



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4685/2024

Subhash Kisan Choudhari,

Aged about 65 yrs. Occ. Retd.
Employee, R/o. At Kordha, P.O.
Navegaon, Pandava, Taluka
Nagbhir, District – Chandrapur
441205.

PETITIONER(S)

// VERSUS //

- (1) **Union of India,**
through General Manager,
South East Central Railway,
C.S.T.M., Mumbai-440001.
- (2) **Sr. Divisional Personnel Officer,**
S.E.C. Railway, Kingsway,
Nagpur-440 001.
- (3) **Addl. Divisional Railway
Manager,**
S.E.C. Railway, Kingsway,
Nagpur-440 001.

RESPONDENT(S)

.....
Shri B. Lahiri, Advocate for Petitioner
Shri N.S. Deshpande, DSGI for Respondents
.....

CORAM : M.S. JAWALKAR & PRAVIN S. PATIL, JJ.
CLOSED FOR JUDGMENT ON :- JULY 28, 2025
JUDGMENT PRONOUNCED ON :- AUGUST 07, 2025

JUDGMENT :- (PER:- M.S. JAWALKAR, J.)

. **RULE. Rule made returnable forthwith.** Heard finally
by consent of learned Counsel for the respective parties.

(2) The facts giving rise for filing of the present Writ
Petition are as under:-

(3) The Petitioner came to be appointed in South East
Central Railway as a Junior Porter on 04/05/1989 and was posted
in Keljar, Maharashtra. In the year 1996, he was promoted as
Porter 'A' Grade and was posted firstly at Gondia and then at
Mulmorara. The Respondent No. 2 issued a notification for
filling up the post of Goods Guards against 60% DPQ in Pay
Band-1 in the scale of 5200-20200 + 2800 Grade Pay in
Operating Department which postulates that selection will be

made on the basis of performance in the written test. Accordingly, the written test was conducted and the Petitioner appeared in the written test held on 30/06/2012. By an office order dated 27/07/2012, the Respondent No. 2 published result of the written examination for selection for promotion to the post of Goods Guard. As per the result declared by the Respondent No. 2, total 16 candidates have passed the written test including the Petitioner.

(4) Subsequently, the Respondent No. 2, by an office order dated 09/08/2012, exhibited a list of 15 candidates, who have been approved for promotion to the post of Goods Guard on the basis of the written tests held on 30/06/2012 & 07/07/2012 & scrutiny of SRS & APARs, punishment and awards etc. conducted on 03/08/2012, in which the name of the Petitioner was not included amongst the selected candidates.

(5) Thereafter, the Petitioner, by taking recourse to the provisions of the Right to Information Act, 2005, sought for the details about the marks obtained by the candidates who had appeared in the written examinations, in response to which, the

Respondent No. 2 has supplied a copy of Note Sheet No. 4 dated 27/07/2012 to the Petitioner. The said note sheet shows that the Petitioner, whose name appears at Serial No. 6, has obtained 64 marks out of 100, and accordingly, he is declared as 'passed' in the written examination.

(6) Aggrieved by his non-selection, the Petitioner made a representation to the Respondent No. 2. In response to the same, the Respondent No. 2, by a letter dated 29/12/2015, intimated the Petitioner that for being considered for empanelment, a candidate has to secure 60% marks in the written test as well as 60% marks in the aggregate. But as the Petitioner has failed to obtain 60% marks in the aggregate, he was declared unsuitable, and hence, not eligible for empanelment for the post of Goods Guard against 60% DPQ quota. Being aggrieved and dissatisfied by the said communication, the Petitioner carried the matter to his Higher Authority i.e. the Respondent No. 3 by filing Representation dated 21/01/2016, which said request of the Petitioner was not entertained by the Respondent No. 3.

