

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO.243/99

New Delhi this the 1st day of November, 2000

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER(J)  
HON'BLE MR. V.K. MAJOTRA, MEMBER(A)

Mahendrajit Singh  
S/o late Sardar Gurbux Singh  
Resident of House No. SPG 8/A  
East Railway Colony  
Bhopal.

-Applicant

(None present)

Versus

1. General Manager  
Central Railway  
Mumbai
2. Divisional Railway Manager  
Habibganj  
Bhopal, M.P.
3. Divisional Railway Manager (Personnel)  
Habibganj, M.P.
4. Divisional Railway Manager (Commercial)  
Habibganj, Bhopal.

-Respondents

(By Advocate: Shri R.L. Dhawan)

ORDER (Oral)

Shri V.K. Majotra, Member (A)

The applicant and his counsel were absent yesterday i.e. 31.10.2000 when the learned counsel of the respondents was heard. Thus, the case was left part heard. As the applicant and his counsel are absent even today, we proceed to dispose of the OA in terms of the provisions of Rule-15 of the CAT(Procedure) Rules, 1987.

2. The applicant is an Assistant Reservation Supervisor in the Railways. The selection for the post of Chief Reservation Supervisor Grade Rs. 6500-10500 was initiated vide Notification dated 29.10.98 (Annexure R-1) for empanelment of six officers (5 general and 1 SC). The

Assistant Reservation Supervisors were called to appear in the examination which was held on 21.11.98. In the Notification itself, it was clarified that in case a candidate does not appear in the examination due to leave/sickness he would be allowed to take the supplementary examination to be held on 28.11.98. Applicant did not appear in the main examination held on 21.11.98. As per his application dated 25.11.98 (Annexure R-2) wherein he had stated that he was unwell and advised by the doctor to take rest, he had requested the authorities for permission to take examination to be held on 28.11.98 even though he was not well. According to the applicant, although by communication dated 27.11.98 (Annexure-4) he was permitted to appear in the written supplementary examination scheduled to be held on 28.11.98 when he went to appear in the supplementary examination on 28.11.98, he was not allowed to appear in the examination stating "the employee is under the treatment of the Railway Physician for being sick and is not fit for duty". The applicant has stated that in the notice dated 27.11.98 (Annexure-4) it has been made clear that no more supplementary written examination after this examination dated 28.11.98 was to be held. Thus, he wanted to avail himself an opportunity of taking the supplementary examination which was denied to him arbitrarily, and with a malafide intention. The applicant has sought direction to the respondents to hold another supplementary examination for the applicant before finalising the list of successful employees.

3. In their counter, the respondents have stated that on going through the applicant's application (Annexure R-2) it was found that he was on sick list with

Railway doctor at the time of supplementary examination held on 28.11.98 and as such he was not permitted to appear in the supplementary examination of the selection for the post of Chief Reservation Supervisor. The respondents have maintained that the panel on the basis of the selection held on 21.11.98/28.11.98 has been implemented on 31.12.98 (Annexure R-7). The respondents have also stated that the applicant is still under medical treatment under Chief Medical Superintendent, Central Railway, Bhopal and not fit to resume duties.

4. The learned counsel of the applicant has filed letter dated 16.10.2000 from DRM, Bhopal addressed to the learned counsel of the respondents stating that the applicant after the long sickness has joined his duties only on 22.8.2000. The learned counsel of the respondents has also drawn our attention to the instructions contained in (G.I. MHA. OM No. 5/165-H dated 8.6.1965) relating to reporting for duty in office before us after the examination is over. The instructions reads as follows:-

"Attending Hindi and other obligatory examination:-

A question has been raised whether a Government servant is expected to report for duty in office either before or after the examination is over, in case the examination including the viva voce test commences in the forenoon or in the afternoon. It has been decided that

(i) in case where the examination is held in a day both in the forenoon and in the afternoon, the Government servants need not be required to attend office either before or after the examination, and

(ii) in case where the examination is held only in the forenoon or in the afternoon, the Government servants must attend office in the afternoon/forenoon, as the case may be, unless the Head of Office/Department specifically exempts any or all Government servants from such attendance, having regard to the time schedule of the test and the distance between the place of duty and examination".

