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O.A. 350/1/42/2014

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH, KOLKATA

PARTICULARS OF THE APPLICANT:

Shri Trikeshwar Nath Trideo, Son of Sri Ram Deo Raman, aged about 38 years, working as Electrical Loco Pilot [Goods] in Asansol Division, Eastern Railway, residing at South Budha Railway Colony, Quarter No. 288/GH, P.O. + P. S. - Asansol, District Burdwan, Pin Code 713 301, West Bengal APPLICANT

VERSUS -

- i) The Union of India, through the General Manager, Eastern Railway, Fairlie Place, Kolkata 700 001
- ii) The Secretary, Railway Board, Rail Bhavan, New Delhi 1
- iii) The Senior Divisional Personnel Officer, Eastern Railway, Asansol, P.O. + P.S. - Asansol, District Burdwan. 713302
- iv) C. K. Choudhury, Chief Loco Inspector. E.Rly, Asansol, 713302
- v) Bivhas Chandra Ghosh, Chief Loco Inspector. E. Rly, Asansol, 713302
- vi) Swapan Kumar Biswas, Chief Loco Inspector. E. Rly, Asansol, 713302
- vii) Om Prakash, Chief Loco Inspector. E. Rly, Asansol, 713302

.....RESPONDENTS

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/1142/2014

25.9.

Date of order: 25.9.2019

**Coram: Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

TRIKESHWAR NATH TRIDEO
VS.
UNION OF INDIA & OTHERS
(E. Railway)

For the applicant : Mr. A. Chakraborty, counsel

For the respondents : Mr. S.K. Das, counsel

ORDER

Bidisha Banerjee, Judicial Member

This application has been preferred to seek the following reliefs:-

- "a) Selection of private respondents in the post of Chief Loco Inspector can not be sustained in the eye of law and therefore the same may be quashed;
- b) RBE Para IV of RBE dt.26.03.2009 issued by Railway Board cannot be tenable in the eye of law and therefore the same may be quashed;
- c) An order do issue directing the respondents to communicate the entry in the ACR for three years prior to issuance of notification to the applicant and also grant liberty to the applicant to make representation and if the entry upgraded he should be considered for promotion;
- d) The panel dated 15.05.2014 may be quashed on order do issue directing the respondents no recast the panel prepared by the selection committee for promotion to the post of Chief Loco Inspection."

2. The case of the applicant is as under:-

The applicant is working as Electrical Loco Pilot(Goods)[E.L.P.(Goods)] in Asansol Division, Eastern Railway. Options were invited by the competent authority from ELP(Mail/Pass/Goods) having 75000 Kms actual driving experience in terms of CPO's Sl. No.58/2009 to fill up 7 vacancies of Chief Loco

Inspector (Electrical)[C.L.I.(E)]. The applicant opted for the post of C.L.I.(E) being eligible for the said post and was called to appear in the selection test. Although the applicant secured qualifying marks in the written test, his name was not included in the panel of selected candidates. He made an application seeking information under RTI Act and pursuant to his application the authority concerned provided him the photocopies of the answer sheet and other relevant documents including the list of eligible candidates and marks obtained by the empanelled candidates along with the marks obtained by him, the details whereof are as under:

Sl.No.	Name(S/Sri)	Design/Stations	Marks of Professional Ability(Written) Out of 59	Marks of Record of Service	Total Marks obtained
1.	C.K. Choudhary	ELP/G/ASN	39.00	28.00	67.00
2.	Bibhas Ch. Ghosh	ELP/G/ASN	31.00	30.00	61.00
3.	Ram Mohan Singh	ELP/M/ASN	34.50	26.00	60.50
4.	Swapan Kr. Biswas(SC) against UR Vac	ELP/G/ASN	38.00	22.00	60.00
5.	Om Prakash(SC) against UK Vac	ELP/G/ASN	36.00	22.00	58.00
6.	Suresh Paswan(SC)	ELP/PASN	35.00	22.00	57.00
7.	Sanjay Kr. Prasad(ST)	ELP/G/ASN	30.00	22.00	52.00
Marks obtained by the information seeker Sri T.N. Trideo ELP/G/ASN					
1	T.N. Trideo	ELP/G/ASN	30.00	18.00	48.00

