

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE
ORIGINAL APPLICATION NO.170/01843/2018
DATED THIS THE 27th DAY OF NOVEMBER, 2019
HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

B.P.Thulasiraman
S/o Sri.A.Prabhakaran
Aged 37 years
Technician Grade 1
Central Workshop
South Western Railway
Mysuru-570008.

....Applicant

(By Advocate Shri K.Shivakumar)

Vs.

1. Union of India
Rep. by General Manager
South Western Railway
Hubli.
2. Chief Workshop Manager
South Western Railway
Central Workshop
Mysuru South.
3. Workshop Personnel Officer
South Western Railway
Central Workshop, Mysuru South.

...Respondents

(By Advocate Sri N.Amaresh)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that while working as Technical Grade-1 in Central Work Shop at Mysuru South, he applied for the post of Junior Engineer against 25% LDCE quota in response to the notification dtd.4.1.2017(Annexure-A1) issued by the 3rd respondent. The notification states that the mode of selection is through written examination only. But as per rules, the selection consists of not

only the written examination but also to take the record of service that is the marks obtained in the written examination to be taken together along with the marks awarded to the record of service to finalise the panel. Since it is the selection through LDCE, the seniority has no role to play and the merit is only taken into consideration for arriving at the panel. The employees who secure 60% of marks in the written examination with 60% in the aggregate are only placed in the panel. As per the serial circular issued by the Chief Personnel Officer, South Western Railway, Hubli dtd.24.2.2011(Annexure-A2), the maximum marks for record of service is 30 distributed as 15 marks for grading in ACRs/working reports of last 3 years, 10 marks on the basis of entries of Awards/Punishments in Service Register and 5 marks on the basis of entries in service register of Academic/Technical qualifications. The written examination was held on 14.7.2017 and 18 employees were qualified in the written examination and became eligible for consideration for empanelment and the memorandum in this regard issued by the 3rd respondent vide dtd.21.8.2017(Annexure-A3). As the notification was issued in January 2017, the last 3 years Awards/punishments i.e. for the years 2013-14, 2014-15 and 2015-16 only to be taken into consideration as per Annexure-A2. But in the format issued by the respondents, the awards granted and penalties imposed for the period 2014-15, 2015-16, 2016-17 had been mentioned and taken into consideration. Similarly instead of taking the APARs/Performance report for the last three years i.e. up to 2016, the APAR pertaining to 2017 has also been taken into consideration by the respondents against the instructions of the Chief Personnel Officer, South Western Railway, Hubli. Since the applicant had been awarded with General Manager award in 2013-14, he submitted representation

dtd.6.10.2017(Annexure-A4 & A5) to take that award into consideration. But till now there is no reply on the same. The applicant submits that he has scored 60 marks out of 100 in the written examination which he came to know after securing his answer sheets under RTI. He has been graded 'outstanding' in the last 3 years i.e. 2014, 2015 & 2016. But his name was not figuring in the list of empanelled employees vide memorandum dtd.10.10.2017(Annexure-A6) wherein the name of Ravishankara S. is figuring at Sl.No.2 whereas in the memorandum at Annexure-A3, no such name is figuring which shows the way the selection has been finalized by the respondents. It is learnt that one of the employees Sri K.Murugan who was qualified in the written exam along with the applicant has challenged the said selection in OA.765/2017. In reply to the said OA, the respondents have admitted that APARs for the years 2015, 2016 and 2017 were taken into consideration which is against the orders of the Chief Personnel Officer and the decisions of the Tribunals in numerous cases. The APAR and award for the year 2017 are taken into consideration to favour some vested interests and having known the written exam marks, to boost the marks and to get their candidates empanelled, the awards may be granted and APAR with grading of outstanding may be given to the persons of their choice. If the service records pertaining to the year 2017 is not taken into consideration, some or all the empanelled candidates may not find place in the panel whereas the applicant will have the chance of finding a place in the panel. Though the written examination marks to be published after the selection is finalised, the same was not done by the respondents. The action of the respondents in taking the APAR and award for the year 2017 for the selection is wrong and in gross violation of

rules and to favour some vested interests. Aggrieved by the same, the applicant has filed the present OA seeking the following relief:

