

Central Administrative Tribunal Principal Bench

OA No. 2979/2013

New Delhi this the 16th day of September, 2015

**Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)**

Mrs. Sumegha Sharma,
W/o Shri Ashish Basara,
R/o F/16, Sudarshan Park,
Moti Nagar, New Delhi-110015 ...Applicant

(By Advocate: Shri Yogesh Sharma)

VERSUS

Union of India: Through

1. General Manager,
Northern Railway,
Baroda House, New Delhi
2. Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi
3. The Divisional Personnel Officer,
Northern Railway, DRM's Office,
State Entry Road, New Delhi

(By Advocate: Shri Kripa Shanker Prasad)

ORDER (Oral)

By Mr. A.K. Bhardwaj, Member (J):

The prayer made in the present OA filed under Section 19 of the Administrative Tribunals Act, 1985, reads thus:-

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the

impugned order dated 16.07.2013 only to the extent by which the name of the applicant has not been included in the panel, for his appointment to the post of Commercial Apprentice in grade PB-II+Rs. 4200 GP and consequently pass an order directing the respondents to conduct a review DPC for considering the case of the applicant after awarding two marks for cash award and after taking into account the working report of three years separately from the concerned correct reporting officer under whom the applicant had worked with all consequential benefits i.e. promotion from the date of promotion of other similar situated persons with the arrears of different of pay and allowance.

- (ii) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the working report dated 05.09.2012 submitted by ACM (Reservation) consequently pass an order directing the respondents to take the working report of the applicant from ACM (System) and from the Officer under whom the applicant had worked during the year 2009-10, 2010-11, 2011-12 and placed the same before the review DPC.
- (iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation."

2. Mr. Yogesh Sharma, learned counsel for the applicant, submitted that the qualifying marks for the selection were 48, while the applicant got 47.75 marks and was short of .25 marks only. According to him, had the respondents given him 2 marks for Vashist Sewa Praman Patra provided to him on 14.06.2011 and 06.02.2012 (Special Service Certificate), he could have qualified the exam (Commercial Apprentice Examination).

Further he made reference to various paragraphs of his Original Application to espouse that his working report considered by the assessment committee was not initiated by the competent authority and further instead of taking into account the working report for all the three years, the committee allotted the average marks on the basis of ACR/writing report which in itself was invalid.

Para 4.12 of the OA read thus:-

“4.12. That it is relevant to mention here that after receiving the copy of the working report under RTI the applicant came to know that the respondents have considered only one working report instead of taking the working report of three years separately. It is submitted that it is well settled principle of law as well as the Govt. of India instructions ‘to the effect that ACR/working report should be written by the officer concerned under whom the employee has worked. It is submitted that in the present case, the working report has been submitted by the Assistant Commercial Manager (Reservation) whereas, the applicant was not working under the ACM ® but the applicant was working under ACM (System). It is submitted that the reporting officer of the applicant was ACM (System). The duties and functions, responsibilities of the applicant and other staff were assigned by the ACM (System), the leave etc., were also sanctioned and granted by the ACM (System) and the applicant was under direct control and under the supervision of ACM (System) and therefore, the working report of the applicant should be submitted by the ACM (System) and therefore, awarding the marks to the applicant on the basis of a report from an Officer under whom she

was not working is of no consequence and this report could not have made the basis for awarding marks under the heading of service record. It is submitted that the working report of the applicant should be called from the ACM (System) under whom the applicant was working. Apart from this, it is clear from the column 16 of the working report submitted by the ACM (Reservation) that "since how long working under senior subordinate who has singed the working report? -2 years which clearly shows that the ACM ® gave his working report only in respect of one year maximum two years but not for all the three years and even in case for the sake of argument only even if the ACM (R) is the competent authority to write the working report of the applicant in that case also the third year working report for the year 2009-10 should be taken from the concerned officer who was posted at the particular time and therefore, the complete working report on the basis of which the applicant has been awarded the marks in the heading of service record is totally illegal, arbitrary and without jurisdiction and therefore, the working report liable to be set aside."

