

(2015) 03 RAJ CK 0222
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1503 of 2012

Shivraj Singh Solanki

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Citation : (2015) 03 RAJ CK 0222

Hon'ble Judges : Raghuvendra S. Rathore, J; V.K. Mathur, J

Bench : Division Bench

Advocate : Sangram Singh Solanki, for the Appellant; P.C. Sharma, Advocates for the Respondent

Final Decision : Allowed

Judgement

Raghuvendra S. Rathore, J.—Being aggrieved of the order dated 30.11.2011 passed by the learned Central Administrative Tribunal, Jaipur Bench, Jaipur (hereinafter referred to as "the learned Tribunal") that the petitioner has preferred this writ petition. He has prayed that the order passed by the learned Tribunal in Original Application No. 279/2010 may be quashed and set aside. Further, he has prayed that the Original Application filed by him before the learned Tribunal may be allowed in the term of the relief claimed therein. It has also been prayed that headings personality, address, leadership, academic/technical qualification be deleted in Examination of LDCE JE.II TRD 2004 and the consequential marks awarded in these heads to the private respondents No. 3 to 8. He has also prayed that the respondents be directed to select and promote him on the post of JE II, above respondent No. 5 Babulal Jain, who had secured lesser marks in written test, service record and also to grant two marks additionally towards DRM awards. Lastly, the petitioner has prayed that he be promoted with all consequential benefits, at par with respondents No. 3 to 8.

2. In short, the facts of this case are that the petitioner was initially appointed as a directly recruited Apprentice on 12.08.1986. He was posted as Technician Grade-III on 30.11.1986 at Kota. Thereafter, he was promoted as Technician

Grade-II on 15.10.1992 and then as Technician Grade-I on 31.10.2010. Amongst the technicians, the petitioner is eligible for JE Grade-II. He is also eligible for promotion to the said post through Limited Departmental Competitive Examination (hereinafter referred to as "the LDCE". According to para 219 of IREM Volume-I, the post of JE Grade-II can also be filled up through LDCE.

3. The Divisional Railway Manager, Kota had, by Notification dated 04.03.2004, invited the eligible for LDCE selection for promotion to the post of JE Grade-II (5000-8000). The petitioner, being eligible for said post, applied and thereafter appeared in the written test held on 24.07.2004. Subsequently, a panel of seven JE Grade-II in the scale of 5000-8000, against the LDCE quota, was prepared on 13.09.2004. Though the petitioner had done extremely well in the written test and was very much hopeful for being selected in merit, but non-inclusion of his name in the panel of JE Grade-II came as a surprise to him. He also had a good service record, so much so, that he was awarded DRM Award on two occasions. Therefore, the petitioner had given a representation to respondent No. 2 on 14.09.2004. The reply which came in response to the said representation gave a clear answer that nobody had secured 80% or more than 80% marks.

4. The petitioner had then filed an OA (464/2004) before the learned Tribunal challenging the panel of JE Grade-II declared on 13.09.2004. The learned Tribunal, vide its order dated 25.07.2007, allowed the OA and had set aside the panel dated 13.09.2004. Further it had directed the General Manager, West Central Railway, Jabalpur (M.P.) and the Divisional Railway Manager, Kota to recast the panel. The respondents had challenged the order of the learned Tribunal passed on 25.07.2007 by filing a DB Civil Writ Petition (10487/2007) before the High Court. The High Court had decided the writ petition on 01.02.2008 and upheld the order dated 25.07.2007 passed by the learned Tribunal. Subsequently, the respondents filed a Review Petition (6/2008) before the Central Administrative Tribunal which was dismissed on 28.11.2009. Therefore, the respondents have again filed DB Civil Writ Petition (797/2009) before the High Court challenging the orders dated 25.07.2007 and 28.11.2009. The said writ petition was also dismissed, vide order dated 10.09.2009.

5. Respondent No. 2 Divisional Railway Manager, Kota had then prepared a panel for promotion to the post of JE Grade-II on 11.08.2009 wherein the names of respondents No. 3 to 8 were included. The petitioner had grievance against the said panel on the ground that it was by manipulation that the marks of the private respondents herein were increased so as to give them benefit of promotion to the post of JE Grade-II. According to the petitioner, the same was done under the pressure of the Employees Union.