- i. Direct the respondents to produce the selection file No.S/P.608/IV/JE/LDCE/Selection/2017(Annexure-A6) and on perusal, order for quashing of the selection as it has been done against selection procedure. Or*
 - ii. Order for recalculation of the marks on record of service by taking the last 3 years service records i.e. 2014, 2015 and 2016 only and to amend the panel based on the marks arrived on the recalculation.*
2. Per contra, the respondents have submitted in their reply statement that the OA is barred by limitation as the OA is filed as an afterthought much after completion of various stages of selection process like issue of panel, deputing selected Apprentice Junior Engineers for training, absorption of selected candidates to working posts on successful completion of training etc. Hence, on this ground alone, the OA is liable to be rejected.
3. The respondents submit that the applicant was appointed in Railways as Trainee Technician Gr.III on a stipend of Rs.3050/- in pay scale of Rs.3050-4590 w.e.f. 10.1.2005 in Western Railway. He was absorbed as a regular Technician Gr.III w.e.f. 6.7.2005. Subsequently, he was transferred to Central Workshops, Mysuru South, SW Railways w.e.f. 11.8.2008. He was then promoted to the post of Technician Gr.II in PB-1 with Grade Pay of Rs.2400 w.e.f. 29.12.2010 and to the post of Technician Gr.I in PB-1 with GP 2800 w.e.f. 18.7.2014. A notification calling for volunteers from Technicians was issued by the 3rd respondent vide letter dtd.4.1.2017 for filling up the posts of Junior Engineers in PB-2 with GP Rs.4200 against 25% Limited Departmental Competitive Examination(LDCE) quota in Mechanical Department. On the same day, a corrigendum was issued vide dtd.4.1.2017(Annexure-R1) duly correcting an inadvertent typographical error in the number of vacancies as 4 UR instead of 9. The post of Junior

Engineer being classified as a 'Safety Category' post, there is no relaxation in qualifying marks to employees belonging to the category of SC/ST and hence they are also required to secure 60% marks in the written examination. The candidates should have completed 3 years of satisfactory service in the grade of Technician Gr.III and above as on 4.1.2017. Employees otherwise eligible and possessing the qualifications of Degree or Diploma in the relevant branch of Engineering are also eligible to volunteer to appear in the selection for induction as Intermediate Apprentices along with those with the qualification of ITI/Act Apprenticeship or 10+2 (Science Stream). The volunteering employees should fulfil the service conditions of age, educational qualifications and other service conditions as on 4.1.2017. The applicant volunteered for the above selection along with other employees. Subsequently, an alert notice was issued to the eligible employees including the applicant vide letter dtd.16.6.2017(Annexure-R2) to appear for the written examination to be held on 14.7.2017 in Mysore. The applicant having fulfilled the eligibility criteria was called for written examination along with others on 14.7.2017 and the applicant had secured the requisite qualifying marks in the written examination. Thus his name was included in the list of employees qualified in the written examination vide memorandum dtd.21.8.2017 wherein it is clearly mentioned that empanelment of employees is subject to their suitability to be assessed by a duly constituted selection committee based on their service records and marks secured in the written examination, to the extent of vacancies notified. Hence, it does not tantamount to inclusion of his name in the provisional panel which was published vide memorandum dtd.10.10.2017 containing names of 4 employees who had secured the highest marks and found suitable in the selection.

