

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

THIS THE 24th DAY OF NOVEMBER, 2004
Original Application No. 870 of 1998

CORAM

HON.MR.JUSTICE S.R.SINGH,V.C.
HON.MRS.ROLI SRIVASTAVA, MEMBER (A)

Subhash Kumar Dubey, a/a 38 years
son of Sri Raj Dev Dubey, presently
Posted as Head Clerk under Deputy
Chief Operating Supdt. (Construction) Broad Gauge
North Eastern Railway, Gorakhpur.

.. Applicant

(By Adv: Sri Sudhir Agrawal)

Versus

1. Union of India, through Secretary
Ministry of Railways, Rail Bhawan,
New Delhi.
2. The General Manager,
North Eastern Railway,
Gorakhpur.
3. The Chief Personnel Officer, North
Eastern Railway, Gorakhpur
Deputy Store Controller (C)
North Eastern Railway, Gorakhpur.
4. Ashok Kumar, Welfare Inspector Grade III
5. Avdhesh Kumar, Welfare Inspector.
Grade III, N.E.Railway, Gorakhpur.

.. Respondents

O R D E R

Justice S.R.Singh, V.C.

The applicant, Head Clerk working under the Deputy Chief Operating Supdt.(Construction) Broad Gauge, North Eastern Railway, Gorakhpur, has instituted this original application for the following reliefs. The relief aforestated are claimed on the following grounds:

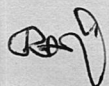
- "(a) Because the applicant was already selected for the erstwhile selection and therefore applicant was entitled to be promoted to the post of Welfare Inspector Grade III even prior to fake show of selection allegedly conducted in pursuant to the notification dated 1.9.1997.
- "(b) Because on the one hand the applicant was not informed regarding the selection scheduled to be held on 27.9.1997 and on the other hand one such persons Shri Ashok Kumar has been promoted who was not even amongst the participants of the earlier selection.
- "(c) Because the applicant has been denied the opportunity to appear in the selection test due to failure of administration to inform and spare him for the selection test scheduled to be held on 27.9.1997.
- "(d) Because Selection proceeding was conducted in violation of the procedure laid down in para 223 of the Indian Railway Establishment Manual 1989 Vol-1
- "(e) Because it was incumbent upon the respondents to hold supplementary selection test of the applicant prior to the date of result dated 27.9.1997.



"(f) Because before the selection proceeding was conducted in a day on 27.9.1997 and two successful candidates were promoted to the post of welfare Inspector with immediate effect therefore the undue haste committed by the respondents make of arbitrariness malafide and ill-will towards the applicant.

"(g) Because the provisions of Article 14 and 16 of the Constitution have been violated by the respondents by conducting the selection proceeding in a day that too without giving opportunity to the applicant to appear in the test. The minimum facts necessary to highlight the controversy involved herein are stated as under:-

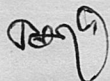
By means of Notification dated 11.11.1993 applications were invited from eligible departmental candidates for selection to the post of Welfare Inspector. The applicant who was initially appointed as Junior Clerk on 17.10.1986 being eligible for the post applied for the same and his name appeared in the list of eligible candidates. Selection for the appointment was to be made on merit based on the marks obtained in the written examination and viva voce test. The applicant was amongst the 6 candidates declared successful in the written test. The viva voce test was held on 27.1.1994. the applicant appeared in the viva voce test but the result was not declared instead the selection was cancelled vide order dated 3/4.3.1994. The applicant filed original application No.458/94 Subodh Kumar Dubey Vs. Union of India and Ors challenging the legality of the order dated 3/4.3.1994. The said OA was disposed of by the Tribunal vide order dated 2.12.1996 thereby directing the respondents to hold the written



test as well as viva voce test afresh for the post of Welfare Inspector in respect of 26 candidates (including the applicant) who were then eligible at the time of notice dated 11.11.1993 and 15.12.1993 within a period of 3 months from the date of communication of the order and to take further action based on the result thereof. The applicant preferred SLP no.2987/97 against the said order passed by the Tribunal. The Hon'ble Supreme Court initially passed an interim order staying further proceedings pursuant to the Tribunal's order but subsequently dismissed the SLP vide order dated 7.7.1997. The applicant, it appears, was transferred from N.E. Railway Gorakhpur to Samastipur division vide order dated 3.9.1997. He filed an original Application No.957/97 and the Tribunal directed to maintain status quo. The OA was subsequently allowed by order dated 8.5.1998 and the transfer order was set aside. In the meanwhile, notification dated 1.9.1997 was issued for holding fresh selection pursuant to the direction given by the Tribunal vide order dated 2.12.1996 in OA No.458/94 and selection pursuant to the said notification was held on 27.9.1997. The applicant did not participate in the said selection and has instituted the instant OA for the reliefs extracted hereinabove.

