

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.3434/2013

Order reserved on 13th December 2016

Order pronounced on 20th December 2016

**Hon'ble Dr. K.B. Suresh, Member (J)
Hon'ble Mr. K.N. Srivastava, Member (A)**

Nafees Ahmed s/o Mr. Shakoor Ahmed
r/o Village Bhola Singh Ki Milke
PO & District Muradabad (UP)

..Applicant

(Mr. Yogesh Sharma, Advocate)

Versus

1. Union of India through General Manager
Northern Railway, Baroda House,
New Delhi
2. The Divisional Railway Manager
Northern Railway, Muradabad Division
Muradabad
3. The Senior Divisional Personnel Officer
DRM Office Muradabad Railway
Muradabad
4. The Assistant Divisional Engineer
Northern Railway
Northern Railway, Hapur (UP)
5. Mr. Sanjay Kumar Saxena
Senior Clerk (at present S&WI)
Through the Senior Divisional Personal Officer
DRM Office, Northern Railway
Delhi Division, State Entry Road, New Delhi

..Respondents

(Mr. V S R Krishna and Mr. A K Srivastava, Advocates for respondent Nos.1-4 –
Nemo for respondent No.5)

ORDERS

Mr. K.N. Srivastava:

The applicant has filed the instant O.A. under Section 19 of the Administrative Tribunals Act, 1985 praying for the following main reliefs:-

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned penal dated 30.10.2012 and impugned promotion order dated 30.10.2012 only in respect of Sh. Sanjay Kumar Saxena declaring to the effect the same is illegal and arbitrary.

(ii) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 09.10.2012 (colly) and working report dated 11.10.2012 (Annex. A/11) declaring to the effect that the same are illegal and arbitrary and consequently pass an order directing the respondents to conduct a fresh DPC on the basis of the working report submitted by Sr. Section Engineer in respect of the applicant.

(iii) That the Hon’ble Tribunal may graciously be pleased to pass an order of directing the respondents to take the working report of Sh. Sanjay Kumar Saxena from the authority under whom Sh. Sanjay Kumar Saxena had worked before considering him in the DPC.”

2. The brief facts of the case are as under:-

2.1 The applicant joined the respondent – Railway Department on 05.11.2004 as a Gangman. He was medically de-categorized on 03.11.2010 and was given alternate appointment as Office Khalasi. He was promoted as Clerk in July 2011 and was posted at Moradabad Division of Northern Railway.

2.2 Pursuant to the respondents inviting applications for the post of Staff & Welfare Inspector (S&WI) to be filled up through the Limited Departmental Competitive Examination (LDCE), the applicant applied for the said post. There were three posts of S&WI to be filled up; two by unreserved category candidates and one by reserved category. The written test was held on 23.06.2012. The applicant secured 67 marks whereas respondent No.5 secured 61.50 marks. The benchmark for qualifying in the test was 60 marks. As such both the applicant and respondent No.5 got

qualified. The final selection was to be made on the basis of the assessment of the Working Reports of the candidates.

2.3 The respondent-department finally selected Mr. Inderveer Singh and respondent No.5 against the quota meant for un-reserved category and Mr. Prakash Chandra Meena against the reserved category.

2.4 The grievance of the applicant is that he got outstanding Working Reports in all the three years under consideration, viz. 2009-10, 2010-11 and 2011-12 (Annexure A-5), whereas respondent No.5, with having inferior gradings, has been selected. Accordingly, for redressal of his grievance, the applicant has filed the instant O.A.

3. Pursuant to the notices issued, the official respondents Nos. 1 to 4 entered appearance and filed their reply, to which the applicant filed a rejoinder. The official respondents also filed an additional affidavit. With the completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 13.12.2016. Mr. Yogesh Sharma, learned counsel for applicant and Mr. V S R Krishna & Mr. A K Srivastava, learned counsel for respondents argued the case. There was no representation on behalf of respondent No.5.

4. Learned counsel for official respondents submitted that it is well settled position of law that candidate having participated in a selection process and after failing in the same, cannot challenge the selection process itself. It was further submitted that the Working Reports of the applicant for the years 2009-10 and 2010-11 were assumed to be 'good' while selecting him to the post of Clerk in July 2011. There was no murmur or

protest at the end of the applicant against these gradings and the applicant had gladly accepted the said gradings.

5. The learned counsel further argued that the Working Reports of the applicant for the years 2009-10 and 2010-11 were written on 01.09.2012 wherein he has been graded 'outstanding'. Pertinent to note that these reports were written after the written examination results were declared for the post of S&WI on 23.06.2012. Under these circumstances, the competent authority considered it appropriate to verify the exceptional work of the applicant for which the said gradings were given. This position was in conformity with the prescribed guidelines of Department of Personnel & Training. The competent authority had also taken cognizance of the fact that during the relevant period, the applicant had, in fact, not worked as Gangman, as reported by the DPO, Moradabad vide his letter dated 09.10.2012.

6. Finally, the authorities concerned submitted their revised assessment whereby the applicant's Working Reports for the years 2009-10 and 2010-11 were downgraded to 'good'. On the assessment of the Working Reports, the applicant was given 22 marks whereas respondent No.5 got 26 marks. Accordingly, respondent No.5 was selected.

7. We have considered the arguments of learned counsel for the parties and have also perused the pleadings and material placed on record.

8. As per the terms set out for selection under the LDCE, the candidates were required to appear in the written test. Only those candidates, who could cross the benchmark of securing 60% marks in the written

examination were considered qualified for further consideration. The final selection amongst the qualified candidates as per the written test was to be done on the basis of their Working Reports assessments. The applicant as well as respondent No.5 have both crossed the benchmark; in fact, the applicant had got more marks than the respondent No.5 in the written test. As observed earlier, the written marks were to be reckoned only for the purpose of short listing by way of crossing the prescribed threshold. Such marks were not to be taken into account for the final selection. The final selection was to be done on the assessment of the Working Reports of the short listed candidates.

9. Apparently, the applicant's Working Reports for the years 2009-10 and 2010-11 were written after the result of the written test was declared on 23.06.2012. It is seen from these two Working Reports of the applicant (Annexure A-5) that the concerned officers although have given him the outstanding gradings for the two years but without mentioning any specific reason for doing so. Writing of these two Working Reports after declaration of the results of the written tests, naturally raises doubts as to its credibility. The competent authority was, therefore, justified in seeking a special report from the officers, who had written these Working Reports, asking them to spell out the reasons. As could be seen from the records, the applicant had not actually worked as Gangman for most of the periods under report. The officers concerned finally submitted revised Working Reports bringing down the grading from 'outstanding' to 'good'. The allegation of the applicant that the Senior DPO, Muradabad (respondent No.3) was biased against him and was in favour of respondent No.5 is to be discarded completely, as no credible evidence has been produced on record by the

applicant to substantiate it. As such we hold that this allegation is just a wild allegation without any basis.

10. In the conspectus of the discussion in the foregoing paragraphs, we do not find any merit in the O.A and the same is accordingly dismissed. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Dr. K.B. Suresh)
Member (J)

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