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Court : Central Administrative Tribunal CAT Delhi

Decided On : Apr-24-2012

Judge : The Honourable Mrs. Meera Chhibber, Member (J) & the Honourable Dr. a.K. Mishra, Member (a)

Appeal No. : O.A. No. 2546 of 2011

Appellant : B.B. Sood

Respondent : Union of India Through the General Manager, Northern Railway, Baroda House, New Delhi and Another

Advocate for Pet/Ap. : For the Applicant: Yogesh Sharma, Advocate. For the Respondents: Shailendra Tiwary, Advocate.

Judgement :

MEERA CHHIBBER, MEMBER (J)

1. Applicant has challenged order dated 11.5.2011 (page 14) whereby his request to consider his representation against the adverse entries in the ACRs has been rejected on the ground that he had not made any representation against the remarks communicated to him in spite of giving reminders. He has further sought direction to the respondents to reassess the marks of the applicant in respect of record of service after ignoring the ACR for the years 2004-05 and 2005-06 for his

promotion to the post of AEN (Group 'B') under 70% quota initiated vide letter dated 10.10.2007 with all consequential benefits. He has further sought that the impugned adverse and downgrading of the ACR for the years 2004-05 and 2005-06 may be quashed for all purposes by ignoring the same for consideration for promotion to the next higher grade.

2. The brief facts, as stated by the applicant, are that selection for the post of Assistant Engineer was initiated by the respondents under 70% quota. Though applicant had qualified in the written examination but his name was not included in the panel. He had thus filed OA No.2044/2009 which was disposed of on 20.10.2010 by directing the respondents to consider the representation of the applicant and decide the same by passing a reasoned and speaking order. Further respondents were directed to consider the issue regarding his CRs below the bench mark and consequences thereof. The orders were not complied with, therefore, applicant had filed CP No.329/2011. In the meantime, respondents had issued order dated 11.5.2011 passing the orders on applicant's representation (page 14). In view of above, the CP was closed. However, liberty was given to the applicant to challenge the order if he is still aggrieved. It is in these circumstances that the applicant had filed the present OA.

3. It is submitted by the counsel for the applicant that while communicating the adverse remarks to the applicant on 12.1.2011 (page 31) no advise was given to the applicant to file his representation. Moreover, his case was pending in the Tribunal as CP was filed by him, therefore, he had not filed any representation against the adverse remarks but he did file his request on 26.4.2011 seeking extension of time but the same was not acceded to by the respondents and without considering his representation, his case was closed on 2.5.2011 (page 33). Counsel for the applicant submitted that since applicant had already given his representation on 3.5.2011, all that he is seeking that respondents should consider his representation and pass a speaking order.

4. Respondents, on the other hand, have opposed this OA. They have stated that in compliance with the court's orders, ACRs for the period from 2002-03 to 2007-08 were communicated to the applicant by DRM, Ambala Division. The applicant is

advised to make representation against the adverse entries in the ACR pertaining to the year 2004-2005 within 15 days of receipt of letter dated 8.2.2011 followed by reminders dated 28.2.2011 and 5.4.2011 asking him to give his representation but in spite of repeated opportunities having been given to the applicant, he failed to give any representation. In view of above, the adverse remarks which were communicated to the applicant did not require to be changed nor there would be any change under the head 'Record of Service', therefore, no review is called by the selection committee. In view of above, the claim of applicant was rejected.

5. On merits, they have stated that a selection for promotion from Group 'C' to Group 'B' to the post of AEN/Northern Railway against 50% quota vacancies in the Civil Engineering Department was conducted by the respondents to fill up 57 vacancies, out of which 9 posts for SC and 4 posts for ST. Applicant was called to appear in the viva voce test. 47 persons were placed in the provisional panel but since applicant did not secure minimum qualifying marks in Record of Service, hence he failed to find place in the provisional panel declared on 14.7.2008, 15.9.2009, 20.4.2009 and 28.4.2010. They have thus prayed that the OA may be dismissed as no case for interference has been made by the applicant.

6. In rejoinder, applicant has stated even before the adverse remarks were communicated to him, he had already given a representation on 8.11.2010 (page 44) and had submitted representation on 3.5.2011 against the adverse remarks for the year 2004-05 and also against the adverse remarks for the year 2005-06. The letter dated 2.5.2011 was received on 9.5.2011 whereas on 3.5.2011 applicant had already given his representation, therefore, the said representation should have been considered by the respondents instead of rejecting his case outright.

7. We have heard both the counsel and perused the pleadings as well.

8. In the reply, respondents have specifically stated that the adverse remarks were communicated to the applicant in January, 2011 and he was also advised to make representation against the adverse remarks vide letter dated 8.2.2011 followed by reminders dated 28.2.2011 and 5.4.2011 but in spite of that he did not give any representation, therefore, his case was closed on 2.5.2011. These facts are not disputed by the applicant in his rejoinder. On the contrary, the only ground taken

by the applicant is that since his case was pending in the Tribunal as he had filed Contempt Petition, he did not file any representation but ultimately he did file representation on 3.5.2011. We do not find any merit in the contention of the counsel for the applicant that representation was not filed in view of the pendency of the C.P. because it has got nothing to do with his right to file representation against the adverse remarks communicated to him pursuant to the directions given by the Tribunal. It is also a very strange argument that since applicant was not advised, he had not filed any representation against the adverse remarks and is noted only to be rejected. If in spite of repeated reminders applicant did not file any representation, naturally respondents had no other option but to close the case. If applicant was interested he should have exercised the opportunity given to him to file representation against the adverse remarks so that it could have been considered by the respondents and appropriate orders could have been passed. The adverse remarks were communicated to the applicant in January, 2011 and now we are in April, 2012 that means one year and 3 months have already passed in the meantime. In normal course, we would not have interfered in this case at all. However, in the rejoinder, applicant has stated that order dated 2.5.2011 was served on the applicant on 9.5.2011 and before that he had already given his representation on 3.5.2011 which is annexed on page 57 onwards. This aspect has not been dealt with by the respondents, therefore, in the interest of justice, we feel that his representation should at least be considered by the respondents. Though we hold that applicant was not vigilant enough in giving his representation and we find no fault with the respondents in passing the impugned order but in the interest of justice and equity, we would like to give one more chance to the applicant.

9. In view of above, the impugned orders passed by the respondents are quashed and set aside. Respondents are directed to consider the appeals filed by the applicant, which are annexed with this OA, on 3.5.2011 and pass reasoned and speaking order within a period of 3 months from the date of receipt of a copy of this order under intimation to the applicant. In case the adverse remarks communicated to the applicant are deleted or changed by the respondents, they shall pass necessary orders as a consequence thereof by taking further action in the matter, otherwise pass reasoned order on his representation within 3 months.

10. The OA stands disposed of with the above directions. No order as to costs.

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