

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This the **21st** day of **MAY 2018**.

ORIGINAL APPLICATION NO. 5 OF 2011

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MR. R. RAMANUJAM, MEMBER (A).

1. Ram Ishwar Sharma, S/o Shri Ramnath Sharma, aged about 44 years, presently working as Sr. Section Officer/Pension in Headquarter Office N.C. Railway under FA&CAO/N C Railway/Allahabad,R/o Raj Kaamal Society, Phase-I, Neem Sarai, Allahabad C/o Shri Satyendra Rai.

.....Applicant

VER S U S

1. Union of India through the General Manager, North Central Railway, Headquarters, Office Allahabad.
2. General Manager, North Central Railway, Headquarters Office, Allahabad.
3. F.A&C.A./NCR/HQ/Allahabad and Chairperson of the Selection Committee for the post AAO (Group B).
4. Smt. Vandana Singhal, F.A.& C.A.O., and Chairperson of the Selection Committee.
5. Shri A.K. Bijalwan, F.A.&C.A.O/F7B/NCR/HQ/Allahabad.
6. Financial Commissioner, Indian Railway, Railway Board.
7. Shri Ram Chandra Upadhyay, AFA (Admn.) N.C. Railway, in the office of FA & CAO/N.C. Railway, Allahabad.

.....Respondents

Advocate for the Applicant : Shri Sudama Ram

Advocate for the Respondents : Shri P Mathur

O R D E R

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

The present Original Application has been filed by the applicant seeking the following reliefs:-

" (i) The Hon'ble Tribunal may graciously be pleased to call for the original records of selection proceeding held on 09.06.2009 relating to the aforesaid selection of Assistant Accounts Officer (Group B) and quash selection proceeding along the panel of Assistant Accounts Officer (Group B) of 9 & 10.06.2009 (Annexure A-1), impugned reply dated 16.09.2009 passed by Shri Hamim Ahmed, Dy. FA & CAO (G)/NCR/Allahabad (Annexure A-2), impugned order passed by G.M./N.C. Rly, Allahabad (which was communicated vide letter dated 15.12.2009 vide Annexure A-3) and impugned reply passed by FA & CAO/NCR/Allahabad dated 1105.2010 (Annexure A-4) and direct the respondents to hold review DPC at the stage of viva-voce for the aforesaid post of Assistant Accounts Officer (Group – B) in the interest of justice:-
(ii) The Hon'ble Tribunal may further be pleased to direct the respondents to expunge the down graded entries of ACRs of the applicant for the year ending March 2007, 2008 and 2009 done by the reviewing/accepting authorities just one day before the viva voce i.e., on 09.06.2009.
(iii) Any other writ or order or direction which the Hon'ble Tribunal deems fit and proper in the circumstances of the case may also kindly be issued in the interest of justice.
(iv) Cost of the Application may also be awarded."

2. After completion of pleadings this matter came up for hearing. It is submitted that the applicant joined as Junior Account Assistant in the Accounts Department of S.E. Railway in 1989, thereafter, he was transferred to Eastern Railway. On 15.05.2008, the respondents issued notification for promotion from Class III to Group 'B' service through L.D.C.E. against 30% quota of vacancies for Assistant Accounts officer. The applicant applied for the aforesaid post and was subjected to written examination, result of which was declared on 04.07.2009 where he was declared successful. Thereafter, he was subjected to viva-voce test held on 09.06.2009/10.06.2009, where the applicant was not declared

successful. The final result was declared on 09.06.2009. Against the said final result, the applicant is stated to have filed a representation to the competent authority stating therein that the Reviewing Officer has wrongly downgraded his ACR without according any reasons. Thus, the view taken by the Reviewing Officer downgrading his ACRs is bad in law. Hence the present OA.

3. Shri Sudama Ram, learned counsel appearing on behalf of the applicant vehemently argued that down grading of the ACRs by the Reviewing Officer without according any reason is contrary to law and principles of natural justice, as the applicant was not heard before down grading of his ACRs. In support of his case, the applicant has placed reliance on the judgement passed by Hon'ble Supreme Court in the case of **Dr. Kuldip N Sharma, IPS, Vs State of Gujarat & Ors 2012 (1) (CAT)**.

4. Shri P K Mishra, proxy counsel for Shri P Mathur, appearing on behalf of the respondents reiterated the facts as stated in his written statement.

5. We have heard the counsels for both the parties and perused the pleadings available on record. We are in agreement with the submission of the applicant that the down-grading of the ACRs of the applicant by the Reviewing Officer without according any

reason is arbitrary and contrary to settled law. As the applicant had no opportunity to represent there against it was also against the principles of natural justice and this cannot be sustained.

6. We, therefore, direct the respondents to hold a review DPC to consider the case of the applicant ignoring the downgrading recorded by the Reviewing Officer. If on such review, he is found fit, he shall be considered for promotion otherwise a reasoned order shall be passed. Let this exercise be completed within two months from the date of receipt of certified copy of this order.

7. With the above direction, the OA is disposed of. No order as to costs

(R. RAMANUJAM)
MEMBER-A

(SANJEEV KAUSHIK)
MEMBER-J

Arun..