

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on July 08, 2013
Judgment Delivered on July 18, 2013

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W.P.(C) 4335/2011

SHRI UMESH KUMAR

.....Petitioner

Represented by: Ms. Jyoti Singh, Sr. Advocate with
Mr. Manjeet Singh Reen and Ms.
Saahila Lamba

versus

UNION OF INDIA & ORS.

..... Respondents

Represented by: Mr. Rohit Dutta and Mr. Joydeep
Mazumdar, Advocates for R-1
and R-2
Mr. A.K. Trivedi, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. This writ petition has been filed by the petitioner challenging the order and judgment dated June 3, 2011 passed by the learned Central Administrative Tribunal, Principal Bench (the Tribunal) in Original Application being No. 2160 of 2008 whereby the learned Tribunal had allowed the said Original Application filed by respondent No.3 herein resulting in petitioner's empanelment being set aside.

2. The cause of the dispute at hand emerged when respondent No. 2 vide its order dated November 30, 2006 decided to hold selection for 11 posts of JE-II (Works) in the grade of ₹5000 – 8000 consisting of 9

vacancies in unreserved category, 1 vacancy in Scheduled Caste category and 1 vacancy in Scheduled Tribe category. Pursuant to the said order dated November 30, 2006, the respondent No. 2 invited applications from the willing staff who fulfilled the eligibility criteria enumerated in the said order.

3. Pursuant to the aforesaid order of the respondent No. 2, the petitioner as well as the respondent No. 3, applied for the said posts. The written test for selection to the said posts was held on March 24, 2007 and the results were declared on May 28, 2007 when both, the petitioner and the respondent No. 3, were declared as passed. In the said results the respondent No. 3 was placed at 11th position whereas the petitioner was placed at 12th position. The respondents, vide order dated July 24, 2007, declared a panel of 8 persons, including one against the SC post, in which the name of the respondent No. 3 was not incorporated, whereas the name of the petitioner, who is junior to the respondent No. 3 was included against the SC post.

4. Thereafter, vide order dated March 13, 2008, the respondent No. 2 ordered promotion of 11 persons including the petitioner herein to the said vacant posts of JE-II (Works) grade ₹5000 – 8000.

5. The respondent No. 3, being aggrieved, on not being able to secure his promotion to the said vacant posts despite securing a higher position than the petitioner in the selection test and despite the fact that he was senior to the petitioner sent a Legal Notice through his Advocate to the respondent No. 2 on August 19, 2008 wherein he asked the respondent No. 2 to promote him to the said vacant post with all consequential benefits.

6. The respondent No. 2 despite receiving the aforesaid Legal Notice from the Advocate of respondent No. 3 did not pay any heed to it and being aggrieved by said fact the respondent No. 3 filled an Original Application No. 2160 of 2008 before the learned Central Administrative Tribunal, Principal Bench, inter alia praying for quashing the orders of the respondent No.2 dated July 24, 2007 and March 13, 2008 and further for promoting him to the post of JE-II (Works) from the date of promotion of junior person with all consequential benefits.

7. It is the case of respondent No. 3 in the his Original Application that according to Railway Board Circular dated November 16, 1998 (RBE No. 263/1998) the final panel is drawn from amongst those securing 60% marks in professional ability and 60% marks in the aggregate, in the order of seniority. Therefore, the respondent No.3 contended that since he secured 60% marks in the written examination and had a better record than the petitioner he should have been promoted. In reply to such a contention the respondents, in their counter reply, admitted that the Respondent No. 3 was senior to the petitioner. However, the respondents further stated in their counter reply that the final panel was to be drawn from amongst those securing 60% marks in the professional ability as well as 60% marks in aggregate. Since the respondent No. 3 did not secure 60% marks in aggregate he was not included in the panel. In his rejoinder the petitioner submitted that along with his seniority, due weightage should also be given to his service record.