4. The respondents further submit that the guidelines issued by the Chief Personnel Officer, SW Railways vide dtd.24.2.2011(Annexure-A2) is advisory in nature and contains the gist of various circulars issued by the Railway Board in the matter of selection within Group-C cadre. The nominated selection committee constituted to select the candidates has strictly observed all the procedures and stipulations laid down by Railway Board in the above selection. The contention that awards for the last 3 years i.e. 2013-14, 2014-15 and 2015-16 are only to be taken for consideration as per Chief Personnel Officer circular dtd.24.2.2011, is without basis since the said circular does not stipulate any such conditions. The committee nominated to select the candidates considered the APARs and awards for the years 2014-15, 2015-16 & 2016-17 since the committee convened to finalise the selection only in the month of October-2017. The notification was issued on 4.1.2017 and the employees were already due for APARs for the year 2016-17 since more than 9 months had elapsed by the time the committee convened to finalize the selection. Therefore, the APAR for the year 2016-17 has been taken into consideration for the selection purpose, along with previous two years APARs i.e. 2014-15 & 2015-16. The APARs and awards for the years 2014-15, 2015-16 & 2016-17 were considered uniformly for all the 18 employees who had qualified in the written examination including the applicant. Hence consideration of APAR and Award for the year 2017 is in order and justified. The applicant had bagged Railway Week award at GM's level for the year 2013-14 which was not coming within the field of consideration and hence it was not considered for assessment by the selection committee. The particulars furnished by the applicant in the prescribed format are annexed as Annexure-R3. The applicant falsely believes that if the committee had considered GM's award for

the year 2013-14 received by him, it would have changed his fortunes and he would have got selected for the post of Junior Engineer. The applicant has made a wild and baseless allegation that this procedure was adopted to favour some vested interests in the selection, which is strongly denied. The selection has been conducted in a fair manner. There was no attempt at any stage of the selection to favour any particular individual or individuals as alleged by the applicant. The name of Sri S.Ravishankara figures both in Annexure-A6 and A3. In Annexure-A3, his name is wrongly spelt as Sri S.Ravikumara at Sl.No.1 instead of S.Ravishankara. This mistake was later corrected vide corrigendum dtd.22.8.2017(Annexure-R4). There is no provision in the rules to publish the marks secured by the candidates in the written examination in case of selections held within Group-C. However, in terms of Railway Board letter dtd.24.6.2011(Annexure-R5), marks secured in written and viva separately by a candidate may be disclosed, on receipt of formal request from the concerned candidate after finalization of the panel. The respondents have acted within the rules and in view of the clear instructions contained in Annexure-R5, the marks in the written examination were not published which is reasonable. The applicant has totally relied on conjectures and surmises and hence the OA is liable to be dismissed in limine.

5. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that the respondents are repeatedly justifying their stand of taking the service records pertaining to the period 2016-17 based on the written examination results of the subject selection published in August 2017 though the notification was issued in January 2017 which is against the rules and also the procedure being followed in the divisions of the South Western Railway. It has

been admitted that the candidates should fulfil all the conditions as on the date of notification i.e. 4.1.2017. When so, how the APAR, awards and punishments pertaining to the period 2016-17 could be taken into consideration need to be clarified by the respondents. In the case of Sri Murugan(applicant in OA.765/2017), the respondents stated that they could not take the qualification obtained subsequent to the notification into consideration whereas they have different stand as far as record of service is concerned. It has been stated that the guidelines issued by the Chief Personnel Officer, South Western Railway, Hubli on 24.2.2011 is advisory in nature and the selection committee has followed the guidelines issued by the Railway Board. This means the respondents have not followed the guidelines of the Chief Personnel Officer who is the head for the establishment section in South Western Railway. Further the respondents have not furnished the guidelines of the Railway Board which were followed by them in the subject selection. In Mysore Division, when the notification was issued on 15.1.2019 for filling up the post of Welfare Inspectors, the service records pertaining to the previous three years have only been taken into consideration(Annexure-A7). Similarly, when notification was issued in Bangalore Division on 6.11.2017 for filling up of the post of Junior Engineer(P.Way), the APAR and the service register for the preceding three years of the date of notification were taken into consideration(as per the reply in OA.No.13/2019). Further it has been stated in the reply that the suitability of the candidates was adjudged under the heading 'Record of Service' as per instructions of Railway Board vide RBE No.35/2006 dtd.22.3.2006 and letter dtd.24.2.2011. This clearly shows that the selections in Bangalore and Mysore divisions of the very same Railway have been conducted as per the advice of

