

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 18th day of February, 2010

ORIGINAL APPLICATION No.90/2008

CORAM :

HON'BLE MR.B.L.KHATRI, ADMINISTRATIVE MEMBER
HON'BLE Dr.K.B.SURESH, JUDICIAL MEMBER

K.S.Ahlawat,
Junior Engineer (Signal),
O/o Senior Section Engineer (Signal),
North Western Railway,
Jaipur.

... Applicant

(By Advocate : Shri P.V.Calla)

Versus

1. Union of India through
General Manager,
North Western Railway,
Jaipur.
2. Divisional Railway Manager,
Jaipur Division,
Power House Road,
Jaipur.
3. Sr.Divisional Signal & Telecommunication Engineer,
DRM Office,
Jaipur.

... Respondents

(By Advocate : Ms.Sonal Singh, proxy counsel for
Shri Alok Garg)

ORDER

PER HON'BLE Dr.K.B.SURESH

The applicant has filed this OA against the notification dated 10.10.2007 (Ann.A/1) and the communication dated 9.1.2008 (Ann.A/2) and has prayed for the following relief:



- "i) Respondents may be directed to award the marks to the applicant in the written papers out of 50 marks in each paper. The action of the respondents reserving 5 marks from each paper may also be declared illegal. Further, by an appropriate order, respondents may be directed to award marks in the service record as per the rules.
- ii) Insert the name of the applicant in the panel Ann.A/1 dated 10.10.2007 at appropriate place."

2. The applicant is aggrieved against declaring him unsuitable for the post of Section Engineer (Signal). Claim of the applicant has been rejected vide communication dated 9.1.2008 (Ann.A/2) and the impugned panel dated 10.10.2007 (Ann.A/1) has been held to be in accordance with the rules. The applicant has claimed promotion from the post of Junior Engineer Grade-I to the post of Section Engineer (Signal) in the pay scale of Rs.6500-10500.

3. Brief facts of the case are that in the seniority list of Junior Engineer Grade-I applicant's position stood at S.No.4. The post of Section Engineer is filled in by two methods viz. 80% through selection from the serving candidates amongst Junior Engineer Grade-I and 20% by direct recruitment from open market. The applicant had moved an application under RTI Act seeking information about grading in the ACRs for the last three years i.e. 2004-05, 2005-06 & 2006-07. He also requested to furnish information that while reviewing the ACRs what grading was given by the reviewing authority and what was the final report of the accepting authority. The application submitted by the applicant was replied vide communication dated 25.10.2007 (Ann.A/4), whereby it was communicated

that the final grading for the year 2004-05 and 2006-07 was 'Good' but for the year 2005-06 it was 'Average'. However, contention of the applicant is that the reporting officer had given higher grading but the same has been lowered down by the next higher authority.

4. It was submitted by learned counsel for the applicant that in the list of eligible candidates, applicant's name appeared at S.No.4. In all 8 candidates were found eligible, out of which one from SC category and another from ST category. Thus, as against 2 posts, 6 general category candidates were called for the written examination. Out of 6 general category candidates, S/Shri Jagdish Chandra Kumar and Akhilesh Chand Pachori, whose names appeared at S.No.1 and 3 in the eligibility list, chose not to appear in the written examination. Thus, as against two vacancies of the general category, one Shri Sachidanand Vishwakarma and the applicant, whose names appeared at S.No.2 & 4, came to S.No.1 & 2 respectively, as per Ann.A/5. In the syllabus attached with Ann.A/5 there was no mention regarding separate marks for neatness/cleanness and for good handwriting. However, while the papers were distributed, at item No.4, 5 marks were kept aside for neatness/cleanness and good handwriting.

5. The applicant appeared in the written test and attempted all the questions. Result of the written test was notified vide letter dated 21.9.2007, whereby the applicant was declared

qualified. But name of the applicant had not been included in the final panel and as against 2 vacancies meant for the general category candidates, only one vacancy has been filled in and the another vacancy has been kept vacant because of non-availability of the eligible general category candidate. The applicant requested the respondents to disclose the marks obtained by him in each paper for neatness/cleanliness and good handwriting. In reply, the applicant was informed, vide letter dated 18.10.2007 (Ann.A/9), that the marks secured in each question could not be furnished being confidential record. However, the marks obtained by him had been given in para 2 of the said reply and it was communicated that the marks awarded for neatness/cleanliness and good handwriting had been included in the marks given in the written examination. So far as the service record for each year, the maximum marks were 10. Thus, out of 30, the applicant was awarded 16 marks and finally, out of 100, the applicant secured 59.25% marks as against the required percentage of marks i.e. 60% and thus the applicant has been declared ineligible as he did not secure 60% aggregate marks in the selection.

