

19
**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No. 1448/97

199

T.A.No.

DATE OF DECISION 30.6.98

Sh.O.P.Singh & Ors

....Petitioner

Sh.A.K.Behera

**....Advocate for the
Petitioner(s)**

VERSUS

UOI & Ors

....Respondent

Sh.R.L.Dhawan

**....Advocate for the
Respondents.**

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The Hon'ble Shri K.Muthukumar, Member(A)

1. To be referred to the Reporter or not?YES

**2. Whether it needs to be circulated to other
Benches of the Tribunal? No.**

Lakshmi Swaminathan
**(Smt.Lakshmi Swaminathan)
Member(J)**

20

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1448/1997
M.A. NO.1491/1997

New Delhi this the 30th day of June, 1998.

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. O. P. Singh S/O Ram Raj Singh,
R/O 4/10 Railway Colony,
Sewa Nagar,
New Delhi-110003.
2. H. K. Sharma S/O Durga Das,
R/O 39/11 Railway Colony,
Kishan Ganj,
Delhi-7.
3. Harendra Singh S/O Moole Singh,
R/O G-112, Sector-9,
Ghaziabad.
4. N. K. Pandey S/O B. Pandey,
R/O 123/1 Railway Line,
Rouse Avenue,
New Delhi.
5. J. P. Kushawaha S/O S. N. Kushawaha,
R/O 3 FG Railway Colony,
N. Railway,
Mirzapur.
6. B. S. Meena,
R/O JE Horticulture
Under DEN/Bikaner
at Delhi (M.G.)

... Applicants

(By Shri A. K. Behera, Advocate)

-Versus-

1. Union of India through
The Chairman, Railway Board,
Rail Bhawan,
New Delhi-110001.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi-110001.

... Respondents

(By Shri R. L. Dhawan, Advocate)

18:

O R D E R

Smt. Lakshmi Swamimathan, Member(J):

This application has been filed by six applicants impugning the action of the respondents in holding the selection test for promotion to the post of Assistant Engineer (Horticulture) (hereinafter referred to as AEN/Hort.) on 7.6.1997.

2. The applicants have filed M.A. No. 1491/97 seeking permission to file a joint application on the ground that they are all working in the same department and their duties are the same, as well as the cause of action. Shri R. L. Dhawan, learned counsel for the respondents, has during the course of arguments, submitted that the respondents have not received a copy of this M.A. and hence no separate reply has been filed. However, he has submitted that in the case of applicants 2 and 6, they have not appeared in the impugned selection test held on 7.6.1997. It is also noticed from para 1 of the O.A. that they have submitted that applicants 1-5 and other similarly situated persons were given intimation of the examination only 10-12 days earlier. Their main grievance is that the syllabus for the examination was not intimated to anyone of them. Applicant No.6 belongs to the ST community and his grievance is that the SC/ST candidates who were eligible for appearing in the examination were not included in the eligibility list. Shri A. K. Behera, learned

counsel for the applicants has heavily relied on the letter issued by the respondents dated 30.5./2.6.1997 (Annexure R-12) referring to the representation of applicant No.6 who was JE/Hort. at Bikaner Division that the information was not circulated among the eligible SC/ST candidates and hence the examination may be postponed. In this connection he has also submitted that the respondents have not only failed to send the circular regarding the examination to the SC/ST candidates, they have also violated the provisions for giving them pre-selection coaching in accordance with the extant rules as referred to in the circular of July, 1996 (Annexure R-7). With regard to applicant No.2, the respondents have submitted that he was not found eligible to take the examination because he did not possess the necessary qualification of a degree/diploma in Horticulture, by letter dated 24.6.1997. This letter has, however, not been challenged by applicant No.2, Shri H. K. Sharma. However, in pursuance of the Tribunal's order dated 6.6.1997, the respondents were directed to permit the applicants to appear in the examination provisionally.

