

Central Administrative Tribunal
Principal Bench: New Delhi

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OA No.35/96

New Delhi this the 6th day of May 1996.

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

Sh.Vinod Kumar Raheja
S/o Late Shri Chander Mani
J.A.A/Under Dy.C.A.O.
Northern Railway
Kishanganj, Delhi-7.

...Applicant.

R/o House No.1181
Rani Bagh
Delhi-110 034.
(By Advocate: Sh.R.K.Relan)

Versus

Union of India through

1. The Secretary
Ministry of Railways
(Railway Board)
Rail Bhavan
New Delhi.

2. The General Manager
Northern Railway
Baroda House
New Delhi.

3. The FA & CAO/Administiration
Northern Railway
Baroda House
New Delhi.

4. The Deputy Chief Accounts Officer
Northern Railway
Traffic Accounts Office
Kishaanganj, Delhi-7.

...Respondents.

(By Advocate: Sh.D.S.Mahendru)

OR D E R (Oral)

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

The applicant who was working as Junior Accounts Assistant (J.A.A.) approached this Tribunal by filing OA No.105/89 seeking to quash the order of termination of his services as J.A.A. and for a direction to give him another chance to appear in the examination for confirmation. When the OA came up for hearing, as an interim measure, the Tribunal directed the respondents to allow the applicant to take another examination provisionally. This OA was finally disposed of alongwith ten other applications and a

direction was given to the respondents to consider each case on merits to determine whether more chance should be given for passing confirmatory examination and also to consider change of category. A review application was filed which was eventually dismissed. The respondents filed an SLP before the Hon'ble Supreme Court and the Supreme Court disposed of the SLP and the following observations were made:

"However, in view of the fact that para 4 (a) of the Appendix itself give right to the employee to take three maximum normal chances for passing prescribed tests, we direct the appellant to give another chance as an exceptional circumstance to take the examination. The appellants are directed to give advance notice of the date on which the examination would be conducted and also should give reasonable facilities for preparation so that the respondents would adequately prepare for the examination. It is open to the appellant to conduct the examination according to its procedure. Such candidates who pass the examination will be considered for confirmation. If they do not pass, appropriate order would be issued to discharge them from service."

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"It is further brought to our notice that some of the respondents could not appear for examinations on medical grounds. It would appear that the authorities have counted that as one of the chances availed of. According to us, if it were a case where they had sought to appear but due to medical grounds could not actually take the examination, the authorities would not consider the same as one of the chances availed of and appropriate benefit may be given to such candidates and that too on proof of medical certificate already filed by prescribed/competent doctor."

2. On the basis of the above directions of the Supreme Court, the applicant was offered another chance to appear in the confirmatory examination. The applicant refused to appear on the ground that there was no need for him to appear afresh without knowing the results of the confirmatory examination which he had already undergone pursuant to the interim orders issued by this Tribunal in the OA. The applicant, therefore, has filed this application for a direction to the respondents to publish the results of the examination which he had already undergone pursuant to the interim orders passed in the earlier OA and to grant him consequential benefits. It has been alleged in the application that

Shri Sanjay Mehta and Shri Ambrish Kumar whose cases were also disposed of by the same order by this Tribunal had also appeared for the similar examination like him pursuant to the interim orders and that the respondents having declared their results and refusing to declare his results are acting in a hostile and discriminatory manner and, therefore, the relief as aforesaid may be granted.

3. The respondents on receipt of notice have filed a short reply opposing the grant of interim relief. They contend that the Hon'ble Supreme Court has in its order on the SLP directed the respondents to give a fourth chance to those who have availed of the third chance to appear in the examination after giving them sufficient notice and opportunity for preparation and it was in obedience to the above directions of the Supreme Court that the applicant has been offered a chance. The applicant, if he wishes to avail of the benefits of the judgement of the Supreme Court, has to appear for the examination, contend the respondents. As the applicant is reluctant to participate in the examination, respondents contend that, he is not entitled to the interim relief as sought for.

4. The application has been listed today for hearing on admission as also for considering the question of interim order.

5. We have heard learned counsel on either side. In the order of the Tribunal disposing of the OA 105/89 alongwith other applications, the respondents were directed to consider the feasibility of giving further chance after considering the individual cases separately on merits and to act accordingly. It was made clear in the order that the interim order already issued would stand merged with the above directions. While the Tribunal as interim measure directed the respondents to allow the applicant to appear for the fourth examination, no such specific direction was given in the ^{final} order but only directed the respondents to consider the feasibility of giving an additional chance. Now that the additional chance is available to the applicant is evident from the

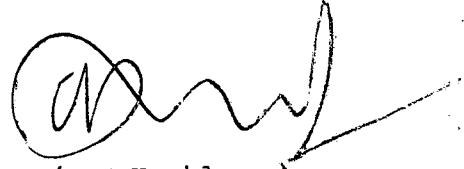
directions of the Supreme Court. However, either in the Tribunal's order or in the Supreme Court order, there is no direction that the chance already availed of by the applicant provisionally and subject to the result of the OA was to be treated as the additional chance to which the applicant was entitled to. The clear direction to the respondents was that they should give a notice of the fourth chance and adequate opportunity for the concerned applicants to make preparations for appearing in the examination. The respondents are bound to comply with that directions and, therefore, they cannot be faulted when they offered another chance to appear in the examination again.

6. Learned counsel of the applicant states that the respondents are acting in a hostile and discriminatory manner as in the case of Sanjay Mehta and Ambrish Kumar, similarly situated like the applicant abd who were allowed to take the examination provisionally pursuant to the interim orders, they have declared the results while they refused to declare the results of the applicant. Shri Mahendru, learned counsel of the respondents under instructions from the departmental representative who is present in the court stated that there is a difference between Sanjay Mehta/Ambrish Kumar and the applicant in that those two persons could not avail of the third chance on medical grounds and the examination which they took under the interim order was treated as third chance in view of the directions contained in the judgement of the Supreme Court and that as the aapplicant is now (as per observations of the Hon'ble Supreme Court, reproduced Supra) availing a fourth chance, he has to appear pursuant to the notice and opportunity given to him. We find considerable force in this argument and fail to see any case in this application. If the applicant wishes to avail of the fourth chance as given to him pursuant to the judicial pronoucement, it is open for him to appear in the examination. He is not entitled to get relief of a direction to the respondents to declare the result of the examination which he took pursuant to the interim order in OA No. 105, because there was no direction either in the order

of the Tribunal or that of the Supreme Court that the examination which he took under the interim order should be treated as an additional fourth chance/examination.

7. In the light of what is stated above, finding no merit in this application and finding that there is no need to keep this application pending for further deliberation, we reject this application under Section 19(3) of the Tribunals Act, leaving the parties to bear their own costs. This order does not preclude the respondents from treating the examination undertaken by the applicant under the interim order in OA No. 105/89 as the additional fourth chance, if the applicant makes a request that the same may be considered as the additional examination to which he is entitled in terms of the order of the Tribunal in OA 105/89 and the judgement of the Supreme Court.

R.K.Ahooja
(R.K.Ahooja)
Member (A)


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

[A.Ashraf]