/89

N.K. Gupta

Applicants

Vs.

1. Union of India, through the General Manager, Central Railway, Bombay V.T.
2. Chief Engineer (Open Line) Civil Engg. Department, Bombay V.T

Respondents

CORAM : 1. Hon'ble Shri.B.S.Hegde, Member (J)
2. Hon'ble Shri.M.R.Kolhatkar, Member (A)

Appearances

1. Applicant in person in O.A. 66/89
None for applicants in O.A. 65/89 and O.A 67/89

2. Shri.V.G.Rege, Counsel for the respondents

JUDGMENT DATED : 24-4-95

(Per.Shri. M. R. Kolhatkar, Member (A))

These three O.As have similar facts and therefore they are being disposed of by a common order. The applicants in O.A. 66/89 and O.A. 65/89 have retired. Reasons for the order are given in the Order for O.A 66/89.

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O.A. 66/89

2. Applicant has challenged the selection list of Assistant Engineers drawn by D.P.C of Central Railway on 21.9.88 vide Annexure 'D' at page 43. The selection was from Group 'C' posts to Group 'B' posts. The mode of selection was laid down in the Central Railway headquarter letter dated 24.5.1988 at Annexure 'B', page 26. Officers in Group 'C' in the scale of Rs.700 - 900 and Rs.840 - 1,040 drawn from six streams namely PWIs, IOWs, BIRs, Draughtsmen, Workshop Foreman/Shop Superintendents and Tract Machine Foreman were to be considered on the basis of an integrated seniority list. Three times the number of vacancies were to be considered. The panel dated 21.9.88 does not contain the applicant's name and the applicant has challenged the panel on several grounds. Firstly, it is contended that the integrated seniority list was defective in as much as it included several officers in Group 'C' who were junior to the applicant. Secondly, although the number of officers to be selected was only 50, more than three times the requisite were called, amounting to 182. Thirdly, although the confidential records of merely 3 preceding years were to be considered, the DPC considered confidential records of 5 to 10 years. Moreover, the marks were to be awarded on the basis of written test, viva voce test and record of service but the respondents departed from this guideline and ignored the special awards of recognition received by the applicant and adopted the procedure of negative marking as a result of which inspite of the overall quality of record of service, persons having some record of penalty in the past were left-out.

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It is also contended that some persons who were still undergoing penalty or have just finished penalty such as S/Shri. B.K.Kampani, G.P.Pradhan and A.R.Jaywant were selected in the panel. According to the applicant therefore, the panel is vitiated and therefore he seeks relief of either quashing the panel or alternatively to consider the claim of the applicants afresh by looking into the service records of only three years preceding the date of selection and further not resorting to negative marking and if found suitable on that basis, to place the applicant on the panel.

3. The respondents have opposed the O.A. It is noted, however that the respondents have filed two written statements. There is one written statement dated 31.12.1993 from Senior Personnel Officer and also an affidavit of Shri. P.Ponnuswamy, Chief Electrical Traction Engineer dated 31.12.1993. The written statement dated 31.12.93 states that the A.C.Rs of preceding 3 years namely 1985-86, 86-87 and 87-88 were considered. However, Shri.Ponnuswamy's affidavit states that A.C.Rs for the preceding 5 years i.e. 1983-84, 84-85, 85-86, 86-87 and 87-88 have been considered. The second written statement/ affidavit dated 11.3.1994 filed by Shri.K.Chandrasekharan, Sr.P.O (Engineering) states that A.C.Rs of preceeding 5 years were taken into account for preparing the panel. The Railways have also filed an application for withdrawing the earlier affidavit as it is stated to be only a draft.

4. The standing instructions on the subject state that the record of service either for 3 years or 5 years as decided by the Zonal General Manager are to be considered. In the Central Railway, the practice is stated to be to consider record of service for the

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preceding three years.

5. Apart from this inconsistency, the respondents have denied all other allegations made by the applicants regarding integrated seniority list being defective, more candidates than three times the requisite number being called, adoption of negative marking and the ignoring of awards and recognition etc. So far as the specific case of the applicant is concerned, it is stated that the applicant has failed to secure minimum marks under the head 'Record of Service' and therefore was not considered. Regarding the three officers brought on the panel although undergoing penalty, it is stated that the allegation did not apply to Shri.A.R.Jaywant and so far as S/Shi.B.K.Kampani and G.P.Pradhan were concerned, the orders were cancelled as it was noticed that the fact of their undergoing punishment was overlooked. The respondents have also contended that not only does the applicant not deserve to be considered on merits but the application is liable to be dismissed.on grounds of limitation.

