

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this, the 2nd day of May, 2024.

Original Application No. 330/109 of 2011

Hon'ble Mr. Justice Rajiv Joshi, Member (Judicial)

Hon'ble Dr. Sanjiv Kumar, Member (Administrative)

Bagda Ram, [REDACTED]

...Applicant

By Advocate :Shri Ashish Srivastava

V E R S U S

1. Union of India through General Manager, North Central Railway, Subedarganj, Allahabad
2. Chief Commercial Manager, North Central Railway, Subedarganj, Allahabad
3. Chief Personnel Officer, North Central Railway, Headquarter, Allahabad
4. Sri Anupam Saxena, S/o Sri S.C. Saxena, presently posted as Assistant Commercial Manager Agra Division, Agra
5. Sri Ashutosh Mishra, S/o Sri Kamta Prasad Mishra, presently posted as Assistant Commercial Manager, Allahabad Division, North Central Railway, Allahabad

...Respondents

By Advocate: Shri Ram Chandra Sahu

O R D E R

By Hon'ble Mr. Justice Rajiv Joshi, Member (Judicial):

1. Heard Shri Ashish Srivastava, learned counsel for the applicant and Shri Ram Chandra Sahu, learned Standing Counsel for the respondents.

3. This Original Application under Section 19 of the Central Administrative Tribunal Act, 1985 has been filed by the applicant for the following reliefs:-

8. (1) The Hon'ble Tribunal be pleased to quash the impugned order dated 30.06.2008, whereby the respondent No.4 & 5 were promoted.

(ii) The Hon'ble Tribunal be pleased to quash the impugned order dated 07.07.2010 passed by the respondent No.1.

(iii) The Hon'ble Tribunal may kindly be pleased to direct the respondents to re-evaluate the answer sheets of all candidates on the basis of model answer sheet, if so available, otherwise, the entire selection may be set aside.

(iv) The Hon'ble Tribunal may kindly be pleased to direct the respondents to promote the applicant as ACM pursuant to the selection held for the year, 2005-07.

(v) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the applicant.

(vi) Award the costs of the original application in favour of the applicant.

5. The short facts of the case has been delineated in the original application is that the applicant was initially appointed as Commercial Clerk on 02.01.1979 in the Jhansi Division and he was promoted in the grade of Rs.500-8000/- on 01.01.1984 and lastly he was promoted in the pay scale of Rs.7450-11500/- w.e.f. 05.02.2005 to the post of Chief Commercial Instructor.

2. A Notification dated 14.05.2007 was issued by the respondent-2 for selection to the post of Assistant Commercial Manager i.e. Group-B post from Group 'C' post against 30 % quota vacancies for the year, 2005-07, by way of promotion. Pursuant thereto, the applicant being eligible, sent his application form through his Head of Department. Thereafter, on 09.03.2018, a written examination was held, wherein the applicant was appeared. On 12.05.2008, result was published, but the applicant was found unsuccessful, whereas the respondent Nos.4 & 5 were qualified.

3. Thereafter, the applicant made an application on 05.06.2009 under RTI Act for providing his answer sheet as well as

Respondent Nos.4 & 5. Accordingly, the applicant inspected his answer sheet and the answer sheet of respondent Nos. 4 & 5, which clearly shows that in the aforesaid selection the respondents have adopted a biased view to promote the respondent Nos.4 & 5 and also the said respondent Nos. 4 & 5 were given wrong answers and also used the green ink and red ink respectively in the answer-sheet.

4. In view thereof, the applicant again submitted an application under RTI Act, 2005, demanding the model answer sheet for the aforesaid examination. Thereafter, by the order of Appellate Authority, on 25.08.2009, a reply of evaluator was supplied to the applicant, wherein it was stated that the model answer sheet though was prepared before evaluation of answer sheet, but the same has been destroyed after evaluating the answer sheet. In the meantime, the respondent Nos. 4 & 5 were promoted to the post of Assistant Commercial Manager. Hence, the applicant had earlier approached this Tribunal by way of O.A. No.188/2010, challenging the promotion order of the respondent Nos. 4 & 5 and also entire selection was challenged. This Tribunal vide order dated 23.03.2010 disposed of the said original application with a direction to decide the representation of the applicant in terms of the departmental rules.

