



**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH**

No. O.A. 621 OF 2011

Date of order: 8<sup>th</sup> December, 2017

Present: Hon'ble Ms. Manjula Das, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Mantu Chandra Saha (SC),  
Son of Late Sudarshan Saha,  
Aged about 52 years,  
Working as Tech. Grade-I (M. Fitter),  
T. No. 26/970, C/No. 327871N, BU No. 264, CLW/CRJ,  
SSE/ELF-26 Shop/CLW/CRJ,  
Residing at Street 28, Qrt. No. 24/A,  
Chittaranjan, Burdwan.

.. Applicants

Vs.

1. The Union of India,  
Through the General Manager,  
CLW/Chittaranjan,  
Burdwan,  
Pin - 713331.
2. The Chief Personnel Officer,  
CLW/Chittaranjan,  
Burdwan,  
Pin - 713331.
3. Sri Dipankar Biswas (SC),  
Tech. I, T. No. 16/411 (New T. No. 16/007).
4. Sri Durga Charan Mondal (SC),  
Welder Gr. II, T. No. 17/545 (New T. No. 16/001).
5. Sri Goutam Mondal (SC),  
M. Fitter,  
Gr. II,  
T. No. 05/189.

.. Respondents

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. A.K. Banerjee, Counsel

*(Signature)*

ORDERPer Dr. Nandita Chatterjee, Administrative Member:

This Original Application has been filed under Section 19 of the Administrative Tribunal, 1985 seeking the following reliefs:-

"a. Panel dated 30.6.2010 regarding formation of panel of Inter-stage Apprentice Mechanics (Mechanical) cannot be tenable in the eye of law as the same was prepared in violation of Rule 219 (G) of the IREM and therefore the same should be quashed.

b. An order do issue directing the respondents to prepare the panel afresh as per Rule 219 (G) of the IREM and also in the light of the judgment passed in Ramjay Ram's Case.

c. An order do issue directing the respondents to allot marks in respect of personality address leadership and also to allot proper marks in respect of record of service since no adverse remark was ever communicated to him."

2. Ld. Counsel for the applicant and respondents are both present and heard. Ld. Counsel for the applicant in his submission on behalf of the applicant, submitted as follows:-

(i) That, a notification was issued for filling up of the post of Apprentice (Mechanical Interstage). Total 19 vacancies were declared for promotion out of which four were for SC candidates and 2 were for ST. In all, 649 candidates were found eligible including the applicant. The applicant was declared suitable in the written test but he was not placed in the panel of successful candidates.

(ii) That, the applicant being a Science Graduate with a diploma in Mechanical Engineering, his qualifications were to be adequately recorded in the performance sheet.

(iii) That, O.A.s bearing No. 91 of 2008 and O.A. No. 336 of 2005 had been filed challenging the selection test on the ground that the panel was prepared on the basis of seniority and not on the basis of merit and the Tribunal vide its order dated 31.7.2009, while relying upon a case of the Hon'ble Apex Court in Ram Jay Ram v. South Central

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Railway & ors. 1996 (1) SCSLJ 536 as well as Railway Board Circular dated 19.6.2009, had directed the respondents to prepare a fresh panel after following the Railway Board's revised Circular dated 19.6.2009. The implications were that the panel had to be prepared strictly according to the merit based on aggregate marks of professional ability, Record of Service and marks secured in the written examination.

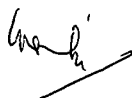
(iv) That, a similar decision was arrived at by the Punjab and Haryana High Court in Writ Petition No. 4746 of 2002 which was subsequently upheld by the Hon'ble Apex Court in SLP No. 16744-2008 vide orders dated 5.1.2009.

3. Challenging the panel dated 30.6.2010, the instant application has been filed.

4. Per contra, the respondents as represented by their Ld. Counsel have argued as follows:-

(i) That a notification bearing No. GMA/TTC/3/1 Pt. X dated 28.10.2003 was issued for filling up 19 no. vacancies to the post of Inter Stage Apprentice Mechanics (Mechanical). As the applicant was eligible for appearing in the test, his name duly appeared in the eligibility list circulated vide No. GMA/TTC/3/1 Pt. X dated 14.9.2009. The applicant passed in the written test and scored 26 out of 50 and 18 out of 30 marks in the Record of Services obtaining thereby, in aggregate, 44 out of 80 marks. That, the panel was prepared purely on merit basis and as per directives of CAT dated 31.7.2009. That, the candidate, although suitable on relaxed standard, did not qualify as per merit.