6. We are concerned regarding inconsistency in the affidavits filed by the respondents on the two successive dates, namely on 31.12.93 and 11.3.94. The explanation that the original affidavit was in the nature of a draft and it came to be filed through oversight does not carry conviction. It appears that the respondents wanted to cover up their mistakes of having considered 5 years' confidential records when the standing instructions only envisage consideration of three years' ACRs. Moreover, the fact that the names of officers undergoing punishment was allowed to be included in the panel and later-on after the mistake came to notice, allowing them to be

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promoted after the period of penalty was over, indicates that the respondents have not followed the instructions on the subject meticulously. The allegation regarding negative marking appears to carry conviction because all the three applicants have a record of having undergone penalty in the earlier years. Apparently, the respondents instead of making assessment of the record in accordance with the grading of C.Rs i.e Outstanding, Very good, Good etc., and awarding marks on that basis, have followed a practice of wholesale exclusion of officers who had some punishment in their record in the past. The contention of the applicant in O.A. 66/89 that his awards and recognitions as enumerated by him at page 8 of the application have been ignored also appears to be borne-out because the applicants have merely stated that the record of service of the applicants was taken into account and no reference to specific items enumerated by the applicant has been made. In order to put the matter beyond pale of doubt, we directed the department to produce Annual Confidential Reports of the applicants and also the proceedings of D.P.C.

7. So far as the proceedings of DPC are concerned, the position is as below :

S. No.	Item	S.S Verma	S.S Amrite	N.K Gupta
1.	Professional Ability	39/50	34½/50	34½/50
2.	Record of service	15/25	11/25	12/25
3.	Personality	10/25	17½/25	10½/25
		64/100	63/100	57/100

8. From the above, it is clear that Shri.S.S.Verma has failed on account of getting less mark under the head of personality. Shri.S.S.Amrite has failed on account of getting less marks under the head 'record of service' and

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Shri. N.K. Gupta has failed on account of getting less marks both under 'Record of service' as well as under 'Personality'. Since the whole attack of the applicants is to the effect that wrong marking has been done on account of 'record of service' we are required to leave out the cases of officers who have failed not merely on account of record of service but on account of personality. This is the case in respect of S/Shri. S.S.Verma and N.K.Gupta. We are therefore left only with the case of Shri.S.S.Amrite who has failed solely on account of record of service, where the theory of negative marking would hold good. The Department has submitted that there are following entries in respect of Shri.S.S.Amrite regarding the penalty imposed on him :

> "1. Withholding of one set of pass for year in 1988 on the charge of failure to ensure proper maintenance in laying of tracks resulting in derailment of wagon on 8/1/87 in Karjat yard. This order was set-aside by C.A.T in O.A. 469/89 on 3.9.1991.
>
> 2. The second charge is failure to ensure proper maintenance of laying of tracks in Karjat yard resulting in derailment on 25/1/87 for which SCM for reduction to lower stage was issued on 5.2.88 "

9. On the other hand, Shri.Amrite contends that his record of service was wrongly treated as being below average because of various developments relating to penalties which he tried to bring to the notice of the department but the same were not taken into account. According to him, in O.A. 471/89 decided on 25.10.1989, this Tribunal quashed the penalty and directed the respondents to treat the Memorandum dt. 5.2.88 as a show-cause notice issued to the applicant and to pass appropriate order after considering the representation of the applicant.

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In O.A. 469/89 decided on 3.9.91, the penalty imposed on the applicant was quashed by the Tribunal on the ground that the applicant was prejudiced by not giving a copy of the Enquiry Officer's report. It appears that the department subsequently took action and therefore penalties referred to above came to be imposed on the applicant. However, the fact remains that as contended by the applicant although proceedings were initiated earlier for imposing a major penalty, the same ended in imposing a minor penalty and therefore the DPC was prejudiced against the applicant because it proceeded on the basis that the applicant was subjected to major penalty.

10. We are therefore of the view that a patent injustice has been done to the applicant in O.A. 66/89 (Shri.S.S.Amrite) by adopting the system of negative marking and in the context of the facts mentioned by us above. It also appears that the Annual Confidential Reports of the officer have generally been good and adverse remark to the effect (unfit for promotion) was subsequently expunged. We are therefore of the view that in this particular case intervention by the Tribunal would be justified. We are therefore required to consider as to what relief is to be given and we dispose of the O.As by passing the following order :

O R D E R

O.A. 66/89 is allowed. While not quashing the panel the respondents are directed to consider the applicant in O.A. 66/89 for promotion as Assistant Engineer by constitution of a Review D.P.C. They should

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consider the eligibility of the applicant for promotion by looking into his service record for only three years preceding the date of selection and further not resorting to negative marking and more over taking into account the awards and recognitions which appear at page 8 and if found suitable, on that basis, to promote the applicant notionally and give him consequential benefits including the benefit of arrears of pay. Since the applicant has retired, the appropriate benefit by way of recalculation of quantum of pension should also be given. There would be no orders as to costs.

O.As 65/89 and 67/89 are dismissed as being devoid of merit for the reasons given earlier.

(M.R.KOLHATKAR)
MEMBER (A)

(B.S.HEGDE)
MEMBER (J)

J*