6. After declaration of the panel on 11.08.2009, the petitioner had moved an application under the RTI Act, 2005 on 08.09.2009 seeking copies, marks, ACARs, assessment sheets. The respondents had provided only the assessment sheets and ACARs. In so far as the answer sheets of the empaneled candidates were concerned, it was replied by the respondents that the same cannot be

supplied.

The petitioner had come to know, on 16.09.2009, that respondent No. 2 had given marks for Viva-Voce under the head of personality, address, leadership, academic/technical qualification. The maximum marks provided for the same were 30. It was only thereafter that the respondent authorities, in compliance of the aforesaid judgment, prepared the assessment sheets based on the marks given to the candidates by the Selection Board for LDCE JE Grade-II.

7. The petitioner had, in view of the fact that the panel so prepared by the respondents on 11.08.2009 was not in accordance to law and the orders passed by the learned Tribunal, filed a contempt petition (No.1/2010). The said contempt petition was decided by the Tribunal on 08.02.2010 with the observation that if the petitioner is aggrieved of the panel prepared and that it is not in accordance to terms of LDCE then it would be open for him to challenge the fresh panel/order prepared by the respondents. He can pray for allowing the original application. After passing of the order by the learned Tribunal in the contempt petition, the petitioner preferred another OA (279/2010), before it with the prayer that the original application be allowed in the term of the relief prayed therein. The respondents had then filed a reply to the said application. During the course of proceedings, the petitioner had filed miscellaneous applications before the learned Tribunal (338/2010, 203/2011, 204/2011 and 282/2011), by which certain facts and documents were placed on record. The applications came to be allowed on 26.07.2011, 01.08.2011 and 24.10.2011.

After compliance of the order dated 25.07.2007 in the previous OA, Ramesh Kumar Saraswat and Dharendra Narayan Sharma were removed from the panel dated 11.08.2009. But later on, in pursuance of the orders of the learned Tribunal and the High Court, they were allowed to continue on the promoted post. The learned Tribunal had, after considering the second OA and the submissions made by the parties, dismissed the OA (279/2010) on 30.11.2011 (Annexure-39). Therefore, having been aggrieved with the order passed by the learned Tribunal on 30.11.2011, the present writ petition has been filed before this Court.

8. It has been submitted by the counsel for the petitioner that the impugned order passed by the learned Tribunal is contrary to law as well as the material on record. He has invited the attention of the Court extensively to the material on record so as to point out that the learned Tribunal has passed the impugned order without considering the same. According to the counsel for the petitioner, the OA filed by the petitioner before the learned Tribunal has not been looked into and the conclusion arrived by it is mainly on the basis of the version given by the respondents.

As a matter of fact, a bare perusal of the impugned order goes to show that the learned Tribunal has accepted the case of the respondents as it is, that the panel dated 11.08.2009 has been prepared in pursuance of the direction issued by the

learned Tribunal and the High Court. The name of the petitioner does not find place in the panel because he had secured lesser marks than the private respondents, who have been included in the panel. Similarly, the objection raised by the respondents that the petitioner had not raised the issue of manipulating the record at the earlier point of time that he cannot be allowed to do so now. It is submitted by the counsel for the petitioner that ample material was placed on record which clearly goes to show that there were cutting and overwriting done in the record by the respondents was malafidely, to give undue benefit to the private respondents.

It was also submitted on behalf of the petitioner that after decision of the earlier OA by the learned Tribunal on 25.07.2007, the respondents had prepared the panel only on 11.08.2009 wherein the name of respondent No. 5 was included despite of the fact that he had secured only 44 marks whereas the marks of the petitioner was 44.5 but even then his name was not included. The respondents have included the marks of Viva Voce which had already been deleted by the respondent Board. The certification issued by the respondents for LDCE, which was placed on record by the petitioner, has not been considered. The case of the petitioner was identical to that of Ramesh Kumar Saraswat and Dharendra Narain Sharma. The petitioner was very much entitled for empanelment but even then the learned Tribunal has dismissed his OA.

