

OPEN COURT

(27)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

O.A. NO. 573/97

Allahabad: This the 10th day of December, 2003

HON'BLE MR. JUSTICE S.R. SINGH, VICE-CHAIRMAN
HON'BLE MR. D.R. TIWARI, MEMBER A

Sri Ram Yadav,
Son of Late Sarju Yadav,
Working as Chargeman-A, Diesal
Loco Shed, North Eastern Railway,
Izzat Nagar, Bareilly.

.....Applicant.

By Advocate :- Shri S K Om

Versus

1. Union of India,
through General Manager,
N.E.Railway, Gorakhpur.
2. Senior Divisional Personnel Officer,
N.E.Railway, Izzat Nagar, Bareilly.
3. Senior Divisional Mechanical Engineer,
(Diesal) N.E.Railway, Izzat Nagar,
Bareilly.
4. Assistant Mechanical Engineer,-I (Diesal)
N.E. Railway, Izzat Nagar, Bareilly.

....Respondents.

By Advocate : Shri Amit Sthalekar

(AS)

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O R D E R

By Justice S.R.Singh, Vice-Chairman

By means of this application the applicant has prayed for issuing a direction in the nature of mandamus commanding the respondents to hold the supplementary selection pursuant to the notification dated 09.04.1997 for the post of Foreman-B in the scale of Rs.2000-3200.

2. A perusal of the letter dated 09.04.1997 issued from Divisional Rail Prabandhak [Karmik] N.E.Railway, Izatnagar, Bareilly, shows that the competent authority was requested to relieve the applicant and three other chargemen-A in the grade of Rs. 1600-2660 to enable them to appear in the written selection test which was proposed to be held on 15.04.1997 for the post of Diesal Foreman-B in the pay scale of Rs.2000-3200 on the mechanical side. The name of the applicant found place at serial no.1 among the eligible candidates mentioned in the said letter dated 09.04.1997. The applicant, it is not disputed, did not appear in the selection test held on 15.04.1997. The Tribunal, while issuing notice to the respondents, passed the following order on 03.06.1997 :-

" Issue notice to the respondents enquiring them to file a short counter to meet the prayer for interim relief within one month. The applicant will have a week thereafter to file rejoinder. Till the next date we direct that the result for the post of Foreman'B' scale 2000-3200[Mechanical] which has held pursuant to notification dated 7/10/2.1997 shall not be declared. We, however, further provide that it would be open to the respondents to hold a supplementary test and call the applicant to appear at the supplementary test. If this is done, the order prohibiting declaration of the result shall not be given effect to."

2. As supplementary selection test was held on 09.5.1997 but the applicant, it is alleged, was not allowed to appear

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in the supplementary selection test held on 09.05.1997 even though, it is submitted by the learned counsel, he was entitled to appear in the supplementary selection test, in view of the provision contained in paragraph 223-I(i)(c) of the Railway Establishment Manual which reads as under :

" 223-I(i) (a) :.....
(b) :.....

(c) Sickness of the candidate or other reason over which the employee has no control. Unavoidable absence will not however, include absence to attend a wedding or similar function or absence over which he has controlled. Sickness should be covered by a specific service from the Railway Medical Officer."

3. The case of the applicant is that he could not appear in the written test held on 15.04.1997 due to the reason of illness of his wife in which connection the applicant had to proceed on LAP leave/^{from} 12.4.2000 to 14.4.2000 and subsequently moved an application on 19.4.1997 for sanction of LAP leave from 15.4.1997 to 18.4.1997. The applicant had, in fact, left for his home on 12.4.1997 after taking LAP leave up to 14.4.1997. The Authority concerned passed the following order on the said application dated 19.4.1997 :

" Regret. Cannot be sanctioned sd-19.4.1997"

4. The learned counsel appearing for the applicant has contended that the applicant was entitled to appear in the supplementary selection test held on 09.5.1997 in as much as his case is covered by clause(c) of paragraph 223 I of Railway Establishment Manual. Be that as it may, we are of the view that no effective relief can now be granted to the applicant for reasons: firstly, that the test was held only for one post and the result has already been declared; and secondly, candidate selected for the post has already been appointed, but he has not been impleaded to this O.A. The applicant has since retired from service

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as at the time of filing the O.A. he was aged about 53 years and, therefore, during the pendency of his O.A. he must have been superannuated. In the facts and circumstances it is not possible to give any effective relief to the applicant. The selected candidate has not been impleaded and his selection is not otherwise under challenge.

5. In the facts and circumstances, the O.A. is dismissed with no order as to costs.

Df
Member A

RAG
Vice-Chairman

Brijesh/-