3. Mr. Kripa Shanker Prasad, learned counsel for the respondents, raised a preliminary objection that the OA is not maintainable as the applicant did not exhaust the remedies before approaching the Tribunal.

4. We heard the learned counsels for the parties and perused the record.

5. Indubitably, the name of the applicant was not included in the list of candidates for selection to the post of Commercial Apprentice against 10% LDCE quota. He

participated in the selection but was declared fail. In any case, the respondents have nixed the stand taken by the applicant in para 4.12 of their reply. The contents of Para 4.12 of the Reply read thus:-

“4.12 That the contents of the para are wrong and incorrect hence disputed and denied. It is submitted that in terms of GM(P) letter No.831-E/63/2-XIV/EIV dated 27.1.2006 one Working Report of preceding year is to be considered, where ACRs of staff is not maintained and this can be averaged out for the relevant period to bring about the uniformity. As the applicant was working in GP Rs. 2000/- only one Working Report was considered which was called from concerned department and the same was provided by the concerned department.”

6. The learned counsel for the applicant has placed reliance on the order passed by this Tribunal dated 03.06.2011 in OA No. 2160/2008, the relevant excerpts of which read thus:-

“8. The further issue, which requires our consideration is whether the applicant has been correctly been awarded 14 marks out of 30 marks under the heading “record of service” on the basis of which he could not have been empanelled. Admittedly, for awarding marks under the heading record of service respondents have taken into consideration the working report for the period from 1.4.2003 to 31.3.2006. Applicant has been awarded marks for service record, taking into consideration the working report for the aforesaid period. However, the case as projected by the applicant is that he was working under one Mr. P.K. Malik during the period 2.4.2003 to 16.9.2005 and had worked under Shri Girish Lubhania only for the period from 17.9.2005 to 31.3.2006. Therefore, the

working report for the period from 1.4.2003 to 16.9.2005 should have been taken from Shri P.K. Malik under whom he was working, otherwise the marks given upon the report of a officer under whom he has not worked would not be sustainable in law. As already stated above, this argument found favoured with the Tribunal while rendering the earlier judgment and direction was given to the respondents to re-convene the DPC and re-assess the applicant again considering the working report from those under whom applicant has worked and if upon reconsideration applicant is found to have been qualified his case shall be further considered for promotion in accordance with law. *Prima facie* we agree with the view taken by the Bench in the earlier OA qua this aspect. However, learned counsel appearing for respondent No.3 while drawing our attention to para-5 of the compliance affidavit filed by the respondents in the Contempt Petition has argued that in fact the applicant has been empanelled by the review selection committee on the basis of the revised working report, which were called from those under whom applicant had been working. According to learned counsel for respondent No.3 it was not permissible for the review Selection Committee to take into consideration the revised working report, especially when the applicant has been assessed on the basis of the working report for the aforesaid period, which was available with the original Selection Committee. It may be stated here that although this Tribunal in earlier OA has given direction to reconsider the matter again by taking into consideration the working report from those under whom applicant had worked but at the same time, in para-9 of the order This Tribunal has also observed that It is not known whether the working report was called for from Sh. P.K. Malik or not. Since the sole question which requires our consideration is whether the working report of the applicant for the period from 1.4.2003 to 31.3.2006, which formed basis for awarding the marks under the heading record of service was given by a person under whom applicant had worked or not, and whether the review Selection Committee has empanelled the applicant on the basis of the revised working report, which have been called from those under whom applicant had worked, although such working

reports under whom applicant had worked has been taken into consideration by the earlier Selection Committee, this Tribunal while reserving judgement has directed the respondents to produce the original record of the DPC as well as record of the review DPC. Liberty was also given to the respondents to file an affidavit whether the DPC took into consideration the working report of the relevant period, which was given by the respective officer under whom applicant had worked or the working report for the period from 2003 to 2005 was given by an officer under whom applicant had not worked.