6. It was also submitted by learned counsel for the applicant that when grading of the ACR was lowered down, the applicant should have been given an opportunity of hearing.

7. Notice of this application was given to the respondents, who have filed their reply contesting the claim of the applicant. As regards the paper showing 50 marks, it was submitted that

the total marks allotted against each question were 45 and rest of the 5 marks were kept for neatness/cleanliness and good handwriting. It is also evident from note-4 on the top of the question paper, wherein 45 marks were for the questions and 5 marks were reserved for neatness/cleanliness and good handwriting. The applicant has not secured 60 marks in aggregate, as per Para 219 (g) of the IREM. Hence, the applicant was not included in the final panel.

8. As regards communication of ACRs, it was submitted by learned counsel for the respondents that grading given for all the three years had been disclosed as per Ann.A/4. However, it has not been disclosed whether the reviewing authority had down-graded the grading given by the reporting officer. It was also submitted that only if the final assessment/appraisal of the person concerned comes to be adverse, only then he is informed of the same. In other cases, mere lowering down of marks/grade was not considered to be adverse and hence was not required to be informed. As the grading in the ACRs were 'Good' and 'Average' and not adverse, the contents of the confidential report were not required to be disclosed.

9. We have heard the rival submissions and perused the record. Facts of this case have already been narrated in this order. The applicant had appeared in the written examination for selection to the post of Section Engineer (Signal). As per Ann.A/9, he was awarded 59.25 marks. The final panel had been issued vide notification dated 10.10.2007 (Ann.A/1).

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Name of the applicant had not been included in the final panel and as against two clear vacancies meant for general category candidates, only one vacancy had been filled in. In the note appended it was mentioned that one vacancy of general category candidate has been kept vacant because no eligible general category candidate is available.

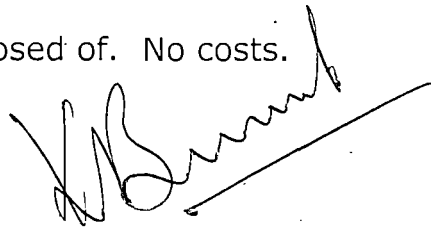
10. Learned counsel for the applicant has also raised objection that the respondents have not disclosed that how many marks had been given for neatness/cleanliness and for good handwriting out of the five marks earmarked for the purpose. Learned counsel for the respondents submitted that these marks are inclusive of the aggregate marks given to the candidates and this method had universally been adopted for all the candidates. Therefore, we are of the opinion that no grievance can be raised against the method followed by the respondents.

11. Main grievance of the applicant is against the information given through letter dated 18.10.2007 (Ann.A/9), whereby he was given 59.25 marks as against the aggregate of 60%. As per the information obtained, in the ACRs for the year 2004-05 and 2006-07, grading to the applicant was 'Good', however, for the year 2005-06 it was 'Average'. Grievance of the applicant is that 'Average' entry had not been disclosed to him. According to the applicant, the reviewing officer had lower down the grading given by the reporting officer. However, no evidence has been brought on record by the applicant to prove

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this point. As regards the intimation of the 'Average' entry, it was vehemently opposed by learned counsel for the respondents and it was submitted that the applicant had not raised any ground for disclosing the ACRs, hence no relief can be granted on this ground. Besides, we find that no benchmark was prescribed for giving marks on the basis of ACRs for the years 2004-05, 2005-06 and 2006-07. The marks had universally been given to all the candidates. Therefore, on the basis of pleadings, the applicant is not entitled to any relief.

12. In this case, the applicant is aggrieved by the grading of 'Average' given by the respondents in his ACR for the year 2005-06. We find that the grade of 'Average' was already within the knowledge of the applicant but he did not make any representation before the appropriate authority for expunging or upgrading the same. Therefore, no relief can be granted to the applicant at this stage. However, the applicant is at liberty to make representation to the appropriate authority for expunging/upgrading the 'Average' entry given in his ACR for the year 2005-06. With these observations the OA stands disposed of. No costs.



(Dr.K.B.SURESH)
MEMBER (J)



(B.L.KHATRI)
MEMBER (A)

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