

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
J A I P U R.

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OA No.588/1993

Date of order: 25.7.1996

Kishan Asnani ; Applicant

Vs.

The Union of India and others : Respondents

Mr.Kishan Asnani, applicant in-person
Mr.Manish Bhandari, counsel for the respondents

CORAM:

HON'BLE SHRI C.P.SHARMA, MEMBER (ADMINISTRATIVE)
HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI C.P.SHARMA, MEMBER (ADMINISTRATIVE))

In this application under Section 19 of the Administrative Tribunals Act, 1985, Shri Kishan Asnani has prayed that a fresh Selection Board may be held as on 26.4.1993 to consider the suitability of the applicant for promotion as AAO (Assistant Accounts Officer) by ignoring the uncommunicated adverse remarks and by giving due weightage to the remarks given by the FA & CAO regarding the quality of the applicant's performance as cited in applicant's appeal dated 11.6.1993 (Annx.A-3). He has further prayed that in case the Selection Board to be so constituted finds him suitable for promotion as AAO, he should be promoted from the date of his next junior ~~emp~~ promoted in 1993 and if the applicant is promoted he should be declared as entitled to all consequential benefits.

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2. The facts of the case as stated by the applicant are that he joined the Accounts Department in the Railways on 22.3.1957 and got promotions on various grades and posts from time to time. At the time of filing the application, the applicant had been working as Senior Inspector of Stores Accounts since 25.9.1985. For promotion to Group 'B' post of AAO, the applicant appeared for viva-voce before the Selection Board at Bombay on 26.4.1993. However in the panel for promotions to the Group 'B' posts of AAO, declared vide Annexure A-1 dated 5.5.1993 by respondent No.2 the name of the applicant was missing. Earlier the applicant had already been declared as passed in the written test held on 28.2.1993, by securing 60% marks and he had also been declared medically fit for promotion to the post of AAO. Against dropping of the applicant's name from the panel for promotion to the post of AAO, the applicant preferred an appeal dated 11.6.1993 (Annx.A-3) to respondent No.1 but it was rejected by respondent No.2 vide his letter dated 22.7.1993 (Annx.A-2) without assigning any reasons. The applicant was the only candidate in the Indian Railways who passed all the three groups of Appendix-III-A Examinations (Departmental) and had also successfully worked as TIA/50/ISA and no adverse entry in his confidential reports was communicated to him during the last 10 years. He had also managed the affairs of the materials/stores of which he was Incharge quite properly and successfully. However, no weightage was given for his performance in this regard by the Selection Board while adjudging his

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suitability for promotion. As per the information of the applicant, not merely the ACRs of the last five years but the entire service record and the confidential reports of the applicant were placed before the Selection Board. His ACRs have been rated as 'Average', 'Poor' and 'Not fit for promotion' for Group B posts. These have adversely affected his career and he was wrongly knocked out of the race for promotion by awarding him no marks in the viva-voce even-though the respondents were aware that the applicant had secured the highest marks in the written test. No reasons were recorded for non-inclusion of his name in the panel. Adverse entries in the ACRs are not to be relied upon for denial of promotion, unless these are communicated and the affected employee is given an opportunity to represent his case. The selection for promotion was to be on the basis of seniority-cum-merit, meaning thereby that the senior most eligible person was to be selected for promotion regardless of his juniors being better.

3. The respondents in the reply have stated that the assessment of the performance of the applicant for promotion was to be on the basis of the instructions dated 19.10.1991 presented as Annexure R-1. By these instructions the selection has been divided in two parts. One is the written test and the other is the viva-voce and the service record. Whenever promotions are made on the basis of selection, the marks are

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divided in the following manner:

	<u>Max. marks</u>	<u>Qualifying marks</u>	<u>Remarks</u>
Written Test	150	90	
Viva-voce	25)		Including at least 15 marks in record of service.
Record of service	25)	30	

The candidates who have obtained 60% marks in the written test get an opportunity to appear in the ~~viva voce~~, but in the viva-voce one is required to secure a minimum of 30 marks out of 50. These 50 marks are further sub-divided into two groups of 25 each; one for viva voce and the other for record of service. A candidate to be eligible for promotion has to secure at least 15 marks out of 25 in each of these sub-groups. If a candidate fails in the viva-voce or fails to secure the requisite marks on the basis of his service record, his name cannot be included in the panel. According to the respondents the applicant had failed to secure the requisite marks allotted for viva-voce and service record and therefore his name could not be included in the panel. Passing of the examination Appendix-III-A (Departmental) is for the purpose of selection to secure a higher grade and not for the purpose of promotion. The respondents had offered to produce the entire record of selection to show the position of the applicant which led to his name not being included in the panel. They have added that the service record

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of only last five years and not the entire service record was considered by the Selection Board. Further according to them there were no adverse un-communicated entries in the ACRs of the applicant. Further according to them, the post on which the applicant was seeking promotion is a selection post, to be filled up in accordance with the procedure prescribed in the Board's Circulars.

4. The applicant had also filed a Misc. Application, No.193/94, in which he had prayed that certain records may be summoned for the perusal of the Tribunal. This MA was partly allowed on 28.4.1994 and a direction was issued to the respondents to produce records listed at items (a), (b), (c), (e) and (f) of the MA which included the ACRs of the applicant for the last five years before selection but excluded the ACRs of certain other officers which the applicant had desired to be produced before the Tribunal. The proceedings and minutes of the selection committee were also ordered to be produced as per the prayer made in this Misc. application. Subsequently on 6.10.1994 the Tribunal had sought clarification from the respondents regarding award of marks on the basis of grading in the ACRs as prescribed in the circular-letter dated 19.9.1988 issued by the Railway Board, copy of which was produced by the respondents on that day and which is on our record. As per this circular/letter, for an outstanding ACR 5 marks were to be awarded, for 'very-good' ACR 4 marks were to be awarded, for 'good' ACR 3 marks

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were to be awarded, for 'good/not fit' 2.5 marks were to be awarded, for 'average' ACR 2 marks were to be awarded and for a 'below average' ACR one mark was to be awarded. The Tribunal had desired to know why 2.5 marks were to be awarded for an ACR wherein the employee has been graded as 'Not fit', whereas, an employee whose ACR is graded as 'average' gets two marks. This clarification has not been furnished by the respondents. We however, find that it is possible to dispose of the present matter without considering any clarification on this point.

5. We have heard the applicant and perused the material on record including the records produced before us today by the departmental representative Mr.S.Subramaniam, Section Officer, Western Railway, Headquarters, Churchgate, Bombay.

6. We have gone through the ACRs of the applicant for the last five years beginning from the year 1988-89 and ending with 1992-93, which were considered by the Selection Board. It appears that the Selection Board has given the gradings on the basis of the circular/letter dated 19.9.1988 to which a reference has been made above. We find that the applicant has been given marks correctly for the ACRs on the basis of these instructions. There is no remark 'Unfit for promotion' in the ACR of the applicant for any of these five years. The remarks are either 'Good' or 'Average'. Marks have been correctly assigned for these ACRs. In fact, for the year 1991-92 higher marks have

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been assigned to the applicant than those justified by the over all grading in the ACR. The applicant failed to secure the minimum 15 marks on the basis of the ACRs which was a pre-requisite for the empanelment for promotion. We have perused the minutes of the DPC and we find that there is nothing irregular in their proceedings which calls for our interference. In the circumstances, we find no merit in this CA and it is, therefore, dismissed with no order as to costs.



(Ratan Prakash)
Member (J)



(G.P. Sharma)
Member (A)