

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD**

This the **21<sup>st</sup>** day of **MAY 2018**.

**ORIGINAL APPLICATION NO. 524 of 2009**

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).**

**HON'BLE MR. R. RAMANUJAM, MEMBER (A).**

1. Babu Lal, aged about 67 years, Son of Late S. Ram, Resident of S-6/102 Orderly, Bazaar, Near Golghar, Kutheri, Varanasi.

.....Applicant

**VER S U S**

1. The Union of India, through General Manager, Diesel Locomotive Works, Varanasi.
2. The General Manager, Diesel Locomotive Works, Varanasi.
3. The Member, Mechanical, Railway Board, Rail Bhawan, New Delhi.

.....Respondents

Advocate for the Applicant : Shri V K Srivastava

Advocate for the Respondents : Shri Anil Kumar

**O R D E R**

**(Delivered By Hon'ble Mr. Sanjeev Kaushik, Member-J)**

By means of the present Original Application the applicant seeks the quashing of the order dated 03.01.2009.

2. We have heard the counsels for the parties. The pleadings are not in dispute. It is an admitted fact that the applicant appeared in selection to the Group-B post in Mechanical Engineering Department which was notified vide notification dated 22.05.2010 against 70% promotional quota of Group-C employees. The

applicant was subjected to written examination and viva voce test where he was declared successful. Thereafter, his service records were evaluated. When the final result was declared the applicant's name did not find mention there and he was informed that he secured less marks in evaluation i.e. the applicant had secured 13.6 marks whereas the minimum marks were 15.

3. The main contention of the applicant is that the respondents have considered the below bench mark remarks given in the ACR relating to the year 1995-96 and 1996-97, where the applicant had been shown to be average. He further submitted that these remarks were never communicated to him as such the same cannot be relied on. To buttress his claim further, learned counsel for the applicant placed reliance on the judgement of the Hon'ble Supreme Court in the case of **Dev Dutt Vs Union of India & Ors (2008) 8 SCC 725**.

4. Learned counsel for the respondents, based on his written statement does not dispute the facts. However, he submitted that in the subsequent selection also, the applicant could not get the prescribed marks. The respondents do not dispute the fact that they had considered the below bench mark remarks which were never communicated to the applicant.

5. Since, the respondents had not communicated the below bench mark remarks to the applicant and had relied upon the same while evaluating the service report of the applicant, their action cannot be sustained. It is a settled preposition of law that if the department considers below bench mark gradings then before considering the same they are under an obligation to convey the same to the concerned employee and give him chance to make a representation for upgradation of his ACRs as held in Para-43 in the case of Dev Dutt (supra).

6. Accordingly, the OA is allowed with the direction to the respondents to now communicate the below bench mark ACRs of the year 1995-96 and 1996-97 to the applicant. If the applicant submits any representation against the average grading or below bench mark remarks, then the respondents shall consider the same in accordance with law and pass a reasoned and speaking order. If as a result of such exercise, the ACRs are upgraded, the applicant shall be considered for promotion by convening a review DPC within a period of three months from the date of receipt of representation from the applicant. No costs

**(R. RAMANUJAM)**  
**MEMBER-A**

**(SANJEEV KAUSHIK)**  
**MEMBER-J**

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