

Central Administrative Tribunal  
Principal Bench

O.A. No. 862 of 1996

2000

(3)

New Delhi, dated this the 22<sup>nd</sup> March,

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE MR. KULDIP SINGH, MEMBER (J)

Shri Awadh Kishore Prasad,  
Head Parcel Clerk, Northern Railway,  
R/o House No. 6/148,  
Dakshinpuri Extension,  
New Delhi-110062.

..Applicant

(By Advocate: Shri Romesh Gautam)

Versus

1. Union of India through  
the General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.

2. The Divl. Railway Manager,  
Northern Railway,  
State Entry Road,  
New Delhi.

..Respondents

(By Advocate: Shri R.L. Dhawan)

ORDER

MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns respondents' order dated 8.4.96 (Annexure I) and seeks to holding of a supplementary viva-voce test for him for consideration for promotion as Parcel Supervisor (Rs.1600-2660) and on his being selected give him all consequential benefits, or alternatively exempt him from the written test and allow him to appear in the viva-voce test and on his being selected give him all consequential benefits.

2. By letter dated 8.4.96 (Annexure I) respondents decided to hold written test for

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selections to the post of Parcel Supervisor (Rs.1600-2600) on 11.5.96, supplementary test on 18.5.96; and viva-voce test on 11.6.96. It is not denied that applicant who had passed the earlier written test on 16.12.94 and the supplementary test on 17.12.94, but he did not appear in the consequential viva-voce test scheduled for 4.7.95 (Annexure V) and was not empanelled vide list dated 13.7.95 (Annexure VI).

3. Applicant contends that he had left station on 3 days leave on average pay from 12.6.95 to 14.6.95 in connection with a court case in Bihar where he fell ill and remained under treatment till 25.7.95 and hence could not attend the viva-voce test on 4.7.95 and represented on 31.7.95 (Annexure X) to be given another chance to appear in the viva-voce.

4. Respondents in their reply to the O.A. state that after taking a lenient view, the request for applicant for holding a supplementary viva voce test was forwarded to the higher authorities, for approval, and pending that approval, applicant was called for the next written test, supplementary written test and viva-voce vide impugned letter dated 8.4.96. Respondents state that the impugned letter dated 8.4.96 is, therefore, perfectly in order, and in fact is <sup>in</sup> the applicant's own interest. In case he qualifies in the said selection and in the meanwhile

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if the approval of the higher authorities for holding a supplementary viva-voce test is received, applicant would be interpolated in the 1994 selections.

5. We have heard applicant's counsel Shri Romesh Gautam and respondents' counsel Shri R.L.Dhawan. We have perused the materials on record and given the matter our careful consideration.

6. We note from the order sheet dated 17.5.96 that applicant's prayer for interim relief to be exempted from appearing in the test scheduled in May-June, 1996 was rejected as it was held that his case did not fall within the scope and ambit of Paragraph 223(iii) IREM Vol.I.

7. A perusal of the respondents' letter dated 11.7.96 (copy taken on record) indicates that applicant was not amongst those who had qualified in the written test held in June, 1996 to enable him to be called for the viva voce test scheduled thereafter. Under the circumstances, if despite rejection of applicant's prayer for exemption to appear in that test vide order sheet dated 17.5.96, he did not appear in the same or upon appearing failed to do well enough to be called for the viva voce, no fundamental right accrues to applicant to warrant interference in this O.A.

8. Shri Gautam has relied upon the C.A.T., P.B. order dated 2.3.94 in O.A. No. 1997/98 D.P. Monga & Others Vs. Union of India & Others, but that

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ruling has already been considered by the Tribunal in its order dated 17.5.96 and has been found inapplicable. We as a Coordinate Bench are bound by that finding.

9. Another ruling relied upon by Shri Gautam is dated 24.10.91 in O.A. No. 2420/89 Shri H.R. Arora Vs. Union of India & Others, but that was a case when that applicant was denied even ad hoc promotion, while his juniors were given ad hoc promotion, but regular promotion through proper written test and viva voce and hence that ruling does not advance applicant's claim.

10. Yet another ruling is dated 18.10.94 in O.A. No. 2034/98 but in that case also the facts and circumstances are different.

11. No order has been shown to us communicating the decision of the competent authority on the proposal referred to by respondents in their reply to hold a supplementary viva voce test for applicant and in case he was successful, interpolate his name in 1994 selection. Whatever decision respondents take in this regard in accordance with rules and instructions (in case the same has not been taken already) should be communicated to applicant

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within three months from the date of receipt of a copy of this order. Meanwhile we note from respondents' order dated July, 1997 (copy taken on record) that applicant has been empanelled as Parcel Supervisor in May, 1997.

12. The O.A. is disposed of in terms of Paragraph 11 above. No costs.

*Kuldeep*  
(Kuldeep Singh)  
Member (J)

*S.R. Adige*  
(S.R. Adige)  
Vice Chairman (A)

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