9. The learned counsel for the petitioner has also submitted that after allowing the miscellaneous applications filed by the petitioner, the learned Tribunal had not considered the facts mentioned therein nor the documents attached. The averments made therein clearly establishes the malafide, discriminatory, illegal and arbitrary act of the respondents. The respondents had also tempered with the record to increase the marks of respondents No. 3 to 8 so as to provide them benefit of selection to JE Grade-II. It was so done under the pressure of the Employees Union. Likewise, the assessment sheet prepared by the respondents was not at all fair and it was rather arbitrary which resulted in placing the private respondents at higher level despite of their being less meritorious to the petitioner. The marks of Pradeep Kumar were shown as 26 in place of 16 and that of Prajapati were increased from 14 to 24. Likewise, the marks of the other respondents have also been increased in the assessment sheets. The overwriting on the assessment sheets was not attested by any of the members of the Board whereas as per the letter No. 149/1999, the changes made were to be attested by them.

10. It has been submitted by the counsel for the petitioner that once a selection Board is constituted their members cannot be changed. In the present case, for selection on the post of JE Grade-II 2004, the members of the Board should have been DEE, TRD Kota, DEE, TRS TKD (Tuglakabad) and APO, Electrical Kota. But signatures on the assessment sheets were that of Sr. DEE TRD, Kota, Sr. DEE TRO Kota and DPO Kota. According the Indian Railway Establishment Circular 218-C, there cannot be two senior scale officers in the Committee for selecting

JE Grade-II, in the pay scale of Rs. 5000-8000. On bare perusal of the assessment sheets, it is more than clear that the respondents have not followed IREM circulars and rules with the object to give benefit to the private respondents. The respondents have even concealed the material information, as for instance in the reply given by them on 16.09.2004, in response to the present petition, it has been mentioned that no candidate had obtained more than 80% marks in the evaluation sheets but a perusal of the same (Annexure-12) shows that respondent No. 3 has obtained 82 marks. This clearly shows that the respondents have subsequently changed the documents and prepared incorrect panel so as to benefit the private respondents.

11. Similarly, incorrect marks have been given to the petitioner for his service record, as for instance the ACAR of the year 2001-02, 2002-03 and 2003-04 were "Very Good" for which he should have been awarded 24 marks but only 22 marks are taken in the evaluation sheet. On the contrary, the respondents have been awarded marks even in case where "Good" has been given in the ACAR. Furthermore, the petitioner had received DRM's Award on two occasions for which 16 marks should have been given but instead of it, he had been granted only 14 marks. Therefore, proper valuation of marks, service record and ACAR should have done and the total aggregate marks of the petitioner would come to 78-79. Consequently, the petitioner would have been panelled at serial No. 1 or 2 on 11.08.2009, but his name has not even been included in the panel.

12. After deletion of Viva Voce Test by the Railway Board in Group "C", vide its order dated 07.08.2003, marks of written test and service record were to be taken into account for preparing the panel on merit. The petitioner was awarded 30.5 marks in Professional Ability whereas he should have been given 31.5 marks as first question was correctly answered, but it was marked as incorrect. Therefore, the total marks of the petitioner should have been 47.5, that is 31.5 for written test and 16 for service record. Therefore the action of the respondents was not only discriminatory but they had favoured the private respondents.

13. The names of the private respondents have been placed over and above the petitioner so as to empanel them which is de hors of the instructions of the Railway Board. The petitioner had rather made it in the panel but on account of the extraneous reasons his name had been left which is unjust and unfair. It is submitted by the learned counsel for the petitioner that the learned Tribunal has neither considered the material facts of the case properly nor looked into the relevant law cited before it but has only accepted the version given by the respondents, as it is.

14. On behalf of the respondent Railways, the version given in the reply has been reiterated during the course of argument. The private respondents had preferred not to file any reply and had furnished arguments, in addition to the one made before the Court. It has been submitted by the counsel for the respondents that the petitioner had participated in the process of selection and as such, he cannot

challenge the same now. Further, it has been submitted that malafide has been alleged against the selection but none of the members of the Selection Board has been impleaded as party respondents. Further, it has been submitted by the counsel for the private respondents that they have been rightly included in the panel because of very good marks in their service records, including ACAR which were "Very Good". After the circular of 07.08.2003, Viva Voce was eliminated. The marks of Professional Ability were increased from 35 to 50, by including other head for personality, address, leadership, academic/technical qualification in the record of service. The panel of 11.08.2009 was prepared on the basis of marks obtained on the aforesaid heads.

