

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

10th February
Jaipur, the 10th day of January, 2008

ORIGINAL APPLICATION NO.514/2005

CORAM :

HON'BLE MR.N.D. RAGHAVAN, VICE CHAIRMAN
HON'BLE MR.J.P.SHUKLA, ADMINISTRATIVE MEMBER

Yugul Kishore Meena son of Shri Kishan Lal Meena, age 49 years, resident of 615/A, Railway Colony, Kota Junction, Kota presently working as CTNL, West Central Railway Kota.

... Applicant

(By Advocate : Shri P.V. Calla)

Versus

1. Union of India through Chairman, Ministry of Railway, Railway Board, New Delhi.
2. General Manager, West Central Railway, Jabalpur (MP).
3. Divisional Railway Manager, West Central Railway, Kota Division, Kota.

... Respondents

(By Advocate : Shri V.S. Gurjar)

ORDER

PER HON'BLE MR.J.P. SHUKLA

The applicant has filed this OA thereby praying for the following relief :

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"(1) The original application preferred by the applicant may kindly be allowed and the respondents may be directed to promote applicant on the post of AOM/ATM group B grade 7500-12000 from the date when the other selected persons

have been given promotion. The respondents may further be directed to allow all consequential benefits to the applicant.

- (2) Any other order or relief which this Hon'ble Tribunal thinks just and proper in the facts and circumstances of the case may kindly be passed in favour of applicant.
- (3) Cost of the original application be awarded in favour of the humble applicant."

2. Briefly stated, facts of the case are that the applicant was initially appointed as Goods Guard on 05.01.1978. Thereafter, he was promoted on the post of ATNL in the pay scale of Rs.5500-9000 on 19.06.1991 and subsequently on the post of Deputy CTNL in the pay scale of Rs.6500-10500 on 01.11.1992. Vide order dated 08.07.2003, the applicant was given ad-hoc promotion on the post of CTNL, pay scale Rs.7500-12000/-.

3. The office of the Chief Personnel Officer, West Central Railway issued a notification dated 15.07.2004 (Annexure A/2) for selection to the posts of AOM/ATM Group 'B' scale Rs.7500-12000 Operating Department Quota. It was mentioned in the notification that the panel of nine employees comprising of five candidates from general category, two from SC category and two from ST category shall be prepared. The list of employees coming in the zone of consideration was annexed alongwith the notification. The name of the applicant was mentioned at sr. no. 27 in the annexed list. Pursuant to the notification, the applicant submitted his willingness on 23.07.2004. He was called in the written test and was declared successful. Thereafter, he appeared in the medical examination and in that too, he was found fit and was directed to appear in the viva-voce examination, which was held on 24.09.2004. However, vide order dated 18.10.2004 the name of the applicant was left out ⁱⁿ the list of successful candidates. The applicant submitted that no reason was assigned why his name was not included in the list of successful candidates. Though in the notification, two posts were reserved for ST Candidates and only one person named, Shri S.R. Meena, who was junior to the applicant, was selected and was given appointment and thus one post of ST category has been left vacant. Applicant further submitted that he was the appointee of the year 1978 and was having outstanding

service record and in his entire service career, no charge sheet or show cause notice was ever issued to him. It is also submitted that keeping in view the applicant service record, the respondents vide order dated 24.01.2005 (Annexure A/6) confirmed the applicant on the post of CTNL.

4. The applicant has also served a legal notice dated 26.09.2005 (Annexure A/7) stipulating all the facts and call upon the respondents to give reasons why his name was not included in the list of selected candidates. But no reply was given by the respondents to his legal notice.

5. The applicant further submitted that the Hon'ble Supreme Court in the case of **R.C. Srivastava vs. Union of India** held that no candidate, declared successful in the written test, can be failed in the viva voce. It is further submitted that the principles of natural justice has been violated and the respondents has infringed the fundamental rights of the applicant enshrined under Article 14 & 16 of the Constitution of India, therefore, the OA deserves to be allowed.