(ii) That the respondents have followed the Rule 219 (j) of IREM Vol. I and the directives of the Tribunal dated 31.7.2009 in O.A. No. 91 of



2008. It has also been stated by the respondents that, while the qualifying marks for professional abilities was 30 against the maximum of 50, there were no qualifying marks against the Records of Service for which the maximum marks were 30.

It has also been stated by the respondents that records of service was based on the performance of the employees in the Zonal Training School/Institute, upon examination of Confidential Records as well as other relevant records.

5. The two issues which are to be resolved to adjudicate the instant matter are as follows:-

(i) Whether the panel dated 30.6.2010 under challenge was prepared in accordance with the Railway Board's relevant circulars based on Indian Railway Establishment Manual Vol. I (1989 Edition) Para 219(j) as authorised by Railway Board's letter No. E(NG)I-2008/PM 7/4 SLP dated 19.6.2009.

(ii) Whether the panel dated 30.6.2010 was prepared as directed by the Tribunal on 31.7.2009.

The relevant circular as referred to by the Tribunal as per revised order of Railway Board dated 19.6.2009 has been annexed at Annexure "R-2" to the reply, which states as follows:-

**"INDIAN RAILWAY ESTABLISHMENT MANUAL, VOLUME-I (1989 Edition) ADVANCE CORRECTION SLIP NO. 209**

Chapter II, Section 'B' - Rules governing the promotion of Group 'C' staff.

I. Substitute the following for the opening sentence of existing sub-para (j) of Para 219-

(j) For general posts, i.e., those outside the normal channel of promotion for which candidates are called from different categories whether in the same department or from different departmental and where zone of consideration is not confined to three times the number of staff to be empanelled, the selection procedure should be as under:-

II. Substitute the following for the existing clause (iii) below sub-para (j)

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of Para 219:-

"The final panel should be drawn up in the order of merit based on aggregate marks of 'Professional ability' and 'Record of service'. However, a candidate must secure a minimum of 60% marks in 'Professional ability' and 60% marks in the aggregate, for being placed on the panel. There will be no classification of candidates as 'Outstanding'.

6. In this case, as submitted by the respondents, the maximum marks for "professional ability" was 50 and hence to qualify, a candidate has to secure a minimum of 60% in the field, that is 30 marks. The respondents have stated that the applicant had secured 26 against 50 which was below the qualifying marks and only in the context of relaxed standard, could he be considered as qualified for "professional ability".

7. Regarding 'record of service' it is seen that the candidate has been awarded 18 marks against a maximum of 30 marks allotted to this item and there are no minimum qualifying marks against this heading. According to the respondents, the records of services were obtained from performance of the employee in Zonal Training School/Institute, upon examination of CRs and other relevant records.

8. It is noted here that as the 'other relevant records' have not been detailed, such records cannot be subjected to objective assessment in absence of specifics. No documents has been produced before us by the respondents to prove as to how the applicant was awarded against his performance in the Zonal Training School/Institute. Regarding his CRs, the dossiers of CR has been furnished by the respondents to the Court. Upon perusal of the same, the applicant's record from 2008-2009 onwards are recorded as follows:-

Year of assessment	ACR Grading
2008-2009	Very Good
2009-2010	Very Good

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2010-2011	Good
2011-2012	Very Good
2012-2013	Very Good
2013-2014	Outstanding
2014-2015	Good

9. Hence, it is seen that 2008-2009 onwards, the candidate did receive grades which were below outstanding. 'Outstanding' was only awarded to him in the year 2013-2014.

10. According to DOPT O.M. No. 21011/1/2015-Estt. (A) (Pt. II) dated 14.5.2009:

(ii) The full APAR including the overall grade and assessment of integrity shall be communicated to the concerned officer after the Report is complete with the remarks of the Reviewing Officer and Accepting Authority wherever such system is in vogue. Where Government servant has only one supervisory level above him as in the case of personal staff attached to officer, such communication shall be made after the reporting officer has completed the performance assessment.

