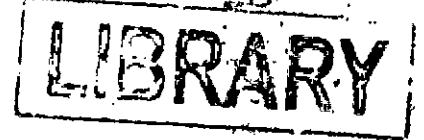


CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



(Through video conferencing)

O.A/350/00940/2014

Date of Order: 18.03.2021

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

Shri Bhola Yadav, son of Late Feku Yadav, residing
at 215/4, Golmohar Avenue, Railway Quarter,
Howrah – 711101 and working as 'Shuntman-B'
under Station Manager, Pakur, P.O. Pakur, District
– Jharkhand. Pin. – 816107.

.....Applicant

-Versus-

1. Union of India, represented through the
General Manager, Eastern Railway, 17, Netaji
Subhas Road, Kolkata-700001.
2. Chief Personnel Officer, Eastern Railway,
Eastern Railway, 17, Netaji Subhas Road,
Kolkata-700001
3. Senior Divisional Personnel Officer, Eastern
Railway, Howrah Division, Howrah – 711101.
4. Shri B. K. Das, Station Manager, Eastern
Railway, Pakur – 816107.

.....Respondents

For The Applicant(s): Mr. S. N. Chakraborty, Counsel

For The Respondent(s): Mr. K. N. Bhattacharyya, Counsel



ORDER (ORAL)

Per: Hon'ble Ms. Bidisha Banerjee, Judicial Member

The O.A has been preferred to seek the following reliefs:

"(a) An order directing the respondent authorities to convene separate dates for allowing the applicant to appear in the aforesaid examination with a view to give him a chance for being considered for the said posts of Assistant Commercial Clerk and Ticket Examiner, with all consequential benefits at par with his juniors.

(b) And an order directing the respondents to transmit the entire record of the case relating to the selection and relevant promotion orders before this Hon'ble Tribunal.

(c) And to pass such other or further order or orders as Your Lordship may deem fit and proper.



2. The brief facts leading to the application are as under:

"(i) The applicant was initially appointed as a Gate-keeper in the Railway Dept. in the year 2004. Subsequently, the applicant was promoted as "Shuntman-B" in 2007 in the Eastern Railway, Howrah Division.

(ii) While serving as "Shuntman-B" in the office of the Station Manager, Pakur, Jharkhand, under Howrah Division, a Group-'D' post, the applicant is required to deal with safety aspect of Railway Traffic and Commercial Department.

(iii) The applicant was shortlisted by the office of the Senior Divisional Personnel Officer from the Group-D staff of the Traffic and Commercial Department for selection in the post of Assistant Commercial Clerk as indicated in the Serial No. 209 of the enclosed 'List of eligible candidates' of the office order dated 13.12.2012 along with order dated 08.04.2013.

(iv) By the aforesaid office order, dated 13.12.2012 and 08.04.2013, all the senior subordinates were directed to spare the eligible candidates/staff for appearing in the written examination on 11.05.2013 (Saturday) and 18.05.2013 (Saturday) for the post of Assistant Commercial Clerk, but the applicant was not spared by his department without showing any reason/cause and in total disregard to the aforesaid direction contained in the office order dated 13.12.2012 and 08.04.2013.

(v) The applicant was once again short-listed as per the office order dated 03.06.2013 at Serial No. 132. Yet again he was ignored and one of his juniors viz. Sk. Shajauddin (short-list no. 146) was spared to appear in the said written examination and got selected.

(vi) The written examination was held on 22.06.2013 (Saturday) and on 06.07.2013 (Saturday) for selection to the post of Assistant Commercial Clerk. The applicant learnt from a reliable source that although he was not spared by his department. A few of his colleagues, namely, Abdul Alim and Kumar Manish Upadhyay at Serial No. 14 and 45 respectively (as per office order dated 03.06.2013), who were his juniors in terms of their date of appointment, had

been spared by the department to appear in the said written examination and are said to have been selected.

(vii) Thus, due to such wilful, deliberate and whimsical attitude of the respondent authorities, the applicant could not appear in the aforesaid two examinations for the post of Assistant Commercial Clerk which have thus caused huge financial loss and mental agony to him.

(viii) His representation, sent through speed post on 06.01.2014, failed to evoke a response.

