

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

LIBRARY

No. O.A. 350/00208/2015
M.A. 350/00501/2017

Date of order: 13.09.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Sunil Kumar Mondal,
Son of Late Santosh Kumar Mondal,
Residing at 884-B,
Domohini Railway Colony,
Post Office – Kalla (CH),
Police Station – Asansol (South),
Ward No. 23, Pin – 713340,
Working for gain as Tech. – I,
PSI/Asst./TR-D/Elec./TR-D/Asst. In
Eastern Railway at Asansol.

Applicant

VERSUS

1. Union of India
Through the Secretary,
Ministry of Railway,
Rail Bhawan,
New Delhi – 110 001.

2. The General Manager
Eastern Railway
14, Strand Road,
Fairly Place,
BBD Bag,
Kolkata – 700 001;

3. The Divisional Railway Manager,
Eastern Railway,
Post Office – Asansol,
Pin – 713301.

4. The Senior Divisional Railway Personnel
Officer / ASN,
Eastern Railway,
Asansol – 713301,
District – Burdwan;

5. The Senior Divisional Electrical Engineer/TRD,

wsb

Eastern Railway,
Asansol - 713301,
District - Burdwan.

..... Respondents

For the Applicant : Mr. A. Chakraborty, Counsel
Mr. T.K. Biswas, Counsel

For the Respondents : Mr. S.K. Das, Counsel

O R D E R

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:

- (i) An order directing the concerned respondent to give him all service benefits from 2001 treating him as Group - II Fitter RC instead of 2002;
- (ii) An order directing the respondent authorities to give him all service benefits of Group I from 2004 instead of 2008;
- (iii) An order directing the respondent authorities to promote him as senior technician immediately which is due to him since 2012;
- (iv) To direct the respondent authorities to provide all consequential benefits to the applicant determining his service in terms of prayer (i), (ii) and (iii) above;
- (v) To direct the respondents to place all the papers and documents in connection with the instant case before this Learned Tribunal for adjudging the matter;
- (vi) And to pass such further or other orders and/or direction or directions as this Learned Tribunal may deem fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record. An M.A. bearing No. 501 of 2017 has been filed by respondents praying for expunging the name of Secretary, Railway Board, Respondent No. 1 from the array of respondents.

3. The applicant's case in brief, as articulated through his Ld. Counsel, is as under:

- (i) The applicant, who belongs to the Scheduled Caste category, was posted as a Chowkidar on 07.11.1994, and, thereafter, promoted to the post of Khalasi Helper in 1996 and to the post of Fitter III/RC in 1997.

(ii) That, although his next promotion to Grade II RC Fitter became due in 1999, after appearing in the written test and viva-voce test, he was declared as failed. Once again, he was asked to appear in the trade test on 05.12.2001 but was declared as a failed candidate.

(iii) Thereafter, post training dated 13.08.2002, he was declared to be qualified and was promoted to the post of Grade II RC Fitter.

(iv) That, a trade test was held in the year 2004 but the applicant was not informed of the same and, as a result, he was deprived of his promotion.

(iv) The applicant was allowed to appear in the trade test held in the years 2005 to 2007. Although he belongs to the SC category, he was made to appear as a General candidate in 2007 and shown as failed.

(v) That upon a representation made by his wife, the concerned authority informed that the ACRs of the applicant was below average on account of which promotion was denied to him.

(vi) Ultimately, in 2008, the applicant passed the test and since then he has been working as Tech-Gr.I.

(vii) That, his next promotion to Sr. Technician is due to him since 2012 but the concerned Respondent authorities did not allow him to appear in the test.

The applicant's main grievances are that he was never informed of the "below average" entries in his ACRs, that, he was never informed of the dates of all trade tests, and, hence, was deprived of an opportunity to appear in the same, and, that he was compelled to appear in the test as

h.h.

UR candidate instead of giving him the benefit of the Scheduled Caste category.

The applicant has filed a supplementary affidavit on 22.03.2018 to bring forth the information that his name was forwarded for selection in Inter Apprentice Mechanic from Skilled Artisan against 25% quota in TRD wing but, despite his selection, he has not been given any appointment on the basis of such selection. No reply to this supplementary affidavit is on record.

4. Respondents, per contra, have disputed the claim of the applicant by arguing as follows:

- (a) That, the applicant was appointed as Temporary Chowkidar on 07.11.1994 on compassionate ground and promoted as Khalasi/Helper w.e.f. 28.05.1996.
- (b) That, promotions in the Railways are granted subject to availability of vacancies and qualifying in the trade test/suitability as per rules framed by the Railways. RBE No. 212/1999 states that suitability would be decided on the basis of service records, ACRS and working reports on staff.
- (c) On availability of vacancy and having qualified in the trade test, the applicant was appointed to officiate as Fitter Gr.III (RC) w.e.f. 10.12.1997.
- (d) The applicant, however, was punished and his next annual increment was withheld for a period of six months (non-cumulative) and, after expiry of such punishment period, his pay was restored and raised to Rs. 3200/- w.e.f. 01.06.2000.

[Signature]

(e) The applicant was again censured under Disciplinary and Appeal Rule for unauthorized absence by punishment notice dated 17.05.2000.

(f) That, the applicant remained unauthorizedly absent once again for a period from 21.03.2000 to 16.05.2000, consequent to which, his annual increment was withheld for a period of one year with non-cumulative effect, which was subsequently reduced to censure by the Reviewing Authority.