3. Rule 4 (5) (a) of the Central Administrative Tribunal (Procedure) Rules, 1987 provides as follows:-

"4 (5) (a) Notwithstanding anything contained in sub-rules (1) to (3), the Tribunal may permit more than one person to join together and file a single application if it is satisfied, having regard to the cause of action and the nature of relief prayed for that they have a common interest in the matter."

js:

4. From the facts mentioned in para 2 above, it is seen that the applicants 1-6 do not have a common cause of action. The applicants, excluding applicant No.6, themselves have stated that they have received intimation of the selection test only 10-12 days earlier which is one of their main grievance. The ground relating to pre-selection coaching classes for SC/ST candidates is not a ground applicable to applicants 1-5 and applies only to applicant No.6. The respondents have also stated that they have rejected the candidature of applicant No.2 on the ground that he was not qualified for taking the examination but he had been allowed to take the examination provisionally. With regard to applicant No.2 his case is ^{is} further weakened because he has not challenged the letter issued by the respondents dated 24.6.1997 rejecting his candidature. No doubt, applicant No.2 had also made several representations earlier for postponement of the examination on the grounds taken in the OA, namely, that no syllabus has been prescribed and reasonable opportunity/time has not been given to him for preparing for the examination. However, he has not challenged the cancellation of his candidature nor is this applicable to the other candidates. Therefore, taking into account the facts and circumstances of the case and the provisions of Rule 4 (5) (a) of CAT (Procedure) Rules, we are unable to come to the conclusion that this joint application is maintainable as regards applicant No.6. The relief claimed does not arise from the same act or transaction nor is there a common

13.

question of law and fact with regard to all the applicants and hence M.A. No.1491/97 is rejected. However, liberty is granted to applicant No.6 to pursue his remedies in accordance with law, if so advised.

5. The other applicants, namely, 1-5 belong to the general category, who have challenged the holding of the selection test for promotion to the post of AEN/Hort. on 7.6.1997. Their main grievance is that the respondents intimated them about 10-12 days earlier giving them no time to prepare for the examination which according to them is a total farce, besides depriving them of reasonable opportunity of appearing in the test. They have also submitted that the respondents have failed to prescribe any syllabus for the examination or intimated them about the same and this also makes holding of the test illegal. In these circumstances, they have prayed that the decision of the respondents to hold the examination on 7.6.97 may be quashed and set aside and to grant them all consequential benefits.

6. The respondents in their reply have taken a preliminary objection on the ground that the Union of India which is a necessary party has not been joined. However, the applicants have amended the memo. of parties to include the Union of India and this preliminary objection is, therefore, rejected.

7. The respondents have submitted that the written test had been fixed on a number of earlier occasions and postponed after taking into account several representations made by the applicants, including those dated 28.12.1995 and 26.12.96. They have submitted that by notice dated 29.8.1995 they called for applications from non-Ministerial Group 'C' staff of Civil Engineering Department satisfying the general conditions of eligibility for selection to Group 'B' post. This was followed by another circular dated 15.12.1995 in which it

was stated that a written test would be held for this purpose on 6.1.1996. To this, the applicants had submitted their representations to postpone the test, ^{to} giving them sufficient time for preparation. This was followed by the letter issued by the respondents on 29.12.1995 postponing the written test which was scheduled to be held on 6.1.1996. Later, in continuation of the earlier circulars, the respondents issued circular dated 13.9.1996 fixing the date for the test for selection to the post of AEN/Hort. on 12.10.1996. In this circular it is mentioned that as regards syllabus, the selection would be conducted keeping in view the nature of functions and prescribed qualification for manning the post of AEN/Horticulture. Later the date for the test was again postponed to 11.1.1997 by letter dated 1.11.1996 against which also the applicants protested by their representation dated 26.12.1996, asking the respondents to give them sufficient time for preparation for the written test. Finally, in continuation of the earlier circulars, the respondents intimated that the written test would be held on 7.6.1997, which is the action impugned in the present application. The applicants again submitted their representation to the respondents not to hold the test on 7.6.1997 on two grounds, which have also been very vehemently urged by Shri A.K.Behera, learned counsel for applicants in this OA, namely, that no syllabus has been prescribed which is essential before holding any examination and reasonable opportunity to prepare for the same has not been afforded to them. The respondents on the other hand have submitted that reference to the various circulars and representations made by the applicants shows that the written test has been postponed several times from 1995, including postponement from 10.5.1997 to 7.6.1997 which has given the applicants sufficient time to prepare for the same. With regard to the question of prescribing

