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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 03.07.2000

OA No.166/1997

Radhey Shayam Chaudhary S/o Shri Hashi Lal Chaudhary, aged about 40 years, at present employed on the post of FWN under CPWI (S) Kota Western Railway under Senior Section Engineer (Western Railway, Kota Division, Kota).

.. Applicant

Versus

1. Union of India through General Manager (E), Western Railway, Churchgate, Mumbai.
2. Senior Divisional Engineer (E), Kota Western Railway, Kota Division, Kota.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant

Mr. U.D.Sharma, counsel for the respondents

CORAM:

Hon'ble Mr. Justice B.S.Raikote, Vice Chairman

Hon'ble Mr. H.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. Justice B.S.Raikote, Vice Chairman

This application is filed for inserting the name of the applicant in the panel vide Ann.A1 without taking into account the adverse ACFs for the year ending 31.3.1995 and 31.3.1996.

2. The learned counsel for the applicant submits that the DFC has considered the adverse remarks which have been expunged, while looking into the service records of the applicant. These adverse remarks have already been expunged but these could not be considered by the DFC. If there is no adverse remarks, the applicant would be entitled to be empanelled alongwith the persons in Ann.A1 for promotion to the cadre of Assistant Engineer, Group-B.

3. As against this argument, the contention of the learned counsel for the respondents is that the overall performance of the applicant was considered while considering his service records. Even if the adverse remarks are expunged his overall grading remains the same, therefore, there is no merit in this application.

4. We have to note some admitted facts. It is an admitted fact that the applicant passed the viva-voce and written examination but he was declared failed only because he could not secure sufficient marks assigned to the record of service. The total marks assigned are 25. In this context, the learned counsel for the applicant admits that while assessing the records, the DPC has considered the CRs for the year ending March, 1995 and March, 1996. While in the CR for the year ending March, 1995, the adverse entries had already been expunged but the CR for the year ending March, 1996 was considered alongwith the adverse entries though expunged later. He also submitted that the said adverse entries have been expunged under Ann.A7 dated 26.7.1991. He also brought to our notice the adverse entries dated 26.9.1996 (Ann.A8) and the same have been expunged on his representation under Ann.A10 dated 18.11.1996. It appears that as on the date of consideration by the DPC, the adverse entries in the CR of 1995 had stood expunged but in the CR of 1996 the adverse entries were still in existence and it was expunged only subsequent to the DPC meeting. As a result, the DPC considered the adverse entry for the year ending March, 1996 as an adverse entry even though the same has been expunged later. From this, it follows that the consideration by the DPC as on the date of consideration of other cases, taking the applicant's adverse entry in the applicants CR for the year ending March, 1996 would be unjustifiable as the same has been expunged subsequent to the DPC. In view of the matter, we find that the case of the applicant requires to be considered afresh by the DPC keeping in view the fact that the adverse entries made against him in the CR for the year ending March, 1996 have been expunged. For the above reasons, we pass the order as under:-

The application is allowed. The respondents are directed to call a Review DPC to consider the case of the applicant afresh taking the adverse entries made against the applicant in the CR of the year ending March, 1996 as expunged. On such consideration, if the applicant qualifies, he is entitled to be empanelled under Ann.A1 as per the marks obtained by him with all consequential benefits. These directions shall be complied with

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within three months from the date of receipt of a copy of this order.

No order as to costs.



(N.P. NAWANI)

Atm. Member



(E.S. RAIKOTE)

Vice Chairman