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**(2025) 01 CAT CK 1561**

**In the Central Administrative Tribunal, Allahabad Bench, Allahabad**

**Case No :** Original Application No. 330, 00335 Of 2020

Anil Kumar Singh

APPELLANT

Vs

Union Of India Through General Manager, North Eastern  
Railway, Gorakhpur & Ors.

RESPONDENT

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**Date of Decision :** 23-01-2025

**Acts Referred:**

**Citation :** (2025) 01 CAT CK 1561

**Hon'ble Judges :** Om Prakash VII, Member (J); Mohan Pyare, Member (A)

**Bench :** Division Bench

**Advocate :** N.P Singh, Rachna Dubey

**Final Decision :** Allowed

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**Judgement**

Om Prakash VII, Member (J)

1. By means of present original application, applicant has sought following reliefs:-

"(i) Issue a direction in the nature of certiorari quashing the order No. PER/C/1/AEN 70%/2008 (1) dated 13.06.2019 (Annexure A-31 to the original application of compilation NO.1).

(ii) Issue an order or direction in the nature of mandamus directing the respondents to promote the applicant on the post of AXEN from the date of 10.03.2009 the date on which the similarly situated persons have been promoted in Group 'B' in pursuance of notification dated 17.05.2007 in the pay scale of Rs. 7550-12000/-.

(iii) Issue an order or direction in the nature of mandamus directing the respondents to grant all consequential benefits at par with the candidates who have joined the post of AXEN since 10.03.2009.

(iv) In other relief which this Hon'ble Court may deem fit and proper under the circumstances of the case.

(v) To award the cost of the application to the applicant”.

2. The brief facts of the case are that initially applicant was appointed on the post of Section Engineer in the pay scale of Rs. 6500-10500 on 24.04.1995. After completion of 10 years of service, the applicant has been promoted on the post of Senior Section Engineer in the pay scale of Rs. 7550-11500 in the year 2005. In response to advertisement dated 17.05.2007 issued by respondent No. 2, applicant took part in the process initiated for promotion to the post of Assistant Engineer (AEN) on criteria of seniority-cum-suitability. After appearing in the written examination, applicant has been declared successful vide letter dated 17.01.2008 and placed at serial No. 20 of the aforesaid list. Applicant had also appeared in the viva voce test, which was held on 07.02.2008. But in the final result dated 10.03.2008, his name has not been included for promotion to the post of AEN. Subsequently, applicant came to know that he was not promoted due to his 'Average ACR' for the year 2004-2005 given by his Reviewing Officer which was not communicated to him. He immediately moved a representation to the concerned authority dated 24.03.2008. The representation of the applicant has been forwarded to the DRM (Engineering) for necessary action. The competent authority vide order dated 16.04.2008 rejected the claim of the applicant. The aforesaid order was challenged before this Tribunal by filing OA No. 649/2008. The aforesaid case was finally heard and decided on 04.11.2009 with the direction to the respondents to reconsider the matter afresh and pass a reasoned and speaking order. After receiving the order dated 04.11.2009, respondents has passed the order dated 28.01.2010 and rejected the claim of the applicant by a cryptic order. Against the aforesaid rejection order, applicant had filed original application No. 755 of 2010. After exchange of counter and rejoinder affidavits, this Tribunal allowed the aforesaid OA vide order dated 29.10.2018. The aforesaid order of the Tribunal had been served to the respondents and in compliance with the aforesaid order, the competent authority has upgraded the APAR of the applicant for the year 2004-05 from 'Average' to 'Good' vide order dated 02.04.2019. After receiving the aforesaid upgradation report, respondent No. 1 and 2 have acted contrary to the aforesaid APAR report and rejected the claim of the applicant vide order dated 13.06.2019 for promotion from the post of Senior Section Engineer to Assistant Engineer in pursuance of the notification dated 17.05.2007. Aggrieved against the aforesaid order, applicant filed present original application.

3. In the counter affidavit filed by respondents, it is submitted that the order dated 13.06.2019 is a reasoned order and applicant was not rightly promoted as applicant has not mentioned or explained any such special achievement on the basis of which his APAR can be upgraded. Therefore, there is no justification for changing the evaluation of the special attributes mentioned by him. The evaluation done by three officers who have closely and thoroughly observed the work of applicant cannot be done. It is also stated that claim of the applicant could not be considered as he could not secure minimum qualifying marks i.e. 15 marks in the record of his service on the basis of his ACRs and therefore his

name could not be included in the panel dated 10.03.2008 of AEN Group 'B'. It has been further averred that as per circular dated 15.10.1976 of Railway Board, the grade 'Average' is not to be treated as adverse and therefore needed no communication to the applicant. Hence, the action of respondents being in accordance with rules and regulations, the O.A. deserves dismissal.

4. Rejoinder affidavit has also been filed in which the applicant has reiterated the facts as stated in the OA and denied the contents of the counter affidavit. Nothing new has been mentioned in the rejoinder affidavit.

5. We have heard Shri N.P Singh, learned counsel for the applicant and Ms. Kanchan Dubey, learned counsel for the respondents and perused the record.