(g) On availability of two vacancies, and, having been found eligible in the zone of consideration, the applicant was called to appear in trade test for the post of Technician II (RC) against the post reserved for SG candidate. The applicant did not appear in the test.

(h) Continuation trade test was held but the applicant remained absent. Hence, next candidate in the zone of consideration, who was ordered to be kept in readiness, was declared as passed. Accordingly, the next candidate was appointed as Technician Gr.II (RC) and he joined the said post on 12.06.2000.

(i) On further availability of three vacancies, the eligible candidates were advised to keep themselves in readiness. After the trade test, result was published and it appears that the applicant had once again failed to qualify.

(j) The applicant was again advised to be in readiness to appear in the trade test to fill up various categories of posts of Tech.II but the applicant remained absent.

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(k) In the continuation trade test on 26.02.2003, however, the applicant was found suitable for the post of Tech.II (RC/Fitter) and he was appointed to officiate as Tech-II (RC/Fitter) on 26.06.2003.

(l) That, on further availability of vacancy of two SC category posts, the applicant was considered to appear at the modified trade test but once again the result shows that he was declared unsuitable.

(m) Again, on availability of vacancy, the applicant was directed to appear but he was declared unsuitable.

(n) According to the Respondents, the applicant was considered as an Unreserved candidate by the departmental committee as per communication dated 17.12.2007 of the respondent authorities whereby the applicant was found suitable for the post of Tech-I (Fitter/RC). The applicant joined the post of Tech.I (Fitter/RC) on 16.01.2008.

5. Summarizing the above, it transpires that:

- (i) On a number of occasions, the applicant either remained absent and refrained from participating in the trade test or was declared unsuitable on merit.
- (ii) The fact remains that the applicant, in his service career, has been pulled up more than once with warning/censure and withholding of increments on account of his frequent unauthorized absence from duty.
- (iii) His junior was promoted earlier to him as because in the trade test both were directed to appear in the trade test but while the applicant was declared unsuitable, the post was filled up by his junior, who otherwise qualified in the trade test.

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(iv) That, the applicant was given repeated opportunities to appear in the modified trade test after assessing his performance in general.

6. The applicant places reliance on Annexure-A/6 to the O.A. wherein the respondent authorities have clarified that the applicant continuously failed in the modified trade test for the post of Tech-I, which were held on 11.08.2005, 07.04.2006 and 08.02.2007 respectively, that the applicant was a habitual absentee, consequent to which, he was granted leave without pay on repeated occasions, and, that, his ACRs for the period 2003-04, 2004-05 and 2005-06 have all been graded as "below average". Accordingly, the applicant could be considered for the test for further promotion only upon improvement of his performance. Respondents have affirmed that it only in 2008, the applicant was promoted to the grade of Tech-I (Fitter/RC) category.

7. The applicant's main argument is that he should have been given an opportunity to represent against his "below average" ACR and, had the competent authority upgraded his ACRs, he would have qualified in the modified trade test and declared suitable therein w.e.f. the year 2005, in which case, he would not have been superseded by his junior, and he would have received his promotion three years earlier with consequential benefits. According to the applicant, a representation to such effect is also on record.

8. We have gone carefully into the representation annexed at Annexure-A/8 to the O.A. dated 08.12.2014, in which, primarily, the applicant has challenged his eligibility as Unreserved category while appearing in trade test in 2007. Nowhere the applicant has however, referred to disclosure of his ACRs.

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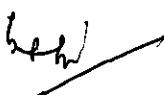
Several judicial pronouncements have discussed the issue of communication of ACRs/APARs prior to the issue of DoP&T O.M. No. 21011/1/2015-Estt. (A) (Pt. II) dated 14.5.2009 in compliance with ***DevDutt v. Union of India &ors. (2008) 8 SCC 725.***

The Hon'ble Apex Court, in ***Brij Mohan Chopra v. State of Punjab 1987 (2) SLR 54 (SC)***, has held that, while considering action upon the adverse remarks, the authorities must act fairly and apply their minds. An adverse entry cannot be considered in isolation or by ignoring the extent of prejudicial qualitative content of the remark.

The Hon'ble Apex Court has further held in ***S. Ramachandra Raju v. State of Orissa, JT 1994 (5) SC 459***, that, writing the confidential reports objectively and constructively and communication thereof at the earliest would pave way for amends by the erring subordinate officer or to improve the efficiency in service.

It has been further held in ***D.K. Aggarwal v. High Court of Judicature, Allahabad AIR 1988 SC 1403*** that, no action can be taken on adverse entries which do not have any foundation and, particularly, an entry prior to the date of crossing of an efficiency bar or where the employee has not been promoted, subsequent to such entries.

Accordingly, we dispose of this O.A. by granting liberty to the applicant to make a comprehensive representation seeking the specific ACRs/APARs on which he wishes to represent within 3 weeks of receipt of a copy of this order, and, in the event such representation is made, the respondent authorities will furnish the relevant ACRs/APRs to the applicant. The applicant is further granted liberty to represent on the gradings, upon receipt of which, the competent respondent authorities shall, thereafter, issue a reasoned order deciding on the applicant's



request for reassessment and grant the applicant consequent benefits if the applicant is entitled to the same.

9. With the aforesaid directions, the O.A. is disposed of.

With the disposal of the O.A., the M.A. is rendered infructuous and is disposed of accordingly.

There will be no orders on costs.