3. Per Contra, the respondents would categorically submit that:

"(a) The applicant, while working as Shuntman 'B' under SM/PKR, was called for written test for the post of "Commercial Clerk" along with other eligible staff which was fixed on 11.05.2013 and 18.05.2013 and continuation written test on 22.06.2013 and 06.07.2013.

(b) The applicant has inter alia claimed that he was not spared by his controlling authority for which he could not appear in the said written test

(c) In this connection, a report from his controlling authority, i.e. Station Master/Pakur/Eastern Railway/Howrah has been called for. In the said report of Station Master/Pakur, dated 20.08.2014, he has clearly stated that all the circulars for promotion or otherwise are duly pasted in the notice board of the station for wide publicity among the staff. The said two circulars, calling eligible candidates for written test on 01.05.2013 and 18.05.2013 and continuation written test on 22.06.2013 and 06.07.2013, were also pasted and the candidates who were to appear in the written test were well known of the fact. In support of the same, he has attached therewith, the statement of two candidates who had appeared in the said written test which has been marked as Annexures R-2 and R-3 respectively. That, Shri Bhola Yadav, being one of the candidates, was also aware about the date of written test of the first circular which was scheduled to be held on 11.05.2013 and 18.05.2013. But he applied on 06.05.2013 for LAP from 12.05.2013 to 20.06.2013. The applicant was on scheduled rest on 11.05.2013. Station Master/Pakur has further stated in his report that while sparing other candidates on 10.05.2013, the applicant failed to turn up. Even on contact over telephone, he failed to turn up to take his sparing memo for appearing in the said written test. A copy of the said 'sparing memo' forms Annexure R-4.

(d) Thus, the respondents have claimed that the applicant was himself responsible for not obtaining 'sparing memo' from SM/PKR and was thus himself responsible for not appearing in the said written test scheduled to be held on 11.05.2013. Regarding the second date of written test, i.e. on 18.05.2013, it has been submitted that the applicant was on LAP from 12.05.2013 to 20.05.2013, and as such, he did not appear in the said written test scheduled to be held on 18.05.2013 for which the applicant is himself responsible.

(e) That, as regards the date of continuation written test held on 22.06.2013 and 06.07.2013, Station Master/Pakur has stated on his report that the scheduled rest day of the applicant was on 21.06.2013. Therefore, on 21.06.2013, while sparing other eligible candidates for appearing in the written test on 22.06.2013, the applicant failed to appear to obtain his sparing memo and he made no contact on mobile phone also. Thus, he was again himself responsible for not



appearing in the written test which was scheduled to be held on 22.06.2013. Further, as per telephonic order of Sr.DSO/HWH, the applicant was spared to undergo refresher course training from 02.07.2013 to 08.07.2013 at STTC/LLH. It is seen from the absentee statement as furnished by Station Master, Pakur vide Annexure R-8, he had availed Casual Leave (CL) on 06.07.2013 and, therefore, on the fourth occasion also, he himself was responsible for not appearing in the written test which was scheduled to be held on 06.07.2013."

4. The applicant, in his rejoinder, has neither specifically nor evasively denied the pasting of notice on the notice boards about written test on 01.05.2013, 18.05.2013, 22.06.2013, 06.07.2013, 11.05.2013 and 18.05.2013. He has not denied that 11.05.2013 was his rest day and he was on LAP from 12.05.2013 to 20.06.2013. The applicant has himself annexed a copy of the ^{ring}sparsity order dated 21.06.2013 to appear on 22.06.2013. No valid reason is forthcoming regarding his absence on 22.06.2013. The respondents have annexed a sparing memo dated 10.05.2013 to attend the written test on 11.05.2013 and the 'Absentee Statement' (Annexure 'R-6') for the period 11.05.2013 to 10.06.2013 to show that the applicant had availed leave in the following manner:

- (i) 12.05.2013 to 20.05.2013 vide application dated 06.05.2013
- (ii) 21.05.2013 to 25.05.2013 vide application dated 25.05.2013
- (iii) 10.06.2013 to 12.06.2013 vide application dated 03.06.2013

5. In view of above, we failed to convince ourselves that the applicant could not attend the written examination due to any fault on the part of the administration.

6. O.A. thus fails and is dismissed. No costs.

(Nandita Chatterjee)
Member (A)

UJ

(Bidisha Banerjee)
Member (J)