It has also been submitted that the petitioner did not challenge, in the earlier proceedings, about awarding marks under the different heads and therefore he cannot be permitted to do so in the subsequent proceedings. Learned counsel for the respondents has denied about cutting and overwriting on the assessment sheets; incorrect checking of the answer sheets and about incorrect assessment of ACAR. It is submitted by the counsel for the respondents that when the petitioner did not raise these issues at the time of earlier proceedings, he cannot do the same now because it is barred by the principle of constructive res-judicata. The reply to additional affidavit by respondents No. 1 and 2 has been adopted by the private respondents also. For the aforesaid reasons, the learned counsel for the respondents have submitted that the submissions made on behalf of the petitioner has no merit and the writ petition deserves to be dismissed.

15. This case has a chequered history which starts from the year 2000 when a notification was issued by the Divisional Railway Manager, Kota- respondent No. 2 on 04.03.2000 for filling up of 7 vacancies (6 General and 1 SC) on the posts of Junior Engineer Grade II in the pay scale of 5000-8000 (RSRP) by the selection committee, for 25% for LDCE. This was issued for Electric Department, TRD Wing, Kota. The respondents had not mentioned any criteria in the notification for the said selection. Under the notification, the written examination was to be held on 24.07.2004, which was to have a question paper of 100 marks.

The respondent No. 2 did not declare any result of the written examination and had straight of prepared a panel on 13.09.2004. Being aggrieved of the said panel, the petitioner submitted a representation to respondent No. 2 on 14.09.2004. A reply to the said representation was given by respondent No. 2 on 16.09.2004 wherein it was stated that on account of being junior, the petitioner could not be included in the panel. In other words, it was not on account of getting lesser marks in the written examination but because the petitioner being junior that he could not be included in the panel. It was further mentioned in the reply that in this examination, no one had secured more than 80% marks. It was also stated in the reply that the panel was prepared in accordance to IREM para 219(g), RBE 263/98 and RBO No. 272/98.

16. Thereafter, the petitioner challenged the panel dated 13.09.2004 before the Central Administrative Tribunal (OA No. 464/2004). The said application was

accepted by the learned Tribunal on 25.07.2004. It is to be noted that in para 2 of the said judgment, the extract of the reply of the respondents has been reproduced which is as under:

"The respondents contested to the OA and filed their reply. It was submitted that the selection through Viva-Voce has been eliminated vide order dated 07.08.2003 passed by the Railway Board and it was directed that the selection would be made through written test and on the basis of service record. Thus the adopted selection procedure was constituted by the competent Authority and hence, the action of the respondents while making selection under the selection procedure as prescribed vide Railway Board letter dated 07.08.2003 is justified and sustainable under the Law (Annex.-5 RBE 137/2003 dated 07.08.2003 and 27.08.2003).

Therefore, it was the case of the respondents that the selection was made after removing viva-voce in accordance to RBE 137/2003 and marks were only given for written examination and service record.

17. Against the judgment dated 25.07.2007 passed by the learned Tribunal in OA No. 464/2004, the respondents Nos. 1 and 2 preferred a writ petition before a Division Bench of the High Court (10487/2007). In the proceedings of the said writ petition, the High Court had asked the respondent- Railways to show the assessment sheet. When the assessment sheet was not shown to the court by the respondents, the learned Division Bench dismissed the writ petition on 01.02.2008. The respondents had then filed a review petition (6/2008) which was also dismissed on 28.11.2009.

18. The review petition No. 07/2008 in OA No. 174/2005 filed by the respondents in the case of Vishnu Kumar Gautam which was also against the notification of the year 2004 related to the filling up the posts of Junior Engineer Grade II from 25% LDCE quota was also dismissed on 28.11.2009. Subsequently, the respondents Nos. 1 and 2 had again filed a writ petition before the learned learned Division Bench (979/009) challenging the judgment dated 25.07.2007 in OA No. 464/2004 and the order passed in the review petition on 28.11.2009. The learned Division Bench of this court, by a detailed order, dismissed the petition (979/2009) on 10.02.2009.

It is pertinent to note here that despite of the decision of the learned Tribunal on 25.07.2007 in OA No. 464/2004 whereby the panel dated 13.09.2004 and the reply to the representation dated 16.09.2004 were rejected, the respondent No. 2 had given promotion to the post of J.E. Grade I from amongst the persons who were made Junior Engineer Grade II by the panel of 13.09.2004. Instead of complying with the judgment dated 25.07.2007 passed by the learned Tribunal and that of the High Court dated 01.02.2008, the respondents had wrongly promoted J.E. Grade II from the disputed panel of 13.09.2004 to the post of J.E. Grade I.