5. He has further referred to Para-542 of Chapter-I of the Indian Railway Establishment Code Volume-I relating to duty certificate after sickness, which reads as follows:-

"Duty Certificate:- When a Railway employee who is residing either within or outside the jurisdiction of the Railway doctor and who has been under the treatment of a non-Railway registered medical practitioner, presents himself with a certificate from the non-Railway registered medical practitioner, has not complied with the rules on the subject, or of there is any doubt regarding the genuineness of the case, for instance, if the submission of the medical certificate is inconsistent with any known facts, or it cannot be ascertained whether the medical attendant is registered medical practitioner or not, the authorised medical officer, after careful examination, will issue a duty certificate in the prescribed form as given in the annexure XIV. The certificates should be serially numbered".

6. Shri Dhawan has stated that for taking an examination, one has to be on duty and in case of sickness an employee has to obtain a duty certificate under the aforesated instructions. The applicant has himself admitted that he was sick and wanted to appear in the supplementary examination but was not allowed to appear in the examination as he had not produced fitness certificate from the Physician.

7. The applicant in his rejoinder has stated that the supplementary examination was held on 26.11.98 as per Annexure R-6 instead of 28.11.98. Various documents namely, Annexure-4A dated 28.11.98 whereby the applicant was refused to appear in the supplementary examination being held on 28.11.98, have been produced. Annexure-5 which is representation of the applicant regarding denial to the applicant to appear in the examination on 28.11.98 and Annexure R-5 refusing the applicant to take part in

the examination being held on 28.11.98 established that the supplementary examination was actually held on 28.11.98 and not on 26.11.98. The applicant had not made any averment regarding the examination held on 26.11.98 instead of 28.11.98 in the OA. He has stated this only in his rejoinder on noticing the typographical error in the Annexure R-6. He has attempted to take advantage of typographical error in Annexure R-6 dated 24.12.98. From various documents in the OA, we hold that the examination was actually held on 28.11.98 and when the applicant went to the examination hall, he was declined permission to take the same being sick and for non-production of duty certificate as required under instructions contained in paragraph-542 referred to above.

8. The applicant has also averred in his rejoinder that the supplementary examination is normally conducted after <sup>1/4</sup> one to three month of the main examination so that the left over employees may be given an opportunity to appear. But the supplementary examination was held by the respondents barely after a week of the main examination in undue haste. Shri Dhawan has referred the instructions contained in paragraph-223 relating to Supplementary Selection/Suitability Test of Indian Railway Establishment Code, Volume-I, which read as follows:-

"The supplementary meeting of the Selection Board should as far as possible be attended by the same Officers who were present at the first Selection Board and held within one month of the first selection of the return to duty of the employee concerned provided that the employee returned to duty not later than three months after the holding of the first selection. In case the return of the employee is delayed beyond three months, the result of the selection need not be deferred, the name of the employee being incorporated as if he had appeared at the selection when first held. The employee will not be eligible to be

considered if he returns to duty more than six months after the date of the first selection.

Not more than one supplementary selection should normally be held to cater to the needs of absentee due to sickness, non-intimation/late intimation of dates of tests etc. The second supplementary selection should be held rarely and with the personal approval of Chief Personnel Officer based on merits of each case".

9. It is quite clear from these instructions that the supplementary examination has to be held within one month of the first selection and that not more than one supplementary selection can normally be held. The candidates have been duly informed vide Annexure R-1 dated 29.10.98 itself that whereas the main examination will be held on 21.11.98, the supplementary written examination would be held on 28.11.98. The allegation that the examination was held in undue ~~haste~~<sup>hurry</sup> and to the prejudice of the applicant is not established at all. The supplementary examination was held within one month of the main written examination as per the prescribed instructions. Therefore, this contention of the applicant is rejected. As per letter dated 16.10.2000 from DRM, Bhopal addressed to the respondents' counsel (copy placed on record), the applicant has remained on sick leave upto 21.8.2000, he has not obtained duty certificate from the Physician. The applicant has not brought home his averments. The respondents have held the main examination and the supplementary examination as per the instructions on the subject and not ~~allowing~~<sup>allowing</sup> the applicant to participate in the supplementary examination held on 28.11.98 in the absence of applicant's fitness certificate.

10. Having regard to what is stated above, we do not find any good ground for interference with the action

of the respondents in refusing permission to the applicant to participate in the supplementary examination for promotion to the post of Chief Reservation Supervisor held in November 1998. Accordingly the OA is dismissed being devoid of merit. No costs.

V.K. Majotra

(V.K. MAJOTRA)  
MEMBER (A)

Lakshmi Swaminathan

(SMT. LAKSHMI SWAMINATHAN)  
MEMBER (J)

cc.