It appears from the above that the applicant got 30 marks in the written test and 18 marks in the record of service. According to the applicant, his answer sheets were not assessed properly and had it been properly assessed, he would have got 37 marks in the written test. It is further

stated by the applicant that no adverse ACR/APAR was communicated to him, therefore, the marks given to him towards records of service cannot be tenable in the eye of law in view of the judgment of the Hon'ble Apex Court in case of **Dev Dutt vs. Union of India**. Aggrieved with such action of the respondents, he has approached this Tribunal seeking the aforesaid reliefs.

3. Per contra the respondents have filed their written reply stating as under:-

The selection for the post of Chief Loco Inspector is classified as general selection post and is filled up through written examination followed by scrutiny of records of service. As per instructions contained in RBE No.35/2006, the marks have been distributed for general selection as under:-

i)	Professional ability	50 marks
ii)	Record of Service	30 marks
iii)	Total	80 marks

In this case, 7 candidates (UR-05, SC-01, ST-01) have been empanelled for the post of Chief Loco Inspector in order of their merit position with reference to the total marks obtained by the candidates both in professional ability and record of service as well as in accordance with size of the panel. In the written test altogether 13 candidates including the applicant had secured 60% and above marks. The applicant and 3 others had secured only 60 marks out of total 100 marks i.e. they had just obtained the minimum requisite marks of 60% whereas other 9 candidates had scored higher marks than the applicant. Similarly in the

"Record of Service" criterion which was also adjudged as a part of selection process, the applicant and another 1 candidate secured 18 marks out of total 30 marks allotted under the heading "Record of Service." On the contrary there were 11 candidates who had obtained higher marks in this field after taking into account the marks obtained by each candidate in both these attributes. The applicant and 1 more candidate could finally secure just 48 marks out of 80 i.e. 60% marks. Remaining 11 candidates had secured more marks in aggregate ranging between 50 and 67 out of total 80 marks. Since the selection was conducted for 7 vacancies(UR-5, SC-1, ST-1), 5 candidates according to merit position were placed in the panel against unreserved vacancies and 1 candidate belonging to SC community and 1 candidate from ST community who had also secured more marks than the applicant got empanelled. Thus the applicant though qualified in the written test and secured 60% marks in the aggregate, could not be placed on the panel on his merit position and according to size of the panel. Therefore, the O.A. is misconceived and is liable to be dismissed.

4. We heard the Id. counsel for both sides and perused the materials available on record.

5. From the admitted position it is clear that the applicant could not be empanelled for selection for the post of CLI(E) on the basis of the total marks obtained in the written test and the record of service as the selected candidates got higher marks than him. It appears that the

applicant got only 18 marks out of 30 in "Record of Service" whereas no adverse ACR/APAR has ever been communicated to him.

6. In regard to non-communication of ACRs and its consideration for promotion in **Dev Dutt Vs. Union of India, Civil Appeal No. 7631 of 2002**, the Hon'ble Apex Court held as under:

"36. In our opinion, fair play required that the respondent should have communicated the 'good' entry of 1993-94 to the appellant so that he could have an opportunity of making a representation praying for upgradation of the same so that he could be eligible for promotion. Non-communication of the said entry in our opinion, was hence unfair on the part of the respondent and hence violative of natural justice.

*37. Originally there were said to be only two principles of natural justice: (1) the rule against bias and (2) the right to be heard (auditor alteram partem). However, subsequently, as noted in A.K. Kraipak's case (*supra*) and K.L. Shephard's case (*supra*), some more rules came to be added to the rules of natural justice e.g. the requirement to give reasons (*vide S.N. Mukherjee vs. Union of India AIR 1990 SC 1984* in *Maneka Gandhi vs. Union of India* (*supra*)) (*vide paragraphs 56 to 61*) it was held that natural justice is part of Article 14 of the Constitution.*

38. Thus natural justice has an expanding content and is not stagnant. It is therefore open to the Court to develop new principles of natural justice in appropriate cases.

