

Central Administrative Tribunal
Principal Bench, New Delhi

OA No.725/95

New Delhi this the 9th day of August 1995.

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)
Hon'ble Mr R.K.Ahooja, Member (A)

Raj Narain Singh
R/o 48, Central Govt.Housing Complex (CBI Colony)
Vasant Vihar
New Delhi-110 057.

...Applicant.

(Through Shri Gyan Prakash, Advocate)

Versus

Union of India through

1. Secretary
Dept. of Personnel
North Block, New Delhi.

2. Director
Central Bureau of Investigation
CGO Complex
Lodhi Road, New Delhi.

3. Assistant Director(Est.)
CBI, Lodhi Road,
New Delhi.

...Respondents.

(Through Shri M.M.Sudan, Advocate)

O R D E R (Oral)

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

The applicant Shri Raj Narain Singh is a Head Constable in the Central Bureau of Investigation. By a letter dated 20.6.1994 issued from the Headquarters of CBI, addressed to all DIsG/DDs, CBI, SP (HQs)/CBI, it was informed that a decision had been taken to invite applications of all Head Constables who had completed 3 years of service as on 1.8.1994, for limited departmental competitive examination for promotion to the post of ASI. The examination was comprised of a written test and an interview. The applicant being one among the eligible candidates appeared in the written test and he qualified the same. The Headquarters sent a communication to all Superintendents of Police on 2.9.1994 stating that the interview of the Head Constables who had cleared the written examination was scheduled to be held on 12.9.1994 with a direction that the intimation should be given to the respective candidates.

✓

This letter reached the Superintendent of Police under whom the applicant was serving at that time, only on the later hours on 7.9.1994, according to the SP, CBI, New Delhi. As the applicant had gone on 4 days' casual leave on 30.8.1994 and later had fallen ill, the SP issued a wireless message to the Station House Officer (SHO), Police Station Jamania, District Ghazipur (UP) with a direction that the message should be conveyed to the applicant. According to the applicant as also according to the SP under whom the applicant was serving, as is seen from the letter at Annexure A-15, the wireless message was not communicated to the applicant with the result that the applicant could not appear for the interview. Out of 17 persons who appeared for the interview, 15 were selected and appointed by order dated 9.11.94. Finding that the applicant was not selected owing to his non-appearance in the interview which in turn was on account of non-communication ^{of} ~~about~~ the schedule of interview, the applicant made a representation requesting that a chance may be given to him for participating in the interview. The Superintendent of Police under whom he was working also recommended that in the circumstances of the case, it would be just and proper to hold a supplementary interview for the applicant. The representation submitted by the applicant was turned down by order dated 24.1.95 (Annexure A-1) in which he was told that it was decided at the level of Joint Director (Admn.)/CBI that the applicant should take the next chance for appearing in the examination for promotion and his request to be given a chance for interview could not be acceded to. It is aggrieved by the rejection of his representation that the applicant has filed this application. The applicant has alleged in the application that ^{as} he was not called for the interview on the basis of his entitlement arising out of his success in the written examination, the respondents have violated the equality of provisions contained in the Article 14 & 16 of the Constitution. Hence the applicant prays for quashing the impugned order and for a direction to the respondents to give the applicant another chance to appear in the interview on the basis of the Limited Departmental Examination held on 20.8.94 for promotion to the post of ASI and if selected to be promoted to the post of ASI, and to assign him due seniority.

6

2. The application is opposed by the respondents who have filed a detailed reply statement.

3. We have heard Mr Gyan Prakash, learned counsel for the applicant and Mr M.M.Sudan, learned counsel for the respondents. The fact that the applicant qualified for the interview in the written test and that the intimation in regard to the interview was not actually communicated to the applicant is not in dispute. On the basis of this undisputed factual situation, Mr Gyan Prakash argued that non-intimation of the date of interview and denial of an opportunity to participate in the interview violate the fundamental rights of the applicant for ^{equality} ~~equity~~ in the matter of employment. Mr Sudan, learned counsel for the respondents on the other hand argued that the applicant having participated in the written test should have been vigilant and should have appeared for the interview; his going on leave to his native place at a crucial time when he should at ^{any} ~~no~~ time have expected a call letter for interview shows the lapse on his part and therefore he does not deserve any relief as prayed for by him. Further, Mr Sudan argued that as the Headquarters of the CBI had done all in its powers by intimating the date of interview to the controlling officers concerned, failure on the part of the applicant to gather information and to appear for the interview cannot be attributed to anybody but to himself. He has further argued that vacancies in the departmental quota for which the examination was held of the general candidates having been filled, it will not be possible to accommodate the applicant in case supplementary interview is held and as a result the applicant happens to be selected.

4. Having heard learned counsel on either side and having considered the facts and circumstances revealed in the pleadings, we are of the considered view that it would be a miscarriage of justice and violation of the provisions contained in Article 14 & 16 of the Constitution if the applicant is not afforded an opportunity to appear for the interview for which he qualified in the written examination.

2

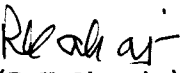
7

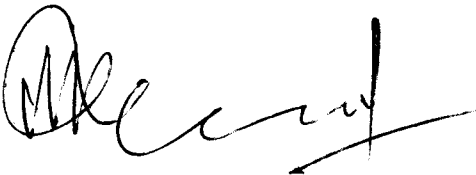
5. If it was a case where the applicant had received intimation but remained absent from the interview for whatever reason, there would not have any case at all for the applicant, but it is a clear case where the intimation regarding the date of interview was not made known to the applicant. The applicant who qualified the written test was entitled to be called for interview which did not take place.

6. The applicant has produced a letter of CBI HQs dated 17.11.94 which would indicate that there were 26 vacancies for the post of ASI under the promotion quota as on 1.11.1994. We are not sure whether any vacancy out of this 26 which would fall to the general category is still open or not.

7. In the conceptous of the facts and circumstances of the case, we are of the considered view that the interest of justice will be met if the respondents are directed to hold a supplimentary interview for the applicant on the basis of his success in the written test held on 20.8.94 and evaluation of the service records, and if he succeeds in the interview to appoint him to the post of ASI. If no such vacancy is in existence at the moment, ^{to} appoint him in the next arising vacancy in the relevant quota, ^{and to} assign ^{him} ~~ning~~ ^{due} seniority on the basis of the examination held on 20.8.94. The application is disposed of with the above directions which shall be complied with within 3 months from the date of receipt of a copy of this order.

There is no order as to costs.


(R.K. Ahooja)
Member (A)


(A.V. Haridasan)
Vice Chairman (J)

aa.