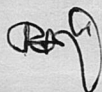
We have had heard Shri S.K.Mishra for the applicant, Shri M.K.Sharma for the private respondents 5&6, Shri A.K.Gaur for the official respondents.

It has been submitted by the learned counsel appearing for the applicant that since the applicant had already been selected in the erstwhile selection process he ought to be promoted to the post of Welfare Inspector Grade III; that the selection held on 27.9.1997 is vitiated due to the reason that the applicant was



denied the opportunity to appear in the said test; that the respondents failed to conduct supplementary test as laid down in Para 223 of the Indian Railway establishment Manual 1989 Vol-1; that the selection dated 27.9.1997 was held arbitrarily and with undue haste with a view to deny opportunity too the applicant. The OA has been contested by the respondents inter alia, on the ground that the selection dated 27.9.1997 was held strictly in accordance with the direction given by the Tribunal vide order dated 2.12.1996.

In the counter affidavit filed on behalf of the official respondents, it is alleged that viva voce test was also held on 27.12.1997 itself with a view to avoiding any mishappening as had occurred earlier; entire selection process was conducted under the strict security arranged in the shape of civil Police and Railway protection Force personnel by the Administration. It is further alleged in the counter affidavit that notice dated 1.9.1997 through which 26 candidates including the applicant were called for selection was also published in daily news papers, 'Dainik Jagaran', Gorakhpur, 'Aaj' Gorakhpur, 'Rashtriya Sahara' Lucknow, 'Swatantra Bharat' Lucknow, and 'Quami Aawaz', Lucknow. The Deputy Chief Controllor of Stores (Construction) Gorakhpur had by means of a letter dated 15.9.1997 endeavored^u to inform the applicant that the tests would be held on 27.9.1997 but since the applicant had already been relieved from his office on 4.9.1997, the letter dated 15.9.1997 was pasted on the Notice Board by Shri Ashwani Kumar Chaudhary, Junior Clerk witnessed by Shri Ramji Prasad, head Typist and Shri B.B.Singh, head Clerk on 16.9.1997. It is further alleged that a copy of the letter dated 15.9.1997 was sent by special messenger Shri Udai Narain Tewari, clerk to D.C.O.S, Samastipur and the same was received on 17.9.1997. D.C.O.S Samastipur wrote a letter



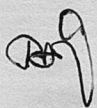
dated 20.9.1997 that the applicant had not reported for duty there. It would thus be apparent that it is not a case of denial of opportunity to the applicant to appear in the written and viva voce tests held on 27.9.1997.

The next question that arises for consideration is whether the respondents were duty bound to hold a supplementary test. Para 223 of the IREM provides that supplementary selection/suitability test may be held in the following circumstances:

- (a) Where intimation for interview being received too late by the candidates making it difficult for them to reach the place of interview;
- (b) Where a candidate could not appear due to administration's failure; and
- (c) Where a candidate could not appear due to sickness or other reasons over which he had no control.

It has been made clear in Para 223 of IREM that unavoidable absence will not, however, include absence with a view to attending a wedding or similar function or absence over which the employee had control. It is further provided that sickness, if any, should be covered by specific service by Medical officers.

Para 223 of the Manual is discretionary in nature and an employee who failed to appear in the selection test cannot insist for a supplementary examination as of right. In the notification published in the news paper it was specifically made clear that no supplementary examination would be held. In the circumstances of the case, therefore, the respondents cannot be directed to hold a supplementary examination for the applicant. The selected candidates including respondents 5 & 6 who have already been appointed. The applicant cannot claim any right on the basis of earlier selection which had been cancelled and

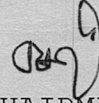


since the applicant failed to appear in the subsequent selection held on 27.9.1997, he is not entitled to the relief claimed herein.

For the reasons aforestated, the original application is dismissed with no order as to costs.



MEMBER (A)



VICE CHAIRMAN

Dated: Nov: 24th, 2004

Uv/