39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

40. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also

hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

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47. We are informed that the appellant has already retired from service. However, if his representation for upgradation of the 'good' entry is allowed, he may benefit in his pension and get some arrears. Hence we direct that the 'good' entry of 1993-94 be communicated to the appellant forthwith and he should be permitted to make a representation against the same praying for its upgradation. If the upgradation is allowed, the appellant should be considered forthwith for promotion as Superintending Engineer retrospectively and if he is promoted he will get the benefit of higher pension and the balance of arrears of pay along with 8% per annum interest.

48. We, therefore, direct that the 'good' entry be communicated to the appellant within a period of two months from the date of receipt of the copy of this judgment. On being communicated, the appellant may make the representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter. If his entry is upgraded the appellant shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment.

49. With these observations this appeal is allowed. No costs."

(emphasis added)

In Sukhdev Singh Vs. Union of India, Civil Appeal No. 5892 of 2006, Hon'ble Apex Court's (Three Judge) view was this:

"6. We are in complete agreement with the view in Dev Dutt particularly paragraphs 17, 18, 22, 37 & 41 as quoted above. We approve the same.

7. A three Judge Bench of this Court in *Abhijit Ghosh Dastidar vs. Union of India and others* followed *Dev Dutt*. In paragraph 8 of the Report, this Court with reference to the case under consideration held as under:

"Coming to the second aspect, that though the benchmark "very good" is required for being considered for promotion admittedly the entry of "good" was not communicated to the appellant. The entry of 'good' should have been communicated to him as he was having "very good" in the previous year. In those circumstances, in our opinion, non-communication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances for promotion or get other benefits. Hence, such non-communication would be arbitrary and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above-referred decision relied on by the appellant. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him."

8. In our opinion, the view taken in *Dev Dutt* that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR – poor, fair, average, good or very good – must be communicated to him/her within a reasonable period.

9. The decisions of this Court in *Satya Narain Shukla vs. Union of India and others* and *K.M. Mishra vs. Central Bank of India and others* and the other decisions of this Court taking a contrary view are declared to be not laying down a good law.

11. Insofar as the present case is concerned, we are informed that the appellant has already been promoted. In view thereof, nothing more is required to be done. Civil Appeal is disposed of with no order as to costs. However, it will be open to the appellant to make a representation to the

concerned authorities for retrospective promotion in view of the legal position stated by us. If such a representation is made by the appellant, the same shall be considered by the concerned authorities appropriately in accordance with law.

11 I.A. No. 3 of 2011 for intervention is rejected. It will be open to the applicant to pursue his legal remedy in accordance with law."

(emphasis added)

The applicant has heavily relied on the decision of the Hon'ble Apex Court in **Dev Dutt Vs. Union of India, Civil Appeal No. 7631 of 2002**, and **Sukhdev Singh Vs. Union of India, Civil Appal No. 5892 of 2006**, to contend that the respondents ought to have given him opportunity to represent against the adverse gradings in the ACRs if at all marks on ACR was to be computed towards merit, that would make him ineligible for promotion.

7. Evidently and irrefutably the selection is a general selection post, which ought to be governed by para 219(g) of IREM and RBE 113/2009. In so far as the rules of selection is far from being ambiguous or ambivalent that marks on ACR have to be given due weightage, in absence of any specific bar to compute the marks (as nothing has been placed on record), we direct the respondents to redraw the panel in question wholly on the basis of marks in written examination, ACR etc. as provided in para 219 (g) of IREM, RBE 35 of 2006(General Selection posts) and RBE 113/2009, but in view of the clear mandate in the decisions cited supra that all entries whether 'good' or "adverse" has to be communicated to the incumbents before being acted upon to their prejudice, the respondents, given that ACR/record of service carry marks, shall communicate all the relevant ACRs that were considered at

the selection, seek representation, consider the representation in accordance with law to discern whether gradings are required to be upgraded and, if upgraded, to review and recalculate the marks on ACR, Record of Service etc. and redraw the panel strictly in accordance with law.

8. In the event the private respondents need to be reverted, the respondents shall proceed upon due notice to all such individuals likely to be affected.

9. The O.A. is accordingly disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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