(7) Aggrieved by the non-consideration of his fervent plea, the Petitioner filed an Application before the Central Administrative Tribunal, Bench at Mumbai bearing O.A. No. 2043/2017. The Respondents filed their reply to the said O.A. on 09/09/2018. In their reply, the Respondents have stated that the written test is only one part of the selection. The final assessment is to be based on written test (50 marks) and Record of Service (30 marks) and for being empanelled, a candidate has to secure 60% in the written test (30 marks out of 50) and overall 60% in the aggregate (48/80) in the safety category. The said procedure was adopted in the selection in question. It is admitted that the Petitioner has secured 64 marks out of 100 in the written test, which means 32 marks out of 50. The Petitioner has secured 32 marks out of 50 in the written test and 15.5 marks out of 30 in the Record of Service. As such, he has secured 47 marks out of 80 taken together. In terms of Estt. Serial No. 51/2006, in order to be empanelled, the candidate has to secure 60% i.e. 48 out of 80 marks taken together and the Petitioner fell short by 0.5 marks, and hence, he was not empanelled.

(8) Learned Counsel for the Petitioner submits that the

entries in the APARs of the Petitioner for the years 2009-10, 2010-11 and 2011-12 have not been communicated to the Petitioner in terms of the Railway Board's Guidelines rendered in the letter dated 18/08/2009. Had that been done, the Petitioner would have got an opportunity of representation for improvement of his grading and thereby increase his total marks in the Record of Service and get empanelled. The Petitioner has placed these facts squarely before the learned Tribunal in his Rejoinder dated 20/02/2023. The Respondents have filed a Sur-Rejoinder dated 20/06/2023. In their Sur-Rejoinder, the Respondents, while admitting that as per Guidelines issued by the Railway Board, vide their letter dated 18/08/2009, the entries in the APARs of the Petitioner ought to have been communicated to him, which they have failed to do; they have attempted to side-track the issue by raising an after-thought and untenable issue of delay in preferring the representation by the Petitioner. The Respondents have thereby sought for condoning the illegality committed by them of depriving the Petitioner of promotion to the post of Goods Guard by relying on his APARs grading without communicating the entries therein for affording an opportunity of representation for improvement of his

grading.

(9) Learned Counsel for the Petitioner, in support of his contentions, relied on following citations:-

(a) Union of India and others Vs. Shantiranjan Sarkar, (2009) 3 SCC 90;

(b) Dev Dutt Vs. Union of India and others, (2008) 2 SCC (L&S) 771;

(c) Abhijit Ghosh Dastidar Vs. Union of India and others, (2009) 16 SCC 146; and

(d) Sukhdev Singh Vs. Union of India and others, (2013) 9 SCC 566.

(10) On the contrary, the contention of Respondents is that the Respondents have filed a detailed reply before the Tribunal with Annexure to the Sur-Rejoinder and O.A. It is admitted that the APAR for the relevant years were not communicated to the Petitioner. Further, it is submitted that, as per the provisions contained in Para-220(a) of Indian Railways Establishment Manual, Vol-I, "The Panels drawn by the Selection Board and approved by the competent authority shall

be current for two years from the date of approval by the competent authority or till these are exhausted whichever is earlier". In the instant case, the panel was approved by the Competent Authority on 08/08/2012 and the Petitioner had preferred the representation on 18/08/2015 which is more than one year exhausted of the panel. According to the Respondents, the Tribunal, after careful consideration to the submission made by both the sides, has dismissed the O.A. vide its order dated 18/07/2023 being devoid of merits duly observing that it is not possible to accept the contentions of Petitioner. The said order dated 18/07/2023 passed by the learned Member, Central Administrative Tribunal is the subject matter of challenge in the present Writ Petition.

(11) We have heard learned Counsel for the respective parties at length, perused the communications issued by the Respondents, the impugned order passed by the Central Administrative Tribunal dated 18/07/2023 in O.A. No. 243/2017 and considered the citations relied on by the Petitioner.

(12) Our attention is drawn to the written submissions of

the Respondents filed before the CAT wherein the Respondent have not denied that the Petitioner Subhash Choudhari, Pointsman 'A'/MME is one of the candidates out of 16 candidates to have been declared 'passed' in the examination conducted on 30/06/2012. The Respondents have conducted the written test for the promotion to the post of Goods Guard against 60% DPQ in PB-1 5200-20200 GP-2800 in the operating Department. It is also an admitted fact that the Petitioner had secured 64 marks out of 100 in the written test, whereas 60 marks are required for selection.

