

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 29th day of April, 2011

ORIGINAL APPLICATION NO. 273/2007
WITH
MISC. APPLICATION NOS. 350/2009 & 145/2010

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Sushant Sharma son of late Shri Dinesh Chand Sharma, aged about 32 years, Telecom Technician (Grade I), Construction Organisation under Dy. CSTE/C Ajmer, resident of House No. 4/119, Rajasthan Housing Board, Panchsheel Nagar, Markarwali Road, Ajmer.

.....Applicant

(By Advocate: Mr. S.K. Saxena)

VERSUS

1. Union of India through the Chairman, Railway Board, Rail Bhawan, New Delhi.
2. The Zonal Manager, North Western Railways, Zonal Office, Jaipur.
3. The Divisional Rail Manager (Establishment), North Western Railway, DRM Office, Ajmer.
4. Sanjay Garg, TSM Grade I, Ajmer Rail Net, North Western Railways, Ajmer.

.....Respondents

(By Advocate: Mr. Anupam Agarwal – Respondents nos. 1 to 3
Mr. C.B. Sharma – Respondent no. 4)

ORDER (ORAL)

By way of this OA, the applicant challenged the order dated 03.08.2007 (Annexure A/1) by which his name was removed in the provisional panel of the selected candidates for the post of Junior Engineer-II (Tele) under General category.



2. Brief facts of the case are that vide communication dated 15.11.2006 (Annexure 2), the assessment of the post of Junior Engineer Grade II (Tele) in the pay scale of Rs.5000-8000/- for telecommunication Department of North Western Railway under 20% Limited Department Competitive Examination was published. As per the assessment, only one post of Junior Engineer Grade II (Tele) under General category was published.

3. Vide communication dated 15.01.2007 (Annexure 3), the list of eligible candidates, who have applied for the recruitment/promotional process of Junior Engineer Grade II (Tele) under 20% LDCE quota was published in which the name of the applicant and respondent no. 4 were published at sr. no. 12 & 10 respectively. The date of written examination for the purpose of selection on the post of Junior Engineer Grade II (Tele) under 20% was 21.05.2007. The applicant appeared in the said written examination on 12.06.2007. The result of the said examination was declared in which 5 persons were declared successful and the name of the applicant also finds mentioned in the panel of 5 persons. Vide letter dated 03.08.2007 (Annexure 1), the provisional panel for the post of Junior Engineer Grade II (Tele) under 20 % LDCE quota was declared and the Selection Board recommended the name of respondent no. 4, Sanjay Garg, having an outstanding remark. Aggrieved and dissatisfied with the action of the respondents, the applicant preferred this OA on the ground that he had secured highest marks but the respondents instead of including his name have included the name of respondent no. 4. Alongwith the rejoinder, the applicant



had given the chart of the marks obtained by the applicant and respondent no. 4 in the LDC Examination, which is reproduced as under:-

Name of employee	Marks out of 100 in written test	Marks in written test after evaluation out of 50	Marks (service record) out of 30	Total Marks out of 80	Percentage
Sanjay Garg	87	43.5	22	65.5	81.8%
Sushant Sharma	92.5	46.25	28	74.25	92.8%

3. Upon perusal of the above chart, it is evident that respondent no. 4 secured 81.8% of marks whereas the applicant secured 92.8% of marks. Admittedly, the marks of respondent no. 4 are less than the applicant but he was placed in the final panel over-riding the inter-se merit. The applicant also challenged the sub clause (2) of Regulation No. E(NG) 1-84-PM7-33 (AIRF) dated 26.11.1986, which is reproduced as under:-

"2. The suggestion referred to above has been considered by the Board who are enable to agree that only three times the number to be empanelled should be called for the selection. Accordingly the Board wish to clarify that all the eligible volunteers should be called for the written test. All those, who secure 60% or above in the written test should be called for interview. Such of them as secure at least 60% marks under "Professional ability" and 60% in the aggregate would qualify to be empanelled. The panel should be drawn up on the basis of seniority from among those who qualify. However, all the candidates who secure above 80% marks should be treated as outstanding and placed on the top of the panel without any restriction as to their number but maintaining the inter-se-seniority among themselves. Of course the total number to be empanelled will be limited to the number to be taken as Inter Apprentices against the prescribed quota."

4. After referring the aforesaid regulation, learned counsel for the applicant submitted that the promotional avenue through LDCE for brining meritorious incumbents to the promotional post by way competitive examination should be solely on the basis of merit. Hence the later part of the clause 2 of the Regulation dated 26.11.1986 putting the outstanding candidates on the top of the panel without any restriction as to their number but maintaining interse-seniority among themselves fails the sole objective of 20% LDCE quota. Learned counsel for the applicant in support of his contention placed reliance on the judgment rendered by this Tribunal in OA No. 464/2004 decided on 25.07.2007 [**Shivraj Singh Solanki vs. Union of India & Others**]. The same controversy was before the Tribunal for consideration as the applicant in that OA was aggrieved by the order dated 13.09.2004 whereby the result of the selection for the post of Junior Engineer Grade II under LDCE 25% quota was declared wherein also the statement made on behalf of the applicant before the Tribunal was that impugned order dated 13.09.2004 was illegal and the final panel had been prepared strictly on the basis of seniority and not as per the marks obtained in the LDCE and though the applicant obtained higher marks than the selected candidates but he being junior than the empanelled persons, his name was not empanelled. Having heard the rival submissions of the respective parties, the impugned order dated 13.09.2004 and order dated 16.09.2004 were quashed and set aside and the respondents were directed to re-cast the panel of the



successful candidates on the basis of total marks obtained in the LDCE and to promote the applicant to the post of Junior Engineer Grade II in case he finds place in the panel, alongwith all consequential benefits flowing out of quashing of the impugned orders.