19. The respondents being aggrieved of the judgment of the Tribunal dated

25.07.2007 and its review dated 26.11.2008 as well as the judgment dated 10.02.2009 passed by the Division Bench of the High Court (CW 979/2009) had recommended to the Railway Board on 14.05.2009 for filing of the Special Leave Petition before the Hon"ble Supreme Court. The Railway Board had vide order dated 25.06.2009 observed that :

"...this case has been carefully considered by the Board and it has been decided that it is not a fit case for filing SLP. Further action on the matter may be taken accordingly."

20. The respondents had then issued an amended panel on 11.08.2009. In the said panel also the name of the petitioner did not find place. The petitioner had then applied for some documents under the Right to Information Act, 2005 which related to the selection of J.E. Grade II from 25% quota of LDCE 2004 for the Electric Department, TRD, Kota. The respondents vide letter dated 08.09.2009 gave to the petitioner his ACR, answer-sheets and assessment-sheets and had refused to give ACRs and answer-sheets of the selected employees. On perusal of the assessment-sheet, it was revealed that in the process of selection apart from professional ability and record of service, marks for personality, address, leadership and technical qualifications were given. The nominated members of the selection committee were; (1) Mr. B.P. Gupta-Divisional Electrical Engineer, TRD, Kota; (2) Mr. Vinay Garg- DEE TRS, Tugalakabad; and (3) Mr. H.S. Meena-Assistant Personal Officer. But according to the assessment-sheet made available to the petitioner, the signatures on the same were that of Mr. Mukesh-Senior Divisional Electrical Engineer TRD, Kota, Mr. Jhingal- Senior Divisional Electrical Engineer and Mr. Deshmukh- Senior Divisional Personal Officer. In Column 6 of the assessment-sheet, marks were shown for personality, address, leadership and technical qualifications whereas in the reply filed before the Tribunal in OA No. 464/2004, the respondents had stated that viva-voce had been removed after RBE 1372003.

21. Furthermore, in the assessment sheets at serial No. 26, Ishad Khan was given 41 marks and Babulal at serial No. 27 was given 30 marks which is less than that of the petitioner. In respect of Pradeep Kumar Jain at serial No. 58 (35 marks) and Chandmal Prajapat at serial No. 75 (34 marks), it is seen that there is overwriting and cutting and there is no signature of any of the members of the Selection Committee to approve the same. In this manner, in order to give benefit to the aforesaid persons, their names were got included in the panel of 11.08.2009. In IREM, after initiation of the selection process, no change in the Selection Committee or in respect of any document is permissible.

Among the persons who were removed from the panel of 13.09.2004, Shri Dharendra Narain Sharma and Shri Ramesh Chandra Saraswat had filed SLP (14495-14496/2009) against the order dated 01.02.2008 passed in DBCWP No. 979/2009 as well as the order dated 25.07.2007 passed by the learned Tribunal in OA No. 464/2004, which were dismissed on 05.10.2009. Accordingly, the order dated 25.07.2007 passed in OA No. 464/2004 filed by the petitioner

attained finality. It was in reply of the said application that the respondents had stated that during selection only, professional ability and the service record is the correct procedure and no other criteria was to be included.

The petitioner had, before the Tribunal as well as the High Court, submitted the circulars which prescribes the procedure for selection of LDCE, as under:--

"Procedure of conducting the Limited Department Competitive Examinations Railway Establishment Act 1989 Guideline may be issued by the departmental committee for holding selection under Section 72 of the Act, which lays down guidelines for holding Limited Department Competitive Examination (LDCE) being relevant for the present purpose reads ad infra:

"72. Guidelines for holding Limited Departmental Competition. (1) Applications from eligible candidates for appearing in the limited departmental competition to the ranks of Head constable and Assistant Sub-Inspector shall be invited thirty days in advance of the proposed date of holding the said competitions.

(2) The procedure for holding the said competition shall be the same as provided in Rules 70 and 71 except sub-rule (3) of the said rules.

(3) A panel shall be drawn from amongst the candidates securing sixty percent marks or more in the order of merit. (Rule 70, 71 and 72 of Indian Railway Establishment Act attached)."