6. Submission of the learned counsel for the applicant is that for the year 2004-2005, the Reporting Officer had awarded him a grade of 'Good,' but the Reviewing Officer, i.e., the Divisional Authority (Respondent No. 4), downgraded the grade to 'Average' during the review. Learned counsel for the applicant further submitted that he was never communicated any adverse ACR for the said period, which constitutes a violation of the law laid down by the Hon'ble Apex Court. This omission on the part of the respondents has resulted in the denial of his promotion to the post of AEN, while his juniors have been promoted. Learned counsel for the applicant also submitted that in its order dated 29.10.2018, Tribunal has observed that "if the upgradation is allowed, the applicant should be considered forthwith for promotion as AEN retrospectively and granted notional promotion from the date of the promotion given to other employees as per the select panel dated 10.03.2008 for the purposes of post retiral benefits and higher scale of pay from the date he is actually promoted". The learned counsel also contended that, since the applicant's grading was upgraded, the respondents are duty-bound to comply with the Tribunal's observations made in the order dated 29.10.2018.

7. In rebuttal, learned counsel for the respondents argued that the applicant did not achieve the required minimum qualifying marks (15 marks) in the record of service based on their Annual Performance Appraisal Reports (APARs) for the last five years. This was the basis for not empanelling the applicant for the AEN Group 'B' post. Learned counsel for the respondents further argued that all the candidates, who were empanelled, have already been posted against the notified vacancies for AEN Group 'B'. Consequently, the applicant's claim to be empanelled is untenable as the vacancies have been filled. Learned counsel for the respondents also argued that the respondents considered the principles established in the Supreme Court case *Dev Dutt v. Union of India* reported in (2008) 8 SCC 725 which pertain to fairness in performance appraisal and transparency in promotion-related matters. Even after applying these principles, the claim for the applicant's inclusion in the 2008 panel for 70% AEN vacancies has rightly been rejected.

8. We have considered the rival submissions advanced by the learned counsel for

the parties and have gone through the entire record.

9. Before, proceeding further, it is appropriate to quote the relevant portion of impugned order dated 13.06.2019:-

10. The operative portion of the order passed in OA No. 755 of 2010 is reproduced below:-

"9. In the circumstances of the case and law laid down in Dev Dutt case (supra), the O.A. is allowed to extent that the impugned order dated 28.01.2010 (Annexure A-17) is quashed and a direction is given to the respondents that they will communicate the entries in ACR of the years relevant for the selection of applicant to the post of AEN to the applicant within a period of one month from the date of receipt of the copy of this judgment and he should be permitted to make a representation against the same praying for upgradation within one month and which representation shall be decided by respondents within one months thereafter. If the upgradation is allowed, the applicant should be considered forthwith for promotion as AEN retrospectively and granted notional promotion from date of the promotion given to other employees as per the select panel dated 10.03.2008 for the purposes of post retiral benefits and higher scale of pay from the date he is actually promoted.

11. It is essential to quote the order for upgradation of grading:-

"It is seen that Reviewing Officer in part -IV of ACR above has agreed with the report of Reporting Officer vide item -2, assessment of reporting officer vide item -3 without any disagreement. However, the grading given by Reporting Officer as "GOOD" has been modified as "Average" without assigning any reason. AS per extant instruction, if reviewing officer revises the grading of Reporting Officer stands.

In view of the above, I modify the grading of 'GOOD' after re-review of the case".

12. From the perusal of the impugned order, upgradation order as well as order passed in OA No. 755 of 2010 it reveal that the applicant's APAR grading has been upgraded vide order 2.4.2019 (Annexure A-30). Despite this fact, respondents have rejected the applicant's claim for inclusion in the panel. While deciding the OA No. 755 of 2010, it has been specifically observed in the operative portion that if the upgradation is allowed, the applicant should be considered forthwith for promotion as AEN retrospectively granting notional promotion from the date of the promotion given to other employees as per the select panel dated 10.03.2008 for the purposes of post retiral benefits and higher scale of pay from the date he is actually promoted. Respondents, arbitrarily without taking into consideration the direction given in the OA No. 755 of 2010 on insufficient ground, have rejected the claim of the applicant. Since applicant's APAR has been upgraded then respondents ought to have calculated the points again on the basis of upgraded APAR, thereafter if he comes within the parameter for notional promotion, orders should have been passed accordingly.

13. Thus, in view of the above, the impugned order passed by the respondents is liable to be set aside/quashed and OA is liable to be allowed. Accordingly, the O.A. is allowed and the impugned order dated 13.06.2019 is hereby quashed. Respondents are hereby directed to consider the notional promotion of the applicant in the light of observation recorded in the OA No. 755 of 2010 as well as in the present original application for the post of AEN retrospectively granting him notional promotion from the date of the promotion given to other employees as per the select panel dated 10.03.2008 for the purposes of post retiral benefits and higher scale of pay from the date he is actually promoted. This exercise shall be completed within a period of three months from the date of receipt of a certified copy of the order. No order as to costs. All associated MAs are disposed of.