9. Pursuant to the directions given by this Tribunal, respondents have produced the original record. We have perused the proceedings of the provisional Selection Committee as well as Review Selection Committee. We find that on the basis of the working reports for three years applicant was assessed as "average", "average" and "good" by the original Selection Committee and thus awarded 14 marks for the heading "record of service". However, when the working reports for three years were called from the officer under whom applicant had worked, he has been graded as "very good" for the period 2004-2005, "average" for 2005-2006 and "good" for 2006-2007. A perusal of the proceedings of the review Selection Committee further reveals that on the basis of the revised grading applicant will get $8+4=12$ marks under the heading "record of service" and his total marks comes to $31.5+12=49.5$ out of 80, i.e.. more than 60%. Thus, the applicant who is a senior SC candidate has become eligible to be placed on the panel instead of respondent No.3 Shri Umesh Kumar, junior to him. We have also perused the working report of the aforesaid three years, which was made available to us and find mentioned at pages 42-44 of the file made available to us. The working report of the applicant for the period 2004-2005 has been written by Shri P.K. Malik under whom applicant was working and he has assessed him "very good" whereas the working report for the year 2005-2006 and 2006-2007 whereby the applicant has been assessed as "average" and "very good" has been signed by the same person. Be that as it may, since the applicant has obtained 60% marks in the aggregate and 12 marks under the heading "record of service" on the

basis of the working report written by the officer under whom the applicant had worked, as such we are of the view that the applicant has made out a case for grant of relief. Since the applicant has obtained 60 marks in the written examination and 60% marks in aggregate, as such pursuant to the recommendations made by the Review Selection Committee, he has been rightly empanelled subsequently by the respondents based on the recommendations made by the Review Selection Committee. Accordingly, OA is allowed, with no order as to costs.”

The order was upheld by the Hon’ble Delhi High Court in terms of judgment dated 18.07.2013 passed in WP(C) No. 4335/2011, the relevant excerpts of which read thus:-

“18. Pursuant to the directions of this Court the petitioner had filed a reply to the Original Application. It is seen, in that reply, the petitioner does not aver any of the points which he has now taken before us. It appears that in terms of the earlier judgment of the Tribunal dated August 21, 2009 a Review Selection Committee was constituted which considered the name of the respondent No.3 afresh. A working report from Mr.P.K.Malik under whom the respondent No.3 was working was placed before the Review Selection Committee which re-assessed the respondent No.3 and with a higher grading increased the marks for “record of service from 14 to 18. This resulted in respondent No.3 securing 60% aggregate. In the absence of any challenge to the said position, the Tribunal had rightly taken judicial notice of the findings of the Review Selection Committee. The Tribunal has no role to play either in the working report or awarding the marks to the respondent No.3. Neither the Tribunal nor this Court can sit in appeal over the findings of the Review Selection Committee based on the working report.

19. It is the duty of respondent Nos.1 and 2 to place before the Selection Committee the relevant material as expected under the Rules, that too from an officer who had actually seen, watched and

assessed the work of the officer. If that is not done, then the officer under assessment would suffer a prejudice as the Selection Committee would not assess him in the right manner. The case in hand is one such case where the earlier Selection Committee had assessed the respondent No.3 on the basis of an irrelevant record. The review Selection Committee had rectified the mistake by correctly assessing the respondent No.3 in terms of the relevant record of service. Such an action cannot be faulted. We do not find any infirmity in the order of the Tribunal and dismiss the writ petition.”

7. We could have adjudicated the OA on merits, but once the respondents have raised a specific plea in the reply that the applicant could not exhaust the departmental remedies before approaching the Tribunal, for the reason that the OA is pending before us since 2013, we dispose of the same with liberty to the applicant to make a representation to the respondent, i.e., DRM (Delhi Division), within two weeks and further direction to the respondents to decide the same within four weeks thereafter, keeping in view the aforementioned order passed by this Tribunal as upheld by the Hon’ble Delhi High Court, by way of detailed, reasoned and speaking order. Till the disposal of the representation of the applicant, the interim order passed by this Tribunal on 09.09.2013 would remain in operation. It goes without saying that if after the order passed by the respondents, the grievance of the applicant subsists, he would be at

liberty to take recourse for the appropriate remedy in accordance with law, if so advised.

(Dr. B.K. Sinha)
Member (A)

(A.K. Bhardwaj)
Member (J)

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