6. The respondents have filed their reply. In their reply, it has been stated that the Departmental Promotion Committee assessed the performance of the applicant and based on his performance in the written examination, viva-voce, record of service and position of the applicant in the integrated seniority, did not find the applicant fit for empanelment. This fact has been recorded in the selection proceedings, which was approved by the General Manager, West Central Railway. The respondents have also stated that there is no illegality, arbitrariness and unreasonableness in their action. The respondents have stated that the applicant was not promoted as CTNL in Group 'B' vide order dated 24.01.2005 (Annexure A/6) but he was promoted as CTNL Group 'C' vide this order. It is also submitted that the judgement referred to and relied upon by the applicant is not applicable to the present case for the reason that the facts & circumstances of the case referred to and relied by the applicant are entirely different from the facts & circumstances of the present case. The respondents in their reply have stated that the Hon'ble

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Apex Court in the case of **UPSC vs. Hiranyalal Dev**, AIR 1988 SC 1069 held that the powers to make selection are vested with the Selection Committee under the relevant rules and the Tribunal could not have played role which the Selection Committee have to play. The Tribunal could not have substituted itself in place of the Selection Committee and made the selection as if the Tribunal was exercising power of the Selection Committee. They have further stated that the Hon'ble CAT, Jabalpur Bench, while deciding a similar controversy in CCP No. 38-2004 followed the UPSC CASE (SUPRA).

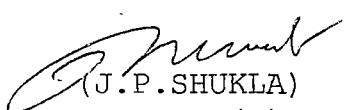
7. The applicant has also filed rejoinder simply reiterating the facts, already stated in his OA. However, he has also stated in his rejoinder that the respondents vide letter dated 01.06.2005 (Annexure A/9), which was served upon him on 25.06.2005, communicated certain adverse remarks for the year ending 31.03.2005. Against the so called adverse remarks, the applicant submitted a detailed representation dated 18/23.07.2005 (Annexure A/10) and prayed that the adverse remarks conveyed to him may kindly be withdrawn. According to the applicant, adverse remarks communicated to the applicant cannot be taken into consideration as the same have been conveyed with oblique motive and that too after regular promotion of the applicant on the post of CTNL, which was made after looking into the service record.

8. During the course of arguments, learned counsel for the applicant submitted that the service record of the applicant was excellent and, therefore, he was confirmed on the post of CTNL vide letter dated 24.1.2005 at Annexure A/6. It clearly shows that the respondents have committed illegality in disallowing the applicant in the list of successful candidates. He also submitted that in the notification dated 15.07.2004, two posts were reserved for the ST candidates whereas only one person named Shri S.R. Meena, who was junior to the applicant, has been given appointment and thus one post meant for ST candidates is still vacant.

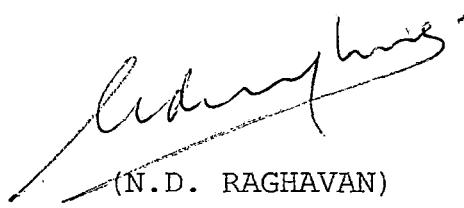
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9. On the other hand, learned counsel for the respondents argued that Departmental Promotion Committee had assessed all the candidates. The applicant has secured the lowest marks and, therefore, the DPC has not found the applicant fit to be given appointment to the post of AOM/ATM Group 'B'. Learned counsel also argued that applicant has not impleaded any one who was in the panel as necessary party. Moreover, he has not raised any mala-fide against any of the member of the Selection Committee.

10. After hearing the parties and perusal of all the records produced by the respondents including DPC proceedings and ACRs of the applicant, we find that overall consideration by the DPC and Respondents is not legally flawed and no arbitrariness or injustice has been caused to the applicant. Accordingly, the present OA does not call for any interference by the Tribunal and the same is dismissed with no costs.



(J.P. SHUKLA)
MEMBER (A)



(N.D. RAGHAVAN)
VICE CHAIRMAN

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