5. The respondents challenged the order passed by the Tribunal before the Hon'ble High Court by filing Writ Petition No. 10487/2007 and the High Court vide its order dated 01.02.2008 dismissed the Writ Petition as withdrawn with liberty reserved to the respondents to file Review Application before the Tribunal. Pursuant to the liberty given by the Hon'ble High court, the respondents filed Review Application No. 6/2008 in OA No. 464/2004 before this Tribunal. This Tribunal while considering this Review Application No. 6/2008 in OA No. 464/2008 alongwith other connected Review Applications held that the panel was prepared strictly on the basis of seniority in respect of those who have qualified written examination. The case of the applicants before the Tribunal was that once the selection had been held on the basis of written examination, the panel is to be prepared only on the basis of marks obtained by the candidates in the written examination. In other words, if a candidate even though he may be junior most, obtains higher marks than a person senior to him, he ought to be placed above the senior person in the panel whereas the case of the respondents was that mere qualifying the written examination does not ipso facto entitle the applicants to be included in the select panel and the Tribunal while dismissing the Review Applications vide its order dated 28.11.2008 observed as under:-



".....We are of the view that review applicants have not made out any case for reviewing the judgment. In case the matter has not been correctly decided by this Tribunal by ignoring the instructions of the Railway Board dated 16.11.1998, the respondents/review applicants are not remediless and the matter can be agitated before the higher forum and certainly, in our considered view, the power of review cannot be exercised which would amount to re-hearing the matter on merit, which is not the scope of review as contemplated under Order 47 Rule 1 of the CPC."

6. Further the order passed by the Tribunal in the Review Application was challenged before the Hon'ble High Court by filing Writ Petition No. 979/2009 and the Hon'ble High Court vide its judgment dated 10.02.2009 dismissed the Writ Petition and upheld the judgments rendered by this Tribunal dated 25.07.2007 passed in OA and 28.11.2008 passed in Review Applications. The Hon'ble High Court in its order dated 10.02.2009 quoted the provision of Para 219(j) of the Indian Railway Establishment Manual, which is as under:-

"219(j). - The names of selected candidates should be arranged in order of seniority but those securing a total more than 80% marks will be classed as outstanding and placed in the panel appropriately in order of their seniority allowing them to supersede not more than 50% to total field of eligibility."

The Hon'ble High Court also quoted Para (d) of the Scheme of Examination, which is as under:-

"(d) There will be no grading of successful candidates to as outstanding, very good etc. Their names be arranged in order of merit on the basis of the total marks obtained by each of the candidates."



7. Learned counsel for the respondents has also drawn our attention to the judgment rendered by the Hon'ble Supreme Court in the case of **M. Ramjayaram vs. General Manager, South Central Railway & Others**, AIR 1996 SC 3126 wherein Hon'ble Apex Court thoroughly considered the provisions of Para No. 219(j) of the Indian Railway Establishment Manual and submits that pursuant to the judgment rendered by the Apex court, now the Railway Board laid down the selection procedure for promotion to General selection posts vide its letter dated 19.06.2009, the Para 3.2 of which reads as under:-

"3.2 These instructions shall be applicable with immediate effect i.e. from the date of issue of these orders, to all panels for promotion to General Posts. Any previous, selection panel drawn up otherwise, before issue of this letter, need not be reopened."

8. As per the instructions pursuant to the judgment rendered by the Apex Court, it was made clear that no previous selection panel drawn up otherwise before the letter dated 19.06.2009 be reopened and the same is taken on record in the present case. Limited Departmental Competitive Examination was conducted in the year 2007. The provisional panel was prepared on 03.08.2007. Vide interim order dated 08.08.2007, this Tribunal after hearing the learned counsel for the applicant and perusal of documents placed on record observed that there is merit in the case. Accordingly notices be issued to the respondents returnable within a period of four weeks with a direction to the respondents that the finality of the panel vide Annexure A/1 shall be subject to the outcome of this OA.



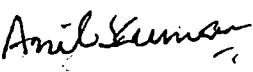
9. Pursuant to this interim order, the respondents Department had issued letter dated 05.09.2007 wherein it was made clear that finality of the panel notified vide Annexure A/1 (Panel dated 03.08.2007) shall be subject to the outcome of this OA. By perusal of the said letter, it reveals that the panel which has been prepared had attained finality and is subject matter of this OA. Thus we are not impressed with the arguments advanced on behalf of the respondents that this OA is not maintainable against the order Annexure A/1 and sub clause 2 of regulation dated 26.11.1986 after undergoing the process of selection. Further we are not impressed with the submission advance on behalf of the private respondent no. 4. that as per provisional panel, respondent no. 4 is working on the post of Junior Engineer Grade II (Tele) and as Para 3.2 of Railway Board's letter dated 19.06.2009 any previous selection panel drawn before the issuance of this letter need not be reopened. As already discussed hereinabove, the provisional panel which has been prepared is with the understanding that it shall be subject to the decision and final outcome of this OA and cannot be said to be final. Therefore, in view of the ratio decided by the Hon'ble High court and Supreme Court and fresh Railway Board's circular dated 19.06.2009, the present OA is allowed and impugned order dated 03.08.2007 (Annexure A/1) is quashed and set aside and the respondents are directed to recast the panel of the successful candidates on the basis of total marks obtained in the LDCE and to promote the applicant to the post of Junior Engineer Grade II in case



he finds place in the panel ignoring the seniority with all consequential benefits.

10. With these observations, the OA is allowed with no order as to costs.

11. In view of disposal of the OA, there is no need to pass any order in MA Nos. 350/2009 and 145/2010 and the same too are disposed of.


(ANIL KUMAR)
MEMBER (A)


(JUSTICE K.S. RATHORE)
MEMBER (J)

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