the syllabus, Shri R.L.Dhawan, relies on Rule 201.1 and 204.2 of the Indian Railway Establishment Manual (IREM) Volume-1 (1989 Edition). He submits that the promotion post of AEN/Hort. being a vacancy in Group 'B' to be filled by selection from among Group 'C' employees, it is done on the basis of a written test as prescribed in Rule 204.1. He submits that Rule 204.2 lays down that since a question paper for written test is to have a practical bias, no syllabus need be prescribed for the same. He, therefore, submits that the written test held on 7.6.1997 has been held in accordance with the rules and he has prayed that the application may, therefore, be dismissed.

8. We have seen the rejoinder filed by the applicants. Shri A.K.Behera, learned counsel very vehemently submitted that since the respondents have failed to mention that they are relying on Rules 201 and 204 of the IREM in the reply, the learned counsel for the respondents cannot refer to them in the arguments. In any case, he submits that these rules are not applicable in this case.

9. We have carefully considered the pleadings and submissions made by the learned counsel for parties. As seen from the facts mentioned above and the impugned circular dated 1.5.1997, the decision to fix the selection test on 7.6.1997 has been taken in continuation of the earlier office letters from 13.9.1996. It is also noted that against each of the office letters fixing the date for selection test earlier; the applicants had submitted representations to postpone the same in order to enable them to prepare for the test. In the representation made by the applicants dated 26.12.96, it is also relevant to note that they have themselves submitted that the test which was scheduled to be held on 11.1.1997 leaves them with little margin of time to prepare for the test as the months of December to April are the busiest

12

seasons for horticultural activities because a number of flower shows and other official functions are being held during those months. This indicates that the applicants were very much involved in practical horticultural activities which were part of their duties. Taking into account these facts and circumstances, we are unable to agree with the very strenuous arguments advanced by Shri A.K. Behera, learned counsel that the applicants have not been given sufficient time to prepare for the selection test.

10. Similarly, we also find no merit in the arguments advanced by the learned counsel for the applicants that the selection test is illegal because no syllabus has been prescribed. Rule 201.1 of IREM provides, inter alia, that all vacancies in Group 'B' posts are to be filled by promotion on the basis of selection of eligible Group 'C' employees. The selection procedure has been laid down in Rule 204 which provides that selection is based on a written test. Rule 204.2 provides as follows:-

"204.2. The question paper for the written test should have a practical bias i.e. it should be designed to test the ability of candidates to tackle the practical problems they are likely to face rather than their theoretical knowledge. It is in view of this that no syllabus has been prescribed for the written examination except the written examination for the post of Assistant Personnel Officer and the Railways depending on the local conditions/practices should set the paper."

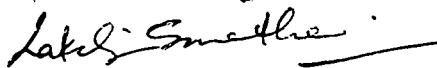
From the above Rule it is clear, therefore, that no syllabus need be prescribed for the written examination. It is also relevant to note that in the several representations made by the applicants, requesting the respondents to postpone the earlier dates fixed for the written test, this point has not been directly agitated by them. The argument of Sh. A.K. Behera, learned counsel for applicants that the learned

(28)

counsel for respondents cannot rely on these rules because the same has not been mentioned in the written pleadings is {baseless as it is trite to mention that" ignorance of the law is no excuse". The rules prescribed in the IREM are fully applicable to the facts of this case as admittedly, the post of AEN/Hort. is a Group 'B' post which was to be filled by promotion by selection from among eligible Group 'C' employees, for which test no syllabus need be prescribed, except that the test should have a practical bias. The respondents had also submitted the question papers as set in the impugned written test for our perusal and we are satisfied that the written test has been held in accordance with the provisions of Rule 204 of IREM.

11. In the circumstances of the case, we find no merit in this application justifying any interference in the matter. The application is accordingly dismissed. There shall be no order as to costs.


(K. Muthukumar)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)