22. The Railway Board had issued a Circular dated 19.06.2009, subsequent to the decision dated 25.07.2007 passed in OA No. 464/2004). Besides this, the respondents cannot add new ground for selection. The Selection Committee has, in the instant case, added a third head in the assessment sheets as column 6 gives marks about personality, address, leadership and academic/technical qualification, which are elements of Viva Voce, as has been held by the High Court of Calcutta in Union of India (UOI) Vs. Santi Kumar Banerjee and Others, AIR 1967 Cal 129 : (1967) 1 CALLT 376 : (1968) 2 LLJ 203 and State of Rajasthan and Another Vs. Beni Prasad Sharma, (1987) 1 WLN 257 .

23. The petitioner has, in this examination, secured 61 marks as he had rightly answered two of his questions. In the ACR of the year 2002-03, the petitioner has got "Very Good" and accordingly, he should have been awarded 12 marks. On account of two awards, further two marks should have been given which makes a total of 14 marks in service record. Accordingly, the petitioner had secured 64 marks out of 100 in written test and 14 out of 20 in service record. The marks of the petitioner comes to a total of 75 in respect of professional ability and service record. Therefore, he had obtained more marks than Babu Lal Jain, who had got 60 marks in the written examination and 12 marks on the basis of ACR of the year 2002, 2003 and 2004. He had not been given any award. In this manner, the respondents had committed illegality in awarding 74 marks to Babulal Jain. Similarly, Pradeep Kumar Jain had secured 70 marks in the written test and there had been overwriting in his ACRs of the year 2002,

2003 and 2004 which casts a shadow of doubt on their genuineness. In the assessment sheet, in column 6, 26 marks in place of 16 have been shown which raises the total of 74 instead of 64. The record clearly shows that the ACRs were only average and therefore, on the basis of three years ACRs, he could have got only 6 marks but has been 13 marks. In this manner, the total marks of Pradeep Kumar Jain shown as 83 which is not correct as his ACRs were changed.

Similarly in case of Chandmal, the marks shown are 68 and his 3 years ACR are only "Good" and no award had been given to him. Accordingly, he would get only a total of 77 marks whereas for his service record he has been given 14 marks in place of 9. In the assessment sheet, his marks has been shown to be 34 in written examination in place of 24 and in Viva-Voce 24 marks in place of 14 and for service record 14 marks in place of 9 by changing ACR and total marks given are 72. Overwriting in his case is clearly seen. In the case of Irshad Khan, the total marks shown are 82 in written examination and on the basis service record, 14 marks have been given to him which comes to a total of 96 marks out of 120. This amounts to 80% marks. As a matter of fact, in the reply to the representation dated 16.09.2004, it has been given out that no one had secured 80% marks. In such a situation, giving of 82 marks to Irshad Khan also reflects that there had been tampering in respect of marks given to him.

24. Shri Vishnu Kumar Gautam had made a report to the Vigilance Department of Railways in respect of irregularity. The Vigilance Department observed that the assessment sheet has been prepared by the Personnel Department and they have also approved the same. The members of the Selection Committee had only put their signatures. Consequently, in respect of selection of JE Grade-II, irregularity were found by the Vigilance Department and warning has been awarded to Shri Mukesh and Shri Jinger. It is noteworthy that all the replies and record in respect of instant selection had been prepared by Shri H.S. Meena who was, from time to time, APO, DPO and officiating Sr. DPO of the Personnel Department of Railway Division Kota. All the documents have been signed by him.

25. It is also noteworthy to mention here that for filling up 25% quota of LDCE, notification was also issued in the year 2008 and the same was cancelled on 07.01.2010 by the Incharge because the petitioner had secured good marks. After about 4 months of the said order, notification for recruitment on the post of JE Grade-II was issued in 2010 for the posts of the year 2008. The petitioner was not allowed to appear in the same. The petitioner then preferred OA No. 19/2011 before the learned Tribunal wherein, by interim order, he was allowed to appear in the examination. The said OA was thereafter amended as OA No. 101/2012. Thereafter the OA was allowed on 23.04.2012. The Railways, being aggrieved of the order of OA, preferred a writ petition (No.10039/2012) before the High Court and the same was dismissed on 13.08.2012. In other words, the decision of the learned Tribunal attained finality. The petitioner secured 68 marks in written test and 12 marks on the basis of service record. Though the petitioner had been given two awards but marks in respect of only one award was allotted to him.