(13) It is the contention of the Respondents that though the Petitioner has secured the required marks in the written examinations, he has not scored 60 marks in the aggregate, and therefore, not eligible for empanelment for the post of Goods Guard. There are Rules to that effect in the Indian Railways Establishment Manual. There are maximum 50 marks of professional ability, 30 marks for qualifying and maximum 30 marks for Record of Service. There is a detailed procedure to be adopted while allotting the marks on Record of Service as per the last three years' APARs. In addition to the APARs, the

service registers also to be scrutinized for adding or deducting marks for awards and punishments respectively to be decided by the Selection Committee. The main grievance of the Petitioner is that on the basis of three years' APARs, the marks which were allotted was never communicated to him. Therefore, he lost his opportunity to upgrade the same.

(14) Learned Counsel for the Petitioner placed reliance on the judgment in the case of *Dev Dutt (supra)* wherein the Hon'ble Apex Court, in Paragraph No. 17, held as under:-

“17. In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) Had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future (2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi vs. Union of India (supra) that arbitrariness violates Article 14 of the Constitution.”

(15) Thus it is not only when there is a bench mark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice.

(16) Learned Counsel for the Petitioner also placed reliance on the judgment in the case of ***Shantiranjan Sarkar (supra)*** wherein it is held that the delay in filing the original application should not be held to be a bar in granting the Petitioner an equitable relief. Union of India as a benevolent litigant cannot be permitted to take advantage of its own wrong.

(17) Learned Counsel for the Petitioner also placed reliance on the judgment of the Hon'ble Apex Court (3 Judges Bench) in the case of ***Abhijit Ghosh Dastidar (supra)*** in which, the Hon'ble Apex Court, relying on the judgment in the matter of ***Dev Dutt (supra)***, held in Paragraph No. 8 as under:-

“8. 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."

(18) Similarly, in the matter of ***Sukhdev Singh (supra)***, the view taken in the matters of ***Dev Dutt and Abhijit Ghosh (supra)*** are endorsed. On perusal of the reply filed on behalf of the Respondents (Page 37, Paragraph 10), it appears that the Petitioner got 4 marks for APAR of 2009-10 and the remark was average. In the year 2010-11, the remark was good and he had scored 6 marks. In the year 2011-12, the remark is shown as good and marks obtained are '6'. If there would have been any

opportunity granted to the Petitioner by communicating these remarks, he would have applied for upgradation of the remarks. If the remarks would have been communicated at the proper stage, his score towards the APAR might have increased. The Petitioner stood retired on 31/08/2019. The learned Member, CAT denied the relief on the ground that he stood retired and the period of panel considering promotions expired. The Petitioner seeks relief as granted in the matter of *Dev Dutt (supra)*.

(19) In our considered opinion, the impugned order does not sustain the scrutiny of law in view of the above law position, and hence, liable to be quashed and set aside.

(20) Hence, we proceed to pass following order:-

ORDER

(a) The Writ Petition is **allowed**.

- (b) The impugned order dated 18/07/2023 passed by the learned Member, Central Administrative Tribunal in O.A. No. 243/2017 as well as the letter dated 29/12/2015 issued by the Respondent No. 2 is hereby quashed and set aside.
- (c) The relevant entries of APAR be communicated to the Petitioner forthwith and he should be permitted to make a Representation against the same praying for its upgradation.
- (d) If such Representation is made for upgradation, it shall be decided within a period of two months thereafter. If his Application for upgradation is considered and in view thereof, he is treated as selected for the promotional post, by granting notional promotion, his pension be revised as per his entitlement.

The Petition stands **disposed of** in the above terms.
Pending Application(s), if any, stand(s) **disposed of**.

(PRAVIN S. PATIL, J.)

(M.S. JAWALKAR, J.)