PCPO/SWR/Hubli. Whereas the Mysore workshop which is a small unit has conducted the subject selection to their convenience and in violation of the instructions of the PCPO. Since the respondents have categorically stated that the orders of the PCPO is only advisory in nature and did not stipulate any such conditions of taking the APAR of the last three years and the stand of the workshop and of divisions are contradictory as far as the period of records to be considered for the selection, the Tribunal may direct the Principal Chief Personnel Officer to file a clarification statement since the main issue in the OA is about the period of service records to be taken into consideration. Since the selection has not been conducted in a fair manner, the same needs to be quashed. If not the panel to be reviewed by considering the service records of the employees qualified in the written examination for the periods 2013-14, 2014-15 and 2015-16 only.

6. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The issue in this case is in a very small compass. The notification for filling up of the post of Junior Engineer was issued vide Annexure-A1 dtd.4.1.2017. This Tribunal has held in any number of cases that the crucial date of notification will decide the further issues regarding the records to be verified, the APARs to be judged and the penalties to be considered etc. when any employee is considered eligible for promotion based on written examination etc. The respondents have admitted that the applicant has passed the written examination and qualified for being considered for promotion. Therefore, they cannot now take a plea that the result of the examination was published on 21.8.2017 and therefore they have taken the APARs for the 3 years i.e. 2014-15, 2015-16 & 2016-17 into consideration. As

already noted, the notification was issued on 4.1.2017 and therefore, the respondents should have considered only the APARs for the years 2013-14, 2014-15 & 2015-16 since the year 2016-17 was not over and their contention that 9 months' period has already been over in the concerned year has no merit. In fact, vide Annexure-R2, there have been many cases which have not been considered since those persons did not complete 3 years of service as on 4.1.2017. The respondents cannot be having different procedures and different benchmarks based on their own convenience. The applicant is definitely eligible to be considered for promotion based on the records of 2013-14, 2014-15 & 2015-16 and the respondents are directed to examine the same within one month and if necessary examine the records of the selected persons vide the notification dtd.10.10.2017 and take appropriate decision accordingly. In case the applicant also qualifies to be promoted, the respondents shall issue necessary orders of promotion within a period of one(1) month of the above consideration. Since the persons already selected are not in the party array, it is the responsibility of the respondents to protect their promotion while at the same time ensuring that the applicant is given due consideration based on the records for the past 3 years and his written examination marks vis-à-vis the other candidates.

7. The OA is allowed with the above orders. No costs.

(C.V.SANKAR)
MEMBER (A)
/ps/

(DR.K.B.SURESH)
MEMBER (J)

Annexures referred to by the applicant in OA.No.170/01843/2018

Annexure-A1: Copy of the notification dtd.4.1.2017

Annexure-A2: Copy of the circular dtd.24.2.2011

Annexure-A3: Copy of Memorandum dtd.21.8.2017
Annexure-A4: Copy of representation dtd.6.10.17
Annexure-A5: Copy of representation dtd.6.10.17
Annexure-A6: Copy of Memorandum dtd.10.10.17

Annexures with reply statement:

Annexure-R1: Copy of corrigendum No.s/P.608/IV/JE-II/LDCE/Selection dtd.4.1.2017
Annexure-R2: Copy of alert notice dtd.16.6.2017
Annexure-R3: Copy of particulars furnished by the applicant in the prescribed format
Annexure-R4: Corrigendum No.S/P.608/IV/JE/LDCE/Selection/Vol.VIII dtd.22.8.2017
Annexure-R5: Railway Board letter No.E(NG)-i-2006/PM1/36 dtd.24.6.2011
(R.B.E.No.97/2011)

Annexures with rejoinder:

Annexure-A7: Service record details sheet
