

9

CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH.

O.A. 1357/94

New Delhi this the 26th day of October, 1995.

Hon'ble Shri N.V. Krishnan, Acting Chairman.

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

S.K. Sharma,
Qtr. No.82-B/2,
Railway Colony,
Tughlakabad,
New Delhi.

...Applicant.

By Advocate Shri G.D. Bhandari.

Versus

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

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

...Respondents.

By Advocate Shri Shyam Moorjani (later appeared)

ORDER (ORAL)

Hon'ble Shri N.V. Krishnan, Acting Chairman.

The applicant, while working as a Fitter Grade-I with respondents, appeared in the written examination for selection to the post of Chargeman. That examination was, according to him, held initially on 21.4.1981. On the basis of this examination, the applicant was called for a viva voce test on 2.5.1981 vide Annexure A-4 letter dated 28.4.1981.

2. However, it is his claim that the written test held on 21.4.1981 was cancelled. Further, a written

(C)

examination was held on 29.6.1981 which also he passed. However, in the meanwhile, he was sent to Zimbabwe through RITES in August, 1981. The interview following the written test held on 29.6.1981 is stated to have been held on 7.11.1981. As he was on deputation, he could not attend the test. On his return, he requested the authorities that either the interview for the post of Chargeman be arranged or he given promotion on merit basis. This is contained in his representation dated 22.10.1984 (Annexure A-6).

3. The applicant has also annexed the letter of the Senior Divisional Mechanical Engineer, Tughlakabad dated 28.7.1993 (Annexure-23). In this letter, it is admitted that he qualified in the written test, the result of which was notified in the letter dated 20.10.1981 and that he could not appear in the interview in November, 1981 as he had gone abroad on 2.11.1981 and that on his return in 1984, he had made representations. The letter also recommended that a chance be provided to the applicant to attend viva voce test to adjudge his suitability.

4. This matter was being taken up by the departmental authorities with the higher level officers, the last of which is the letter dated 8.4.1994 (Annexure A-1), addressed by the D.R.M., Tughlakabad to the General Manager (P), Northern Railway Headquarters, wherein the General Manager was requested to consider the case of the applicant on the lines of the decision taken in the case of Shri M.P. Singh and accord sanction for exempting the applicant from appearing in the viva voce test.

5. Despite being given several opportunities to file a reply, the respondents did not file any reply and accordingly, their right to file the reply was forfeited on 20.2.1995. They were, however, permitted to bring the record if they so choose on the next date of hearing. On the last date, Shri H.K. Gangwani, proxy counsel for Shri Shyam Moorjani, had requested for adjournment and hence the case was listed for today. None is present for the respondents. Hence, we are disposing of the case on the basis of the pleadings and the records and after hearing the learned counsel for the applicant.

6. It appeared necessary to consider whether there were some laches on the part of the applicant inasmuch as he could have instituted legal proceedings soon after his return from abroad in 1984. The learned counsel submits that he had been making representations and thereupon his immediate superior had taken up the matter with the concerned Railway authorities as is evidenced by the Annexure A-1 letter of the D.R.M. to the General Manager, as latest on 8.4.1994. In this view of the matter, we are satisfied that the O.A. cannot be held to be barred by limitation, but the relief has to be suitably modified.

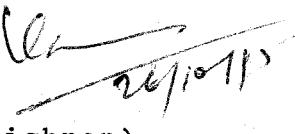
7. In the facts mentioned above, the only relief which the applicant can expect is that he should be given an opportunity to appear in the viva voce test in which he could not appear in 1981 due to the administrative reasons. We, therefore, direct the respondents to hold a supplementary viva voce

(K)

test for the applicant in connection with the selection for the post of Chargeman in regard to which he passed the written examination, the result of which was notified on 20.10.1981. In case the applicant passes the viva voce examination, he will be entitled to be promoted notionally from the date from which his immediate junior who had passed that examination was promoted. His pay will be refixed on the higher scale from the date of such notional promotion but he will be given arrears only from 1st July, 1993, i.e. one year ~~FROM~~ before the date on which this O.A. was filed. This will be done within a period of three months from the date of receipt of a copy of this order. No costs.

8. After the judgement was dictated, Shri Shyam Moorjani, Counsel, for the respondents, appeared.


(Smt. Lakshmi Swaminathan)
Member(J)


(N.V. Krishnan)
Acting Chairman

'SRD'