

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH : BANGALORE

ORIGINAL APPLICATION No. 170/00265/2017

TODAY, THIS THE 06th DAY OF NOVEMBER, 2018

**HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER
HON'BLE SHRI DINESH SHARMA, ADMINISTRATIVE MEMBER**

S. Nanjunda,
Aged about 54 years,
S/o Sanjappa,
Pointsman 'A'/Harihara,
Door No. 113/B, Railway Quarters,
Harihara, Davanagere District

(By Advocate Shri B.S. Venkatesh Kumar)

versus

1. Union of India
Represented by The General Manager,
South Western Railway,
Headquarters Office,
Gadag Road, Hubli – 580 020
2. The Additional Divisional Railway Manager,
Mysore Division,
South Western Railway, Mysore
3. The Senior Divisional Personnel Officer,
Personnel Branch, Mysore Division,
South Western Railway, Mysore

(By Shri Nizam Abbas, Counsel for the Respondents)

ORDER

Hon'ble Shri Dinesh Sharma, Administrative Member

The case of the applicant is that despite his having qualified in the examination conducted for selection to the post of Goods Guard against 60% promotional quota following a notification dated 18.07.2013; he has not been empanelled in the selection list. Inspite of his repeated requests to find out reasons, he has not been given proper reply. He has also

alleged that he had passed similar examination in the year 2008. However, that process of examination was cancelled for no fault of his.

2. The respondents have denied the claim of the applicant. The applicant was not empanelled for selection since he secured less than qualifying marks when the results of the examination and marks awarded on the basis of record of service were totalled. For selection, he required to achieve at least 60% marks out of total 80 marks, but he secured only 47 which was one mark short of the required marks.

3. The applicant, in his rejoinder, has questioned the reduction of one mark based on a minor penalty (imposed on 23.07.2013, reduced to 'Censure' on 29.11.2013). He has also claimed that he should have been given additional marks for having passed in the SSLC Examination in December, 2013. The applicant has quoted the decision of this Tribunal in O.A. No. 135/2014 which was upheld by the Hon'ble High Court of Karnataka in W.P. No. 5546/2015 (S-CAT) dated 3.6.2016, in support of his case. According to this decision, only the service record prior to the date of notification is relevant for consideration.

4. The respondents have also raised the issue of limitation since the examination was conducted in the year 2013. Since we find that the applicant did not get the details of the assessment process till he filed for this information under the RTI and since he was still expecting a relief from the respondents, we consider that there is sufficient reason for condoning the delay even though the applicant has not asked for it.

5. After going through the pleadings and having heard the counsels, it is clear that the applicant would have got empanelled for promotion if one mark was not deducted for the eventual penalty of censure. The penalty

was imposed on him after the date of notification, but before the date on which the selection panel was prepared. Though the respondents have argued that there is no such rule which mandates them to consider service record only upto the date of notification, the decisions quoted by the applicant (cited in para 3 above) make it very clear that only the service record prior to the date of notification for the selection process is relevant for considering a person's fitness for promotion. In this case he seems to be the only person who has been left out of the selection panel because of this one mark shortage. If the logic of considering service record upto the date of empanelment decision was to be followed and if the empanelment (Annexure A-3) was finalised in December, 2013 instead of November, 2013, the applicant would have got extra marks for SSLC qualification. Thus the applicant appears to have suffered because of an unfortunate random event of the selection process happening after the imposition of a minor penalty but before the declaration of his SSLC results. There is admittedly sufficient number of vacancies available for SC candidates. In this situation, following the earlier decision of this Tribunal which is upheld by the Hon'ble High Court of Karnataka, we direct the respondents to consider the case of the applicant for promotion on the basis of service record as it stood on the date of notification for examination (18.07.2013).

6. The O.A. is, therefore, allowed. The respondents should issue orders considering the applicant for promotion to the post of Goods Guard after taking into consideration the service record upto the date of notification for examination. No costs.

**(DINESH SHARMA)
ADMINISTRATIVE MEMBER**

**(DR. K.B. SURESH)
JUDICIAL MEMBER**

Cvr.

Annexures referred to in O.A. No. 170/00265/2017

- Annexure-A1: Copy of the notification dated 18.07.2013
- Annexure-A2: Copy of the letter dated 30.10.2013
- Annexure-A3: Copy of the memorandum dated 06.11.2013
- Annexure-A4: Copy of the RTI application dated 11.11.2013
- Annexure-A5: Copy of the reply showing marks list dated 15.11.2013
- Annexure-A6: Copy of the valuation sheet dated 22.12.2015
- Annexure-A7: Copy of the first page of answer book supplied in RTI reply dated 22.11.2015
- Annexure-A8: Copy of the representation dated 20.01.2016
- Annexure-A9: Copy of the representation dated 17.06.2016
- Annexure-A10: Copy of the SSLC certificate of the applicant

Annexures filed with reply statement

- Annexure-R1: Copy of the representation of the applicant dated 25.08.2015
- Annexure-R2: Copy of the letter dated 28.10.2015
- Annexure-R3: Copy of the CPO's letter dated 24.02.2011