

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 1st day of December, 2008

ORIGINAL APPLICATION No.237/2007

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR.B.L.KHATRI, MEMBER (ADMINISTRATIVE)

Vinod Kumar Bhatnagar
s/o Shri Ram Kishan Bhatnagar,
MCF (Master Craft), Daurai,
Ajmer r/o 71-C, Gali No.30,
Nayee Basti,
Ram Ganj, Ajmer.

.. Applicant

(By Advocate: Mr.Ashish Saksena)

Versus

1. Union of India
through the Zonal Manager,
North Western Railway,
Jaipur
2. The Divisional Rail Manager (Estt.)
North Western Railway,
DRM Office,
Ajmer.
3. Nodal Officer and
Senior Divisional Personnel Officer,
North Western Railway,
Divisional Office,
Ajmer.

... Respondents

(By Advocate: Mr. R.G.Gupta)

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O R D E R (ORAL)

The applicant has filed this OA thereby praying that direction may be given to the respondents for quashing order/communication dated 21.3.2007 (Ann.A1) to the extent of adding name of the applicant in the provisional panel of the selected candidates for the post of Junior Engineer Grade-II (Signal) under general category with all consequential benefits.

2. Briefly stated facts of the case are that the respondents issued an official communication dated 18.8.2006 thereby publishing vacancy for the post of Junior Engineer Grade-II. Accordingly, eligibility list of the candidates who were eligible to appear in the selection was also prepared vide communication dated 17.10.2006 in which name of the applicant find mention. Subsequently, written examination was held and result of the written examination was declared wherein name of the applicant found mentioned at Sl.No.3 under general category. Copy of the notification dated 7.2.2007 has been placed on record as Ann.A5. It may be stated here that in all respondents have notified 5 vacancies of Junior Engineer Grade-II, out of which 3 were meant for general category and one each for SC and ST category. As can be seen from result Ann.A5, 3 persons qualified the written test against general category including the applicant whereas one each from ST and ST

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category. Ultimately, vide impugned order dated 21.3.2007 (Ann.A1) only 4 persons were empanelled and name of the applicant does not find in the said panel. It is this order which the applicant has sought to be quashed to the extent of adding his name in the provisional panel of selected candidates for the post of Junior Engineer Gr.II (Signal) from general category. As can be seen from the pleadings, the main grievance of the applicant is that under the heading 'service record' the applicant has been awarded only 18 marks out of 30 marks. Thus, according to the applicant, his case has not been considered in right perspective. A passing reference has also been made by the applicant regarding awarding of marks under the heading seniority, as according to the applicant, seniority has to be reckoned from 1.5.98 whereas seniority of the applicant has been reckoned w.e.f. 1.12.98. It is on the basis of these two grounds that the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have stated that the applicant has prayed for quashing the impugned order dated 21.3.2007 (Ann.A1) which is panel for the post of Junior Engineer Grade-II scale Rs. 5000-8000 wherein 4 employees have been placed in the aforesaid panel. It is further stated that as per panel these

employees have already been promoted vide order dated 9.7.2007. Therefore, the applicant cannot challenge the aforesaid panel dated 21.3.2007 without impleading the concerned employees of panel as party-respondents. The respondents have further stated that the applicant has sought relief to award reasonable marks on the basis of judicial scrutiny by the Hon'ble Tribunal in accordance with law, which relief cannot be granted to the applicant as it is settled position that Court or Tribunal can neither sit over the Selection Committee nor award marks on the basis of judicial scrutiny. It is further stated that since the applicant could not get aggregate 60% marks but got only 58.5% marks, as such, name of the applicant could not be placed in the provisional panel and the applicant was correctly declared unsuccessful in the aforesaid selection.

According to the respondents, the applicant has been correctly awarded 18 marks against 'record of service' by the Selection Committee and Shri Jagatpati Morya being outstanding, his name was placed in the panel. Regarding the fact that the applicant should have been assigned seniority from 1.5.98, and he should have been awarded marks based on this seniority position and not w.e.f. 1.12.98, the respondents have placed on record Ann.R3 dated 9.6.06 whereby the applicant has been given proforma promotion in the scale of Rs. 4500-7000 w.e.f. 1.12.98. Thus, according to the

respondents, the applicant has been given proper marks against the seniority.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. The sole question which requires our consideration is whether this Tribunal has got jurisdiction to upgrade or downgrade the rating as given by the Selection Committee based on ACRs for service record and whether this Tribunal can sit over in appeal over the assessment made by the Selection Committee ? The law on the point is well settled. The Hon'ble Apex Court in the case of M.V.Thimmaiah and ors. vs. Union Public Service Commission and ors., 2008 (2) SLJ 397 has held that normally the recommendations of the Selection Committee cannot be challenged except on the ground of mala-fides or serious violation of the statutory rules. The Courts cannot sit as an appellate authority to examine the recommendations of the Selection Committee like the Court of appeal. This discretion has been given to the Selection Committee only and Courts rarely sit in Court of appeal to examine the selection of the candidates nor is the business of the Court to examine each candidate and record its opinion.

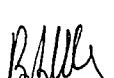
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6. In view of the law laid down by the Apex Court, it is not permissible for us to sit over the assessment made by the Selection Committee in so far as awarding of marks under the heading 'record of service' is concerned, which marks have to be assigned by the Selection Committee on the basis of the grading awarded in the confidential reports as well as scrutiny of record regarding award or punishment, as the case may be. Except for vague averments made by the applicant, no specific foundation has been laid as to how there is infirmity in awarding 18 marks out of 30 marks to the applicant under the heading 'record of service. Admittedly, name of a person can be included in the panel only if a person has obtained 60% marks in written examination and also 60% marks in aggregate i.e. after taking into consideration the marks of written examination and service record etc. In this case, the applicant has not secured 60% marks in aggregate, as such, his name was not rightly included by the respondents in the panel of successful candidates. The contention of the applicant that he ought to have been assigned seniority w.e.f. 1.5.98 and not from 1.12.98 is without any basis. From perusal of Ann.R3 it is evident that applicant was given proforma promotion in the grade of Rs. 4500-7000 w.e.f. 1.12.98 vide order dated 9.6.06. In fact the applicant was in the lower grade of Rs. 4000-6000 as on 1.5.98. The persons who were made eligible for

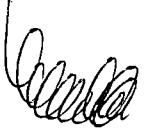
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promotion to the aforesaid post and whose names were included in the eligibility list were persons who were in the grade of Rs. 4500-7000, as such, the respondents have committed no infirmity while counting seniority w.e.f. 1.12.98 when he was given proforma promotion in the scale of Rs. 4500-7000 and for that purpose seniority of the applicant in the lower grade i.e. in the grade of Rs. 4000-6000 was of no consequence. Thus, the respondents have not committed any infirmity while awarding marks under the head 'seniority' to the applicant w.e.f. 1.12.98, the date from which the applicant was given proforma promotion in the scale of Rs. 4500-7000.

7. For the foregoing reasons, the OA is bereft of merit, which is accordingly dismissed with no order as to costs.


(B.L.KHATRI)

Admv. Member


(M.L.CHAUHAN)

Judl.Member

R/