

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

22

**Date of Order: 24.09.2012**

OA No. 156/2010

Mr. C.B. Sharma, proxy counsel for  
Mr. S. Shrivastava, counsel for applicant.  
Mr. Anupam Agarwal, counsel for respondent nos. 1 & 2.  
None present for respondent no. 3.

At the request of learned counsel for the parties, put  
up the matter on 11.10.2012 for hearing.

*Anil Kumar*  
(ANIL KUMAR)  
MEMBER (A)

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

Kumawat

11-10-2012

OA No. 156/2010

Mr. S. Shrivastava, Counsel for applicant.  
Mr. Anupam Agarwal, Counsel for R-1 & 2.  
None present for respondent No. 3.

Heard.

O.A. is disposed of by a separate  
order on the separate sheets for  
the reasons recorded therein.

*Anil Kumar*  
[Anil Kumar]  
Member (A)

*K.S. Rathore*  
[Justice K.S. Rathore]  
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

Jaipur, the 11<sup>th</sup> day of October, 2012

**ORIGINAL APPLICATION No. 156/2010**

CORAM :

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

Vishnu Kumar Gautam son of Shri Sarnam Singh aged about 46 years, resident of 203, A Type III Railway Colony, Sawai Madhopur. Presently posted as Tech. Grade (I) PSI Trd. Sawai Madhopur under SSE Trd.

... Applicant

(By Advocate : Mr. S. Shrivastava )

Versus

1. Union of India through General Manager, West Central Railway, Jabalpur.
2. Divisional Railway Manager, Kota Division of West Central Railway, Kota.
3. Babu Lal Jain, JE Trd. Working under SSE Trd. Lakher.

... Respondents

(By Advocate : Mr. Anupam Agarwal – Respondents nos. 1 & 2  
None present for respondent no. 3.)

**ORDER (ORAL)**

The applicant has filed this OA praying for the following reliefs:-

- “(i) The Hon'ble Tribunal may graciously be pleased to quash and set aside the impugned panel dated 11.08.2009 (Annexure A/1) to the extent to delete the name of the Shri Babu Lal (co-respondent no. 3) from the panel in question.
- (ii) That respondents may further be directed to include the name of the petitioner in the panel dated 11.08.2009 by placing his name at appropriate place in the assessment sheet and petitioner should be given promotion with all consequential benefits, as JE Grade II with effect from the date panel has been made effective.
- (iii) Respondents may be directed to produce entire record upon which assessment of marks have been made and may also produce relevant instruction under which

*Anil Kumar*

marks have been awarded under the head of Personality Address and Leadership.

- (iv) Any other order or direction which the Hon'ble Tribunal may deem fit and proper as per the facts and circumstances of the case, be passed in favour of the petitioner.
- (v) Award the cost of the petition in favour of the petitioner."

2. Brief facts of the OA, as stated by the learned counsel for the applicant, are that the respondents issued a notification dated 04.03.2004 for filling up 7 posts of Junior Engineer Grade II for which Technicians Grade I, II and III as well as the Senior Technician were entitled to appear for selection (Annexure A/2). The applicant was amongst the eligible incumbent and as such he appeared in the said selection.

3. Pursuant to the notification dated 04.03.2004, the written test was held on 24.07.2004 at Kota and consequently, panel of 7 Junior Engineer Grade II, scale Rs.5000-8000/- against the said LDCE quota (selection in question) was formed vide order dated 13.09.2004 (Annexure A/3).

4. Unfortunately, the applicant was not included in the panel. The respondents in forming the said panel had wrongly given the weightage to the seniority only amongst those who had secured qualifying marks while in fact, in the selection against LDCE 25% quota, merit is the sole criteria for selecting the incumbents, which was not followed by the respondents.

*Anil Kumar*

5. The applicant filed an OA No. 412/2004 wherein he assailed the said panel dated 13.09.2004 prepared on the basis of seniority of those who had secured the qualifying marks. While this OA was pending, the respondents had disposed of the representation of the applicant dated 14.09.2004 vide letter dated 16.09.2004 whereby they have rejected the claim of the applicant primarily on the ground that the applicant was junior amongst successful incumbents and hence he could not be empanelled (Annexure A/4).

6. That subsequent to that, the applicant got his name deleted from the earlier OA No. 412/2004 with liberty to challenge the order dated 16.09.2004 alongwith panel dated 13.09.2004. He filed an OA No. 174/2005 which was finally allowed in favour of the applicant with the direction to the respondents to re-cast the panel of successful candidates on the basis of 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 impugned orders (Annexure A/5). This judgment of the Tribunal has been upheld by the Hon'ble High Court in the DB Writ Petition NO. 981/2009 vide its order dated 10.02.2009 (Annexure A/6).