(iii) The Section entrusted with the maintenance of APARs after its receipt shall disclose the same to the officer reported upon.

(iv) The concerned officer shall be given the opportunity to make any representation against the entries and the final grading given in the Report within a period of fifteen days from the date of receipt of the entries in the APAR. The representation shall be restricted to the specific factual observations contained in the report leading to assessment of the officer in terms of attributes, work output, etc. While communicating the entries, it shall be made clear that in case no representation is received within the fifteen days, it shall be deemed that he/she has no representation to make. If the concerned APAR Section does not receive any information from the concerned officer on or before fifteen days from the date of disclosure, the APAR will be treated as final.

(v) The new system of communicating the entries in the APAR shall be made applicable prospectively only with effect from the Reporting Period 2008-2009 which is to be initiated after 1<sup>st</sup> April, 2009.

(vi) The Competent Authority for considering adverse remarks under the existing instructions may consider the representation, if necessary, in consultation with the reporting and/or reviewing officer and shall decide the matter objectively based on the material placed before him

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within a period of thirty days from the date of receipt of the representation.

(vii) The Competent Authority after due consideration may reject the representation or may accept and modify the APAR accordingly. The decision of the Competent Authority and the final grading shall be communicated to the officer reported upon within fifteen days of receipt of the decision of the competent authority by the concerned APAR Section."

11. The respondents, however, have relied on a Master Circular No. 28 dated 17.6.1991 which states in terms of Para 8 that "adverse remarks recorded in the Confidential Report of a Railway servant should be communicated". The Master Circular is of 1991 vintage and respondents have not stated anywhere that the Railway Establishment have not adopted DOPT O.M. dated 14.5.2009 for disclosing of APAR from 2008-2009 onwards. In the absence of any such admission, it is presumed that the employee had a right to be shown his APAR from 2008-2009 onwards. Consequently, he had an opportunity to represent against the APARs from 2008-2009 onwards for upgradation, if so desired.

12. In the absence of clarity and suitable and specific response on behalf of the respondents as to how they had arrived at 18 marks for "Record of Service" against the applicant, we are of the view that it cannot be concluded that the marks awarded to the applicant against "Records of Service" was arrived at objectively and with specific accuracy.

13. The respondents by their own admission, have stated that the applicant qualifies under relaxed standard under performance score. Hence, it is only his apparent low marks against "Records of Service" which has legitimately deprived him from being empanelled as a successful candidate.

14. Hence, (i) we direct that the respondents disclose all APARs from 2008-2009 onwards to the applicant thereby giving him an opportunity to represent, if he so desires, against the same to the competent authority. In this, we are guided by Hon'ble Apex Court's observations in **Dev Dutt v.**

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**Union of India & ors. (2008) 8 SCC 725** wherein it has held that:

"Requirement of communication of the entries flow from the constitutional obligation of fairness, non-arbitrariness and natural justice."

The Supreme Court has not restricted the obligation to adverse remarks only. It has said that communication of outstanding grading is only recommended as the same would boost the morale of the employee.

A Constitutional Bench judgment of the Supreme Court in **Prakash Chand Sharma v. ONGC 1970 SLR 116 (SC)** found that:

"the committee's taking into consideration confidential reports with respect to which the petitioner had been given no chance to make a representation was merely fortuitous."

(ii) The respondents also should objectively quantify the marks awarded to him for performance of the employee in the Zonal Training School/Institute and account for any other marks awarded for other relevant records, after specifying the same. Upon decision of the competent authority on the representation of the applicant and upon an objective reassessment on the marks arrived at in the "service record" category of the applicant, the respondents should, if so permitted under the rules, refresh the panel dated 30.6.2010. The entire exercise should be completed by the Respondent authorities within 16 weeks of the date of receipt of this order.

15. There will, however, be no orders on any retrospective benefits accruing to the applicant in case he is so empanelled by the Respondent authorities.

16. The O.A. succeeds. No costs.

  
(Dr. Nandita Chatterjee)  
Administrative Member

  
(Manjula Das)  
Judicial Member

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