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Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 959 of 1997

Allahabad this the 13th day of 13/8/2004

Hon'ble Mr.A.K. Bhatnagar, Member (J)
Hon'ble Mr.D.R. Tiwari, Member (A)

Ram Lakhani, aged about 42 years, S/o Late Shri Rudra Prasad, R/o 22, Mahabir Nagar, Manikpur, District Banda (U.P.).

APPLICANT

By Advocate Shri Rakesh Verma

Versus

1. Union of India through the General Manager, Central Railway, Chhatrapati Shivaji Terminus, Mumbai.
2. The Divisional Railway Manager(P) Central Railway, Jabalpur.
3. Chief Personnel Officer, Central Railway, Chhatrapati Shivaji Terminus, Mumbai.

RESPONDENTS

By Advocate Shri Prashant Mathur

O R D E R (Oral)

By Hon'ble Mr.D.R. Tiwari, Member (A)

By the instant O.A. instituted under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for issuance of a direction to respondent no.2 to declare the result of trade test of the applicant held on 19.07.1996. He has further sought the relief that applicant may be promoted on the post of Telecom Maintainer Grade III in the pay scale of Rs.950-1500 in case he has been successful in the trade test.

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2. Filtering out the unnecessary details, the relevant facts to adjudicate the issue, are that the applicant was initially appointed as Trolley Man on 10.03.1979 in regular capacity in revised pay scale of Rs.775-1025/- and was posted at Manikpur under the control of respondent no.2. Subsequently he was promoted to the post of Senior Trolley Man on 01.08.1982 in the pay scale of Rs.800-1150 after qualifying the prescribed trade test and he is presently posted at Manikpur in that capacity. The post of Senior Trolley Man is class IV-post. He was nominated to appear in the trade test scheduled to be held on 19.07.1996 for promotion to the post of Telecom Maintainer Grade III(annexure A-1). The applicant alongwith others appeared in the trade test on 19.07.96 and result was declared on 30.08.1996(annexure A-2). By para-7 of the O.A. he has made specific averment that his result was withheld without any reason and he contends that his result has been withheld illegally without disclosing any reason.

3. After the lapse of a period of 3 months, he preferred a representation dated 13.11.1996 to respondent no.2 and he followed it up by reminder dated 03.12.1996. None of these representations has got any response. He again took up the matter with respondent no.3 and submitted a representation on 13.01.1997(annexure A-7). Aggrieved by non response from the respondents, the applicant filed the present O.A. on 10.09.1997.

4. The applicant has assailed the action of the respondents on various grounds contained in sub paras (a) to (l) of para-5 of the O.A.

5. Counsel for the applicant filed M.A.No.1156 of 2003 under Section 22(3)(b) of the Administrative Tribunals Act, 1985. By this M.A., which was allowed, the applicant has stated that respondents have informed him by letter dated 29.01.2003 that he has failed in the aforesaid trade test(annexure-1 to the M.A.). The applicant has submitted that declaration of result suffers from many infirmities as he has done very well in the written examination and expected that he must have been awarded more than 45% marks in the written examination. He has further contended that because of bias/attitude of the respondents, he has been declared failed. By para-5 of the M.A., a request has been made that the respondents be directed to produce the relevant records in respect of trade test to facilitate in arriving at a proper and just conclusion of the entire dispute.

6. The respondents, on the other hand, have opposed the contention of the applicant and have stated that nomination of the applicant for the trade test was made on the basis of wrong notification issued from the Office, as the avenues of promotion for the post of Trolley Man is available only in the grade of Rs.800-1150/- in his own cadre and is entitled for further promotion in the grade of Rs.825-1200 to the post of Head Trolley Man. The photocopy of avenues of promotion has been attached as annexure C.A. to the counter-affidavit. They have also stated that immediately after the trade test, matter was agitated by the Trade Unions before the Divisional Authority as the applicant was not at all entitled to be considered for the post in question as the cadre was separated w.e.f. 26.10.1979 coupled with the fact that

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avenue of promotion for the post of Trolley Man had its own cadre. Copy of representation preferred by the respective unions are annexed with the counter affidavit as annexure C.A.-3 and C.A.-3 A. The matter was taken up at Headquarters level and a decision was taken at the competent level, giving directions to the divisional authorities that the applicant is a Trolley Man and, as such, he can claim his promotion only in respective cadres(annexure C.A.-5). Moreover, the respondents have already submitted that the applicant has failed in the trade test. In view of this, they have submitted that the O.A.deserves to be dismissed.

7, We have heard the counsel for the parties at length and very carefully the rival contentions. We have also perused the record as well as the original records produced by the respondents in the Court.

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8. The single question which falls for consideration is whether the respondents are justified in denying to the applicant the post for which he was allowed, though ^{A wrongly} ~~ordinarily~~, to appear in the trade test. It may be stated that the error was committed in nominating the applicant to appear in the trade test, which was subsequently detected. There is no law that once the error is committed, it cannot be rectified, hence the contention of the counsel for the applicant is negatived and respondents are justified in correcting the error by withholding the result of the applicant. The counsel for the applicant has, however, argued very emphatically that withholding of result of the applicant was illegal and arbitrary and that was precisely for this reason that he wanted ^A ~~to produce~~ all the original records. The Court allowed

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his misc.application and directed the respondents to produce the original record. We have seen the original records, produced by Shri P. Mathur, to satisfy ourself and have found that presumption of counsel for the applicant is not tenable in view of the fact that it was only a trade test, not followed by any viva voce and the marks obtained in practical as well as theory is not upto the mark. In the practical test he has been awarded '26' out of '60' whereas in the oral test he has secured '11' out of '40'. The respondents vide annexure S.C.A.-3 of the supplementary counter affidavit have given this information. S.C.A.-3 tallies with the original record, and we do not find any error in the contention of the respondents. In view of these facts, O.A. is liable to be dismissed.

9. In the result, O.A. is dismissed being devoid of merit. Cost easy.

Dava
Member (A)

JK
Member (J)

/M.M./