7. Learned counsel for the applicant further submitted that the respondents in compliance of the aforesaid judgment prepared the assessment sheet dated 07.07.2009 based on the marks given by the selection board to the individuals in LDCE of Junior Engineer

*Anil Kumar*

Grade II in question. He further stated that the assessment sheet dated 07.07.2009 so prepared by the respondents was not fair but discriminatory and arbitrary in as much as private respondent no. 3, namely Shri Babu Lal Jain, who was less meritorious as compared to the applicant was placed at sr. no. 2 while the applicant's name was inducted at sr. no. 10 in the said assessment sheet (Annexure A/7).

8. From the perusal of the assessment sheet, it is clear that Shri Babu Lal Jain had secured 30 marks in the written test (Professional ability), 30 marks in Personality/address and leadership and 14 marks as per service record. Thus, he has been given 74 marks out of 100 marks by the Selection Board. On the other hand, the applicant has secured 31 marks in the written test (Professional ability) and was discriminately awarded 24 marks only in personality/address and leadership and 14 marks as per service record. Thus the applicant has been given 69 marks out of 100 marks. Thus the respondents have included the name of the respondent no. 3 over & above the applicant in the assessment sheet and, therefore, placed the name of respondent no. 3 in the impugned panel dated 11.08.2009.

9. Learned counsel for the applicant further argued that the grievance of the applicant is that private respondent no. 3 could not given higher marks in the test of personality address. The applicant has gathered information that respondent no. 3 was given 30 marks under the head of Personality address and

*Anil Kumar*

leadership on the basis of entries in the ACR of concerned 3 years which are to be taken into account while the applicant has only been awarded 24 marks under this head based on concerned ACR of 3 years. He further submitted that respondent no. 3 has 3 'Very Good' ACRs pertaining to the year 2002, 2003 and 2004 and on that very basis, he has been awarded 30 marks under the head of personality, address and leadership meaning thereby 10 marks for each entry of 'Very Good' in the ACRs. On the contrary, the applicant was awarded only 24 marks under this head while the applicant was awarded grading 'Very Good' for the concerned year 2002 and 2004 and 'Excellent' for the year 2003. Keeping in view the above fact, the applicant should have been given more marks than private respondent no. 3.

10. He further argued that viva-voce test in Group 'C' services has been eliminated by the Railway Board vide letter dated 07.08.2003 and then only the marks obtained in the written test and of service record should have been taken into account for the purpose of drawing the panel in order of merit. If the marks are calculated on the basis of these two parameters, it is clear that the applicant has obtained 45 marks (31 marks in written test and 14 marks as per service record) whereas private respondent no. 3 secured 44 marks (30 marks in written test and 14 marks as per service record). As such, the applicant should be placed over & above the private respondent no. 3 in the assessment sheet.

*Anil Kumar*

11. He further argued that marks under the head personality, address and leadership could not have been taken into consideration while preparing the panel and only the marks of written test and service record should have been included and since the applicant has secured more than under these two heads, therefore, his name should be included in the panel. Therefore, he prayed that the OA be allowed and the name of the applicant be included in the panel at the appropriate place in place of private respondent no. 3.

12. On the other hand, learned counsel for the respondents argued that this OA is not maintainable because the respondents have prepared a fresh panel on the direction of the learned Tribunal, as upheld by the Hon'ble High court. He further argued that learned Tribunal in Para No. 9 of its order dated 26.07.2007 passed in OA No. 174/2005 had directed the respondents 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, alongwith all consequential benefits flowing out of quashing of the impugned order. Complying with the directions issued by the Tribunal, the respondents have issued the panel dated 11.08.2009 (Annexure A/1), which is based on merit. He referred to Annexure A/7 of the OA, in which the comparative merit has been given of the persons who appeared in the examination. A perusal of the assessment sheet shows that Shri Babu Lal Jain, private respondent no. 3, has secured 74 marks out of 100 marks

*Anil Kumar*

while the applicant has secured 69 marks out of 100 marks. Therefore, the private respondent no. 3 being more meritorious than the applicant has been selected as per the direction of the CAT, Jaipur Bench, Jaipur. He further argued that as per Para No. 2 of RBE 263/98, the marks are to be given as under:-

"2 .....

- (i) Marks for seniority will not be awarded and accordingly distribution of marks allotted to various factors of selection will be as under:

	Maximum Marks	Minimum marks
<b>(1) Professional ability consisting of</b>		
<b>(a) written test and</b>	<b>35</b>	<b>21</b>
<b>(b) Viva Voce</b>	<b>15</b>	<b>--</b>
		<b>30 50</b>
<b>(2) Personality address, leadership     academic/technical qualification</b>	<b>30</b>	<b>--</b>
<b>(3) Record of Service</b>	<b>20</b>	<b>--</b>

He pointed out that in category (1) of Professional ability there are two components (a) written test and (b) viva voce test. Railway Board Circular No. 137/2003 dated 07.08.2003, viva voce part has been done away with departmental selection except in the case of selection, if any, for promotion to the post of in the categories of Law Assistants, Physiotherapists, Telephone Operators and Teachers. He further argued that under this RBE, the marks for personality, address, academic and technical qualification as inducted in Para 2 above have not been done away with. The selection was made in 2004. No marks were awarded for viva-voce test and, therefore, there is no violation of RBE No. 137/203 dated 07.08.2003.