Shri H.S. Meena was a member of the Selection Committee as being represented by Personnel Department who had given loss to the petitioner. Despite of the fact that the petitioner had secured highest marks in the Selection of the year 2010, he was not included in the panel. The assessment sheet was prepared after increasing and decreasing the marks of the persons securing lesser marks and as such they were included in the panel.

26. After the decision of the learned Tribunal on 25.07.2007, the respondents had prepared the assessment sheet by changing the constitution of the Board. In the Selection Committee of 2004 for preparing the panel of 25% of the LDCE quota, Shri B.P. Gupta, DEE (TRD) was a member and he had prepared the question papers. The answer sheet of the petitioner bears the signature of Vinay Garg, DEE (TRS), Tuglakabad. Shri H.S. Meena, APO had signed at the bottom of the assessment sheet as a Section Officer and thereafter it had been signed by Shri Mukesh, Sr. DEE (TRD), Shri Jinger, Sr. DEE (TO) and Shri Deshmukh, Divisional Personal Officer. The very fact that the same was not signed by Mr. B.P. Gupta and Vinay Garg goes to show that IREM Circular 218-C was violated. In other words, the persons who were members of the Selection Committee and belonging to the cadre of Jr. Administrative Grade, such as DEE (TRD) and DEE (TRS), were left out after completion of selection and instead of it, another assessment sheet signed by Sr. DEE (TRD) and DEE (TRS) and other officers were taken on record. Furthermore, in order to give benefit to respondents No. 3 to 8, the marks given in column 6 and 7 of the assessment sheet were increased. Even in the enquiry conducted by the Vigilance Department, irregularities were found. A vigilance report, in para 4.0, made observation which are as follows:--

"4.0 Observation:

"On the investigation, it is found that there seems no basis for awarding of marks by selection board in column No. 6 under head Personality, address, leadership and technical qualification. As per decision taken by Railway Board vide letter RBE 53/1998 dated 04-03-1998, the marks under heading personality, address, leadership and technical qualification should be based on the assessment already available in the confidential Reports of concerned employees, wherever maintained.

In the subject selection the CR of the employees was maintained in annexure V and as per Rly. Board's letter dated 04-03-1998 (RBE 53/1998) the column 6 and 12 to be taken into account for awarding the marks under this head, but on observation of screening sheet (CP-E-5/1 to 6) it seems that these guidelines are not followed by selection Board and no uniformity is maintained in awarding of marks.

The selection committee members have failed to follow the guidelines mentioned in the RBE 53/1998 dated 04-03-1998 which was the main basis for allotment of marks, under this case instead of this letter of RBE 53/1998, the selection committee members are trying to deviate the issue and also have expressed that

the committee members had consensus and deliberated to award the marks on the basis of RBE 263/1998 which is not applicable for awarding of marks for personality, address, leadership and technical qualification. Since the RBE 263/1998 was issued in later date but not in super session of the RBE 53/1998. Hence criteria for awarding of marks was as per Annexure V column No. 6 and 12 which was not followed by the committee members. No satisfactory clarification is given by the selection committee members regarding the allotment of marks in these heads i.e. personality, address, leadership and technical qualification etc. as well as service record."

After through enquiry by seeking clarification of the Selection Committee members, etc, the conclusion arrived in para 7.0 is under:--

"7.0 Conclusion:

Thus it seems that due care has not been taken by the Selection Board. Even if they had followed some other method it should have been recorded on the assessment sheet itself to explain the matter if any time required.

These discrepancies as mentioned above are occurred in the selection process, whether knowingly or unknowingly, as it can not be said clearly being very old case. One of the members of selection Board has already superannuated from Railway Service in March 2006.

If the criteria for allotment of marks was decided by the committee members as per the guidelines issued by Railway Board and the same should be clearly mentioned in the screening sheet itself, so that allotment of marks may be justified at any time, if required. Moreover, RBE 263/1998 was not issued with super session of RBE 53/1998 and the RBE 263/1998 is only for change in criteria for total marks also the guidelines mentioned in RBE 53/1998 were to be followed in this case in absence of any other specific guidelines issued by the Railway Board, which the selection committee members failed to do so."

In para 8, it has been further observed in respect of responsibility of the officials that:--

"8.0 Responsibility of the official: Since the selection committee members have not followed the guidelines of Railway Board regarding allotment of marks, there is possibility of irregularity, and they are responsible to that extent."