8. The learned Tribunal after considering the arguments of the parties and after perusing the materials placed on record disposed of the Original Application vide impugned judgment dated August 21, 2009 by holding at paragraph 10 of the judgment as under:

“The Respondents shall, therefore, convene a review Selection Committee to reconsider the case of the applicant for the post of JR-II (works), keeping in view the criteria adopted for reserved category candidates and by taking into consideration working report from those under whom the applicant had worked. If upon reconsideration the applicant is found to have qualified his case shall be further considered for promotion in accordance with law. The O.A. is disposed of as above. No costs.”

9. The petitioner, who was impleaded as respondent No. 3 in the aforesaid Original Application, filed a Writ Petition being No. 4472 of 2010 before this Court challenging the aforesaid order of the learned Tribunal on the ground that though he was impleaded as party in the said Original Application, he was not served with a notice of the same. This Court found merit in the submission of the petitioner consequently set aside the order dated August 21, 2009 of the Tribunal and subsequent order dated July 2, 2010 disposing of CP 426 of 2010 and the matter was remitted to the Tribunal for fresh adjudication.

10. The Tribunal consequently took up the matter for fresh adjudication and observed that the selection for the aforesaid post has to be made in terms of RBE No.263/1998, which order of the Railway Board is also in conformity with the provisions contained in para 219 (g) and (i) of the IREM and only those persons could have been empanelled who have obtained 60% marks in professional and 60% marks in the aggregate based upon written test and record of service. The Tribunal further noted that the respondent No. 3 as well as the petitioner obtained 60% marks in professional ability but for record of service for which maximum marks being 30 and 60% would have been 18, respondent No. 3 had obtained 14 marks instead of 18 marks and as such he could not be empanelled as aggregate marks of the respondent No. 3 in professional

ability and service record comes to $31.5+14=45.5$ whereas the petitioner has obtained 30.5% in the written test and 28 in the record of service and in aggregate 58.5 out of 80, thus well over 60%.

11. The Tribunal while noting that working report of three years immediately preceding selection were taken into consideration and based upon such report respondent No. 3 was awarded 14 marks whereas petitioner was allotted 28 marks observed that:

“However, the main grievance of the applicant is that his case has not been considered in the right perspective inasmuch as the working report for the period 1.4.2003 to 16.9.2005 was required to be called from Mr. P.K. Malik, who had assessed his work and the applicant had worked from 17.9.2005 and 31.3.2006 under Shri Girish Lubhania. Thus, according to the learned counsel of applicant the marks given based upon a report from an officer under whom he was not working is of no consequence and as such could not have been made the basis for awarding marks under the heading service record. The aforesaid contention raised on behalf of applicant found favoured with the Bench of the Tribunal rendering the judgment dated 21.8.2009 and it was under these circumstances that this Tribunal has given directions to the Respondents to reconsider the case of the applicant by taking into consideration the working report from those under whom applicant had worked.”

12. The Tribunal while agreeing with the view taken by the Bench in the earlier Original Application perused the proceedings of the original Selection Committee as well as the Review Selection Committee and found that according to the proceedings of the Review Selection Committee on the basis of the revised grading respondent No. 3 will get $8+4=12$ marks under the heading “record of service” and his total

marks comes to $31.5+18=49.5$ out of 80, i.e.. more than 60%. Thus, on the basis of the above the Tribunal held that the respondent No. 3 who is a senior SC candidate has become eligible to be placed on the panel instead of the petitioner, Shri Umesh Kumar, who is junior to him. Thus, the learned Tribunal while allowing the Original Application filed by the respondent No. 3 held, vide the impugned order dated June 3, 2011 that was the respondent No. 3 was rightly empanelled, subsequently, by the respondent Nos. 1 and 2 based on the recommendations made by the Review Selection Committee.

13. Being aggrieved by the aforesaid order of the learned Tribunal the petitioner filed the instant Writ Petition. We have heard the learned counsel for the parties and perused the written submissions filed by the petitioner and respondent No.3.