*Anil Kumar*



13. With regard to the submission of the learned counsel for the applicant that applicant should have been given more marks than respondent no. 3 under the heading of personality, address and leadership, learned counsel for the respondents argued that this point is covered by the principle of constructive res-judicata. The applicant has not raised this point in the earlier OA No. 174/2005, which has already been adjudicated. In that OA No. 174/2005, it has been held that the panel should not be prepared on the basis of seniority but on the basis of merit. The Tribunal directed to recast the panel of the successful candidates on the basis of total marks obtained in the LDCE. The LDCE examination was not quashed. Thus a fresh panel dated 11.08.2009 was prepared on the basis of total marks obtained by the applicant in the LDCE. The applicant has not raised any issue in OA No. 174/2005 regarding the marks not been properly awarded to him as compared to the marks obtained by respondent no. 3. Therefore, now at this belated stage, he cannot raise this issue in the present OA. Therefore, it is barred by the principle of constructive res-judicata.

14. Learned counsel for the respondents argued that the provisions of RBE No. 113/2009 dated 19.06.2009 will not be applicable in the present case as the selection was made in the year 2004. Para 3.2 of RBE No. 113/2009 dated 19.06.2009 specifically states that these instructions shall be applicable with immediate effect, i.e. from the date of issue of these orders, to all

*Anil Kumar*

panels for promotion to General Posts. Any previous selection panel drawn up otherwise, before issue to this letter, need not be reopened. Since the panel dated 11.08.2009 has been prepared on the basis of the examination held in 2004, therefore, this RBE No. 113/2009 dated 19.06.2009 will not be applicable in the present OA. It is clear from the perusal of the marks obtained that private respondent no. 3 has secured 74 marks and the applicant has secured 69 marks. Therefore, respondent no. 3 is more meritorious than the applicant and hence the OA has no merit and it should be dismissed with costs.

15. Heard the learned counsel for the parties and perused the relevant documents on record. It is not disputed that the applicant had earlier filed OA No. 174/2005 which was decided by this Tribunal vide order dated 26.07.2007. The earlier panel so prepared on the basis of seniority was quashed and the respondents were directed to recast the panel of the successful candidates on the basis of total marks obtained in the LDCE. This order has been upheld even by the Hon'ble High Court in the DB Writ Petition No. 981/2009 vide its order dated 10.02.2009. Thus it is clear that the respondents were only to recast the panel of the successful candidates on the basis of total marks in the LDC Examination. Perusal of Annexure A/7 shows that private respondent no. 3 has secured 74 marks out of 100 marks and the applicant has secured 69 marks out of 100 marks. Thus it is clear that private respondent no. 3 is more meritorious than the applicant. Therefore, there is no infirmity/illegality in the action of

*Anil Kumar*

the respondents in placing private respondent no. 3 in the panel dated 11.08.2009, which has been issued in compliance of the order of this Tribunal in OA No. 174/2005.

16. Further, the arguments of the learned counsel for the applicant that no marks should have been awarded for personality/address/leadership because this has been done away with vide notification dated 137/2003 dated 07.08.2003 and RBE No. 113/2009 dated 19.06.2009. A bare perusal of RBE No. 137/2003 shows that it only provides that there will no viva voce in the departmental selections except in the case of selection, if any, for promotion to the posts in the categories of Law Assistants, Physiotherapists, Telephone Operators and Teachers. This RBE does take away the marks to be awarded for personality, address, leadership, academic and technical qualification which has been provided under RBE No. 263/98 dated 16.11.1998. Similarly the provisions of RBE No. 113/2009 dated 19.06.2009 will not be applicable in the present case. The effect of this RBE is prospective and not retrospective. The bare perusal of Para No. 3.2 of this RBE No. 113/2009 dated 19.06.2009 makes it clear that these instructions are applicable with immediate effect i.e. from the date 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. Since the panel dated 11.08.2009 has been issued on the basis of the selection made in the year 2004, therefore, the provision of this circular dated 113/2009 dated 19.06.2009 will not be applicable in the

*Anil Kumar*

present case. Therefore, on this ground also, the applicant could not be given any relief.

17. With regard to the claim of the applicant that he should be given more marks than private respondent no. 3 under the head of personality, address, leadership, academic and technical qualification, the applicant had not raised this issue in the earlier OA 174/2005. Therefore, the same cannot be raised at this belated stage. This request is barred by the principle of constructive res-judicata also. Thus looking from any angle, the applicant has failed to make out any case for interference by this Tribunal in his favour.

18. Consequently, the OA being bereft of merit is dismissed with no order as to costs.

*Anil Kumar*  
(Anil Kumar)  
Member (A)

*AHQ*

*K. S. Rathore*  
(Justice K.S.Rathore)  
Member (J)