5. In compliance of the order dated 23.03.2010, the respondent-General Manager passed an order dated 07.07.2010, rejecting the representation of the applicant on the ground that there is no merit in the allegation made by the applicant as they have been shown favour in the selection by the Departmental Promotion Committee. Hence, this Original Application has been filed.

6. Per contra, counter affidavit has been filed by the respondents on 19.07.2011, wherein it is stated that final selection process was completed on 30.06.2008 itself and penal was also implemented, the applicant did not raise any objection within one year when actual cause of action was arises. The allegation levelled by the applicant are baseless. The examination process is a foolproof system and complete secretary is maintained at all stages. The result was declared on 12.05.2008 and applicant did not challenge the same neither any allegation about the evaluation was made.

7. No rejoinder-affidavit has been filed by the applicant to the said counter-affidavit, filed by the respondents

8. Shri Ashish Srivastava, learned counsel for the applicant submits that the respondents have manipulated the entire written examination so that the respondent Nos. 4 & 5 could be promoted. The Departmental Promotion Committee was totally biased and has acted arbitrarily under the pressure of some of the higher officers of the Ministry of the Railways. The answers submitted by the respondent Nos. 4 & 5 were wrong and not tallying to the syllabus, but they have qualified in the said examination. The aforesaid examination was conducted without preparation of any model answer sheet, which is illegal and as such, entire selection is liable to be declared illegal. There were number of vacant seats of the said post, but only two vacancies were notified to be filled by general candidate, which is absolutely illegal.

9. On the other hand, Shri Ram Chandra Sahu, learned counsel for the respondents vehemently opposes the contention of the learned counsel for the applicant and submits that the departmental selection was finalized in accordance with law adopting complete transparency and fairness and no favour can be done to any candidate. The selection has been conducted by the administration in a transparent and a fair manner and as such, the allegations levelled by the applicant are baseless.

10. We have considered the rival submissions so raised by the learned counsels for both the parties and perused the records.

11. It transpires that all the candidates, who appeared in the selection process, same policy was adopted for calculation of marks, which has been adopted in the case of the applicant. The respondents have not changed the terms and conditions of the advertisement/notification for departmental examination. Admittedly, the applicant has obtained less marks than the cut-off marks in terms of the notification as he obtained 80 marks in the second paper, whereas qualifying mark was 90 as per the advertisement/notification. It is well settled principle of law that no person can be appointed

dehors the rules. The argument of the learned counsel for the applicant is not at all accepted by this Court as once terms and conditions of the advertisement/notification have been accepted by the applicant, it cannot be challenged after appearing in the examination and when the results have been declared. There is no illegality or infirmity on the part of the respondents for non-consideration of the cases of the applicant.

12. The Apex Court in case of **G. Sarana (Dr.) v. University of Lucknow & Ors.**, reported in **(1976) 3 SCC 585**, has clearly held that 'the candidate who participated in the selection process cannot challenge the validity of the said selection process after appearing in the said selection process and taking opportunity of being selected'. Para-15 of the said judgment is reproduced herein below:-

"15. ... He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is now not open to him to turn round and question the constitution of the committee."

13. Further, the learned counsel for the applicant very fairly stated that subsequent to the Notification dated 14.05.2007, the applicant appeared in further recruitment process for promotion to the post in question and he was promoted to the said after due process.

14. As a cumulative effect of the aforesaid rules and guidelines and in view of the admitted fact that the applicant has obtained less marks than the respondent Nos.4 & 5 and prescribed cut-off marks, no case is made out for interference. Hence, instant original application is liable to be dismissed and is hereby dismissed. There is no merit in the instant case.

15. No order as to costs.

16. Pending Misc. Application, if any, also stands disposed of.

(Dr. Sanjiv Kumar)
Member (Administrative)

(Justice Rajiv Joshi)
Member (Judicial)