

Central Administrative Tribunal  
Principal Bench  
OA-2286/91

(23)

New Delhi, the 29th February, 1996.

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

Shri Hari Krishan  
S/o Sh. Kartar Singh  
H.No.165/8, Railway Colony  
Kishanganj  
Delhi.110006. .. Applicant  
(Advocate : Sh. KN Bahuguna)

versus

1. General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.110001.
2. Divisional Railway Manager,  
Northern Railway,  
Paharganj,  
New Delhi.
3. Shri Siri Krishan,  
S/o Shri Puntu Ram,  
Electrical Khalasi,  
SEFO (PS)  
Hazrat Nizamuddin  
New Delhi.
4. Shri Vinod Kumar  
S/o Shri Ram Gopal  
Electrical Khalasi,  
C/o SEFO (PS)  
Hazrat Nizamuddin  
New Delhi.
5. Shri Prem Prakash  
S/o Shri Hosiar Singh  
Khalasi,  
C/o SEFO (PS)  
Hazrat Nizamuddin  
New Delhi.
6. Shri Giasi Ram  
S/o Sh. Chet Ram  
Electrical Khalasi,  
SEFO (Chg)  
Hazrat Nizamuddin,  
New Delhi. ...  
(Advocate: Shri B.K. Aggarwal)

Respondents

ORDER (Oral)

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Hon'ble Shri A.V. Haridasan, VC(J)

The undisputed facts of the case are as follows:

The applicant in response to notice inviting applications from Scheduled Caste and Scheduled Tribes only for appointment to post of non-technical Group 'D' applied for selection and he was assigned Roll No.5237. In the merit list prepared after the process of selection, the applicant was placed at serial No.93. The applicant's grievance is that he has not been sent for medical examination and not been appointed while respondents 3 to 6 who were lower than the applicant in the list have already been appointed. It is alleged in the application that the applicant deposited a sum of Rs.8/- being the fee for medical examination on 4.9.89 and completed other formalities and in spite of his several requests to the authorities concerned for making his appointment, the respondents did not take any steps to do the needful. Under these circumstances, the applicant has filed this application praying that the respondents may be directed to appoint him in a Group 'D' post.

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2. The respondents in their counter statement admit that the applicant was placed at serial No.93 in the select panel but they justify their action of not appointing him alleging that the applicant did not deposit a sum of Rs.8/- as medical fee and even did not appear in the office before 28.8.89 whereas respondents No.3 to 6 had complied with all the formalities and were therefore appointed. They have further contended that now there is a ban on recruitment and it is not possible to appoint the applicant at this stage.

3. In the rejoinder, the applicant has stated that he did not get the registered letter from the respondents requiring him to appear in the office and pay medical examination fee on/or before 28.8.89 that when he came to know of the letter on 4.9.89 he deposited the medical examination fee and complied with all other formalities. The applicant was required to produce the evidence to establish that he had deposited the medical examination fee of Rs.8/- . He filed an affidavit along with a photo-copy of the receipt for deposit of Rs.8/- as medical examination fee on 4.9.89 which was attested by Shri Mangat Ram, Asstt. Director ( EST) Traffic Directorate, New Delhi. In a counter affidavit Shri Ved Prakash DOP had stated that the photo-copy produced by the applicant is a fabricated one

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and no such receipt appears to have been issued to the applicant. It is also stated that no such receipt was available in the office of the respondents.

4. Shri B.K. Agarwal, 1d. counsel for the respondents had made available for our perusal a file which disclosed that the letter which was sent to the applicant was not served on him but was retained and the same was given to him on 4.9.89 when he went to the office of respondents to make enquiry.

5. On a careful scrutiny of the pleadings, documents and other materials available on record and the file produced for our perusal, we are convinced that the applicant on 4.9.89 appeared before the office and received the letter by which he was required to deposit medical examination fee of Rs.8/-. From the Annexure A-4 a photo-copy of the receipt for medical examination fee, it is evident that on 4.9.89, the applicant has deposited the sum of Rs.8/- as medical examination fee. The receipt contains a No. and the same has been attested by the AD(Est.) Deptt. of Traffic Directorate. The Asstt. Director being a responsible officer, it is not possible to assume that he would have attested the correctness of the receipt unless he was satisfied.

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The applicant who has been selected and empanelled at a fairly high place for appointment to a Group 'D' post would not have failed to deposit a sum of Rs.8/- as medical examination fee which is a condition precedent for appoint. The Annexure (A-4) satisfies our judicial conscience, that he had deposited the medical examination fee of Rs.8/- on 4.8.89. Though with reluctance the respondents produced the file which revealed that the failure on the part of the applicant to appear before the respondents on or before 28.8.89 was not on account of any of his lapse but because this letter was not served on him. He received this letter on 4.8.89 and this deposit was made on the same date. The code of the respondent that Annexure A-4 receipt did not appear to have been issued from the office is highly unconvincing. The reason for not sending the applicant for medical examination and not proceeding to appoint him if he was fit must be better known to the respondents.

6. In the conspectus of facts and circumstances we allow the application and direct the respondents to send the applicant for medical examination, and if found fit to appoint him on a Group 'D' post forthwith. On such appointment the applicant shall be assigned seniority on the basis of his placement in the select list and proforma fixation of pay, but no arrears of pay and allowances

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need be paid to him. The above directions shall be complied with by the respondents within a period of one months from the date of receipt of a copy of this order. That there is a ban on recruitment shall not stand in the way of the appointment of the applicant as in his case recruitment process had been already initiated and concluded. There shall be no order as to costs.

R.K. Ahuja  
(R.K. Ahuja)  
Member(H)

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

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