14. In his written submissions the petitioner has attacked the judgment of the Tribunal on the following points.

- (a) *The Tribunal could not have relied on its earlier judgment dated August 21, 2009 as the same has been set aside by this Court.*
- (b) *Once this Court has set aside the earlier order in the Original Application, the Review Selection Committee proceedings have become a nullity. The Tribunal should have re-adjudicated the matter as to whether the matter deserved interference in the marks or the working report and then decided afresh.*
- (c) *It is settled position that the manner and quantum of marks awarded to a candidate in selection is not something the Courts can interfere.*

- (d) *The respondent No.3 has managed a report from Mr.P.K.Malik. The working report was required to be countersigned by the next superior officer. In the absence of all this no authenticity or credibility can be attached to this report got several years later.*

15. It is an accepted position that the promotion in question to the post of JE-II (Works) is regulated by Railway Board circulated dated November 16, 1998 (RBE No.263/1998. The relevant portion of the circular (page 72 of the paper book) which deals with the distribution of marks allotted to various factors of selection is reproduced hereunder:-

“1. Marks for seniority will not be awarded and accordingly distribution of marks allotted to various factors of selection will be as under:

	<i>Maximum Marks</i>	<i>Qualifying marks</i>	
<i>(1) Professional ability consisting of</i>			
<i>(a) Written test; and</i>	<i>35</i>	<i>21</i>	<i>30/50</i>
<i>(b) Viva-voce test</i>	<i>15</i>	<i>-</i>	
<i>(3) Personality, address, Leadership, academic/ Technical Qualifications.</i>	<i>30</i>		
<i>(4) Record of service</i>	<i>20</i>		

ii. The final panel will be drawn up from amongst those securing 60% marks in the professional ability and 60% marks in the aggregate, in the order of seniority, provided that those securing a total of more than 80% marks will be classed as outstanding and placed on the top of the panel in order of seniority.”

16. A perusal of the circular would reveal that the record of service carries 20 marks. It also reveals that final panel will be drawn up from

amongst those securing 60% marks in the professional ability and 60% in aggregate. The 20 marks allotted to the 'record of service' plays a very important role for determining the merit for promotion to JE-II (Works). These 20 marks are not only relevant for securing 60% marks in aggregate they also play role in determining the merit position in the panel as person securing 80% marks will be classed as 'outstanding'.

17. In so far as the aforesaid points raised by the petitioner in his written submissions, we are of the view that the earlier Writ Petition No.4472/2010 was filed by the petitioner himself wherein this Court after observing that the petitioner was not given opportunity has restored the Original Application No.2160/2008 with a direction that the petitioner be allowed to file a response and thereafter adjudicate the matter afresh. With such observation the earlier judgment of the Tribunal in the said Original Application was set aside.

18. Pursuant to the directions of this Court the petitioner had filed a reply to the Original Application. It is seen, in that reply, the petitioner does not aver any of the points which he has now taken before us. It appears that in terms of the earlier judgment of the Tribunal dated August 21, 2009 a Review Selection Committee was constituted which considered the name of the respondent No.3 afresh. A working report from Mr.P.K.Malik under whom the respondent No.3 was working was placed before the Review Selection Committee which re-assessed the respondent No.3 and with a higher grading increased the marks for 'record of service' from 14 to 18. This resulted in respondent No.3o securing 60% aggregate. In the absence of any challenge to the said position, the Tribunal had rightly taken judicial notice of the findings of the Review Selection Committee. The Tribunal has no role to play either in the working report or awarding the marks to the respondent No.3.

Neither the Tribunal nor this Court can sit in appeal over the findings of the Review Selection Committee based on the working report.

19. It is the duty of respondent Nos.1 and 2 to place before the Selection Committee the relevant material as expected under the Rules, that too from an officer who had actually seen, watched and assessed the work of the officer. If that is not done, then the officer under assessment would suffer a prejudice as the Selection Committee would not assess him in the right manner. The case in hand is one such case where the earlier Selection Committee had assessed the respondent No.3 on the basis of an irrelevant record. The review Selection Committee had rectified the mistake by correctly assessing the respondent No.3 in terms of the relevant record of service. Such an action cannot be faulted. We do not find any infirmity in the order of the Tribunal and dismiss the writ petition.

20. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

July 18, 2013
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