

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.933/04

, this the 22nd day of November, 2005.

CORAM

HON'BLE MR.M.P.SINGH, VICE CHAIRMAN
HON'BLE MR.MADAN MOHAN, JUDICIAL MEMBER

Rajendra B.Agarwal
Senior Section Officer
SAO(S&C) Office
Western Railway
Ratlam.

Applicant

(By advocate Shri S.L.Vishwakarma)

Versus

1. Union of India through
General Manager
Western Railway
Churchgate, Mumbai.
2. Financial Advisor & Chief Accounts Officer
Western Railway
Churchgate, Mumbai.
3. Shri S.K.Dhavan
A.A.O. (Appropriation)
Railway Board
New Delhi.
4. Smt.Divya Bhuvandas
Asstt.Financial Advisor (FE&AJ)
FA&CAO's Office
Western Railway
Churchgate, Mumbai.
5. Shri M.S.Juneja
AAO(PC)
Railway Board
New Delhi.
6. Shri Prashant Kale
Asstt.Financial Advisor (Books)
FA&CAO's Office
Churchgate, Western Railway
Mumbai.
7. Smt.Vani Murthy
Sr.Section Officer (Accounts)
(E-Bills Section)
FA&CAO Office, 7th Floor
Western Railway
Churchgate, Mumbai.

Respondents.

(By advocate Shri Y.I.Mehta along with
Smt.S.H.Mehta)



O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant has claimed the following reliefs:

- (i) Quash FA&CAO's letter dated 8.7.04 Annexure A1.
- (ii) Hold and decide that the 'Average' grading in the CR if any may be expunged as the applicant has not been conveyed the same so far and the same being below bench mark for further promotion of applicant.
- (iii) Declare that Annexure A2 in so far as the same does not include the name of the applicant for promotion to the post of AAO Group 'B' is illegal and unlawful and direct the respondents to include the name of the applicant in the panel of AAO's notified on 20.5.04 A-2 and promote the applicant to the post of AAO from the due date with arrears of salary or in the alternative scrap the panel and order fresh selection.

2. The brief facts of the case are that the applicant is working as Sr. Section Officer in the office of Sr. Accounts Officer (C) Ratlam for the last 14 years. During this period he has been awarded 3 casg awards in 1991-92, 1995-96 and 2003-04 vide Annexure A6, A7 & A8 respectively. Applicant appeared in the written test for the post of Assistant Accounts Officer (Group 'B') and passed the written test. 12 senior employees above the applicant failed in the written test and therefore the applicant was at S.No.1 i.e. senior most amongst the competitors. Applicant did well in the interview. However, applicant has been dropped and persons junior to him including one Smt. Vani Murthy against whom a decision to initiate major penalty was already taken have been included in the panel. Applicant was dropped due to alleged 'Average' confidential reports during previous years. Bench mark for promotion to AAO's post was mutually decided to be 'Good'.



Applicant was never punished during entire service career. It is alleged that there had been not a single occasion to warn or reprimand the applicant so far. Applicant's Confidential Reports have been downgraded to his detriment during 1999-2000 to 2002-2003 due to prejudice and bias by SAO(C) Shyamlal Verma. Since he has retired, he has not been made a party. Downgrading of confidential reports adversely affected the applicant's promotional avenue and the said remarks were not communicated to the applicant. Hence this OA is filed for inclusion of his name in the panel.

3. Heard learned counsel for the parties and perused the records carefully. It is argued on behalf of the applicant that adverse rating in the confidential report adversely affecting the employee's career is considered to be adverse and such remarks are to be communicated to the employee. The applicant has not been communicated such adverse remarks in his confidential reports. The applicant should have been considered and treated as meritorious and eligible for promotion. Hence he is entitled for the reliefs claimed.

4. In reply, learned counsel for the respondents argued that the applicant may feel that he fared well in the viva voce but it is not his feeling which is important as compared to the view of the DPC members who gave him marks according to their appreciation. The reference to cash reward is irrelevant because the DPC had to consider only last five years CRs and Annexure A6 & A8 pertain to very old dates and even Annexure A8 was for the concerned authority writing and reviewing the ACR and DPC and is concerned only with consideration of overall remarks for last 5 years. The applicant was not found fit by



the DPC, therefore, the name of the applicant did not appear in the selection list. The charge sheet was issued against respondent No.7 after notification Annexure A1 but promotion order of her has not been issued for this reason and thus, there is no irregularity. Non finding of the name of applicant is on its own merits and cannot be labelled as serious irregularity as he did not reach the standard according to the guidelines issued by Railway Board. Vacancy was for 14 posts for general candidates and only those who reached the required standard were empanelled. So far as para 4.15 of the OA is concerned, the applicant is stating his own notions/ version about the grading in his confidential reports hence denied. The 'Average' remark does not require to be communicated to the applicant as it does not amount to 'adverse remark' and any self appreciation by the applicant is not relevant. Hence the action of the respondents is perfectly legal and justified.

5. After hearing learned counsel for both parties and perusing the records, we find that the applicant has mentioned in para 4.12 of the OA that the panel notified on 20.5.04 Annexure A1 contained the name of Smt. Vani Murthy, against whom investigations were completed and a decision to issue charge sheet for imposing major penalty was already taken by competent authority. The circumstances under which her name was included in the panel and the name of the applicant dropped is a matter of serious irregularity on the part of the respondents. This fact is specifically denied by the respondents in the reply and has mentioned that the charge sheet was issued to her after notification of A-1 panel but even promotion order in her favour



has not been issued for this reason. Hence they have not committed any irregularity. The applicant has not controverted this fact in his rejoinder. Hence the above fact mentioned in the OA is against record and not correct. So far as the performance of the applicant in the viva voce is concerned, it cannot be accepted. In this regard, the argument advanced on behalf of the respondents is that the decision is to be taken by the competent authority about his performance in the viva voce test and not by the applicant himself. He was not even found eligible in the viva vice test. Applicant cannot question the decision taken in this regard by the respondent authority. So far as downgrading in his ACR during 1999-2000 to 2002-2003 is concerned, being average, and the cash reward for three times, the respondents have argued that sanctioning of cash reward is not relevant in the matter of ACR of an employee. 'Average' remark is not an adverse remark, hence the respondents did not communicate the same to the applicant. This argument of the respondents seems to be legally correct. The applicant could not show any document about his downgrading.

6. Considering all facts and circumstances of the case, we are of the considered view that the OA is liable to be dismissed. Hence the OA is dismissed as having no merit. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

aa.

मृष्टांकन दो ओ/च्या..... जबलपुर, दि.....
प्रतिविधि दायरे दिन:

- (1) राधिय, जरा नवाब नाम का द. विश्वासन, जललनुर
- (2) आंदेजा दीपेंद्र, जा..... के बहुंसल Dr. Deependra
- (3) प्रत्यक्षी श्री/स्त्री/कु..... के ज्युरेन Dr. Ratlam
- (4) बंदायला, के प्राप्त जारी कराये गये

सूचना एवं आवश्यक कार्यालय (प्राप्ति) का

29/11/03 द्य रजिस्ट्रार

Y. I. mchfa ADV
INDOR

25/11/03