27. On perusal of the ACR of Pradeep Kumar Jain for the year 2004, it is revealed that there is tampering in it and ACR of 2007 has been converted into that of 2004. Even the signatures of the person who prepared the said ACR are missing. There is tampering also in the ACRs of 2002 and 2003. The signatures of one person are of different nature in the said documents. Marks have wrongly been awarded in the case of Irshad Khan, who is said to be awarded 82 out of 100 marks in the written test and service record. The total marks of the two goes to 80% whereas it is the case of the respondents themselves while replying to the representation made by the petitioner (Annexure-8) on 16.09.2004 it has been

mentioned that no one had secured 80% marks. In case of Babulal Jain, 14 marks have been awarded for service record whereas he should have been awarded 12 marks, total of which comes to lesser than the petitioner. Chandmal Prajapat had been given 68 marks in written test and 14 marks for service record, which should be 9 marks because remark in his ACR is "Good". All this further goes to show that after awarding of the marks in the selection process, the same have been changed later on.

28. From the above discussion, it is ample clear that the selection procedure adopted by the respondents was not in consonance of the circulars and instructions issued by the Railway Board. The process started with notification in the year 2004 for fulfilling 25% quota of LDCE, the written examination of 100 marks was conducted in the month of July, 2004 but the result of the said examination was not declared. Instead of it, a panel was prepared, straight of, on 13.09.2004. The petitioner being confident of his performance had submitted a representation to the respondents to which a reply was given with averment that he, being junior in the seniority, could not be empaneled. In other words, irrespective of the marks obtained by the employees, they were empaneled on account of their seniority. At the same time, it is also averred that no candidate had secured 80% marks. Similarly when petitioner filed OA before the learned Tribunal, the respondents filed their reply which were taken note of by the Tribunal in its judgment that the Railway Board had directed that selection shall be made through test and on the basis of service record. But as mentioned above, this criteria was not adhered to, while preparing the panel. A bare look of the documents on record goes to show that there had not only been miscalculation in awarding marks on the basis of service record but there are also overwriting and cutting in the documents which goes to show that the same were tampered with after the preparation of the panel. When the Court had asked for the assessment sheet, the same was not provided and subsequently, an assessment sheet was prepared which clearly shows that marks were awarded to the candidates on the ground other than written examination and service record. Besides, even the confidential documents like ACRs could be laid hands by some persons by which the same had been changed and rather got prepared subsequently which is clear from the face of it.

After the earlier panel having been set aside by the Tribunal and upheld by the Hon"ble Supreme Court, the respondents prepared another panel incorporating, the private respondents as those who have been selected either by increasing their number or giving them marks more than the one they were entitled to. The entire procedure followed by respondent No. 1 and 2 and the manner in which the panel had been prepared even after the decision of the Court clearly shows that respondents were determined to give benefit to respondents No. 3 to 8 even without there being any basis for the same. In fact, as observed in the enquiry by the vigilance, the Selection Committee neither followed the rules of the Railway Board nor any procedure nor any principles of law in this regard. The involvement of one officer, namely H.S. Meena and changing of the record from

time to time, at his behest, because his signatures were found on all the documents, goes to show that the action of the respondents preparing the panel was malafide. This is further revealed from the fact that even in the subsequent examinations for fulfilling 25% quota of LDCE, the petitioner secured good marks and were more than the others but the same were cancelled for no rhyme and reasons. This itself goes to show that the respondents, had one point in mind, namely to deprive the petitioner from being selected in the quota of LDCE. On the other hand, the private respondents, who have been selected contrary to the Railway Board Rules and after gross irregularities having been made, have been given further promotions. It clearly shows that respondents No. 1 and 2 were bent upon to favour the private respondents and give them undue benefit.

29. Consequently, the writ petition is allowed. The impugned order dated 30.11.2011 passed by the Central Administrative Tribunal, Jaipur in OA No. 279/2010 is quashed and set aside. Respondents No. 1 and 2 are directed to place the petitioner on the post of JE Grade-II since 13.09.2004, over and above Irshad Khan, Babulal Jain, Pradeep Kumar Jain and Chandmal Prajapat. The petitioner shall also be entitled to all consequential benefits, such as promotions and all other monitory benefits.