

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.1285 of 1986

Vireshwar Singh Plaintiff

Versus

Union of India & Another Defendants

Hon. S.Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, A.M.)

Suit No. 899 of 1981 Vireshwar Singh

Versus Union of India & Another has been received

on transfer from the Court of City Munsif,

Varanasi under Section 29 of the Administrative

Tribunals Act XIII of 1985. According to the

plaintiff he is working as Inspector of Works

Grade I in the scale Rs. 700 - 900 at Varanasi.

In 1978 a selection was proposed for the post of

Assistant Engineer class II and the plaintiff

who was at Sl.No. 27 in the seniority list gave his

willingness but the selection was not held on the

date fixed. It was postponed from 12.6.78

and thereafter held in November 1978, February

1979 and July, 1979 in three parts. According

to the plaintiff he was not called nor intimated

of the selection which was finalized and approved

on 3.3.1980 and persons junior to him were

promoted and posted as ~~an~~ Assistant Engineers. Again in 1980 a second selection was proposed and plaintiff's willingness was demanded but he raised a query to find out if it was a continuation selection of the one held in 1978. Thereafter an absentee selection was held on 19.7.1981 and without disposing of the plaintiff's appeal and without any reply to his queries he was intimated on 15.7.81 and without affording chance of participation for the said ~~post~~ ^{3/4 Selection} the panel has been declared and persons juniors to him have been promoted. The plaintiff has therefore filed a suit with a prayer that by means of a decree of declaration ~~the~~ ^{3/4 the} panel declared on 16.12.81 for promotion to the post of Assistant Engineer be declared illegal and ultra vires and a permanent prohibitory injunction be issued restraining the defendants from implementing and enforcing the panel of 16.12.81 without finalizing his seniority and his appeal or in the alternative the defendants be directed to consider ~~the~~ ^{3/4 the} pending seniority and representation made to the Railway Administration within time to be allowed by the Court.

2. The defendants' case is that the selection notified vide circular of 1.5.78 was superseded by another circular dated 19.1.79. In pursuance of this notification of 19.1.79 a selection for the post of AEN(Cl.II) against 75% vacancies was notified and the written test was

fixed for 18.2.79. The name of the plaintiff appeared at Sl. No.26 of the list enclosed with the notification. When he did not appear in the written test he was again given a chance to appear in the test on 22.7.79 vide letter of 27.6.79 but he did not appear. The above selection was finalised and selected persons promoted. Thereafter a fresh selection was notified fixing the date of written test to be held on 15.2.81 and about the absentee test which was to be held on 1.3.81. The allegation made by the plaintiff that he sought for clarification clearly showed that the plaintiff had full notice of the date of test fixed on 15.2.81 and 1.3.81 and he was required to appear in these tests. It was a fresh selection as the notice was specific on this account. The absentee written test had, however, to be postponed due to court stay order and was subsequently fixed for 19.7.81, intimation for which was given to him on 15.7.81. The plaintiff failed to appear in this test, though he had not given a specific willingness which according to the notification meant unwillingness he was given one more chance to appear in the absentee written test to be held on 19.7.81. Since the first notice on 27.12.80 had been issued well in time no further ^{3/ notice} period was required to be given and the test could be held at short notice. This

selection has also been finalized and the panel was issued on 15.12.81. The defendants have denied that the plaintiff gave any appeal regarding his seniority. According to the defendants the plaintiff is not entitled to any relief.

3. We have heard the learned counsel for both parties and have also perused the case file. The learned counsel for the plaintiff pressed only for two reliefs. First that the plaintiff's seniority should not be disturbed and second that he may be given a chance to appear in a selection and should not be made to suffer for latches on the part of the department. No other point was pressed. In his letter dated 7.3.81 (12-Ga/1) the plaintiff had addressed a letter to the Senior Divisional Engineer Varanasi saying that the selection ^{as proposed} ~~was~~ to be held on 12.6.78 was postponed till further advice and he has not been intimated any date for the above selection and he has been asked to appear in the second selection again being held for the post of AEN. He gave his willingness to appear but he wanted to be informed the circumstances under which he was not allowed to appear in the selection held in response to the letter of 1978. He had further said that he could not appear in the selection

on 15.2.81 due to the reason that firstly he was not intimated to appear on 15.2.81 secondly his son met with a road accident while coming back from school and he was verymuch upset. He requested for an opportunity to appear in the selection called vide letter of 1.5.78 for which he reiterated that he was not informed when the test was actually held. There is nothing to indicate on this letter that it was received by any responsible officer. However, the fact is that the test to be held on 15.2.81 was in full knowledge of the plaintiff. His letter of 7.3.81 does not indicate that he intimated his inability to appear in the test in time to the concerned authorities.

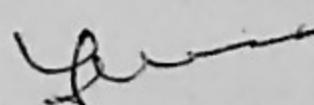
4. In terms of Railway Board's letter No.E(GP)74/2/20 dated 26.10.76 not more than one supplementary selection ^{3/13} was to be held to cater for the absentees. Accordingly the defendants had vide their letter of 27.12.80 (20-Ga) informed all concerned that candidates who are not able to appear at the written test which was proposed to be held on 15.2.81 for circumstances beyond their control may appear at the absentee written test which was to be held on 1.3.81. The absentee candidates were required to produce a proper certificate from their controlling officers certifying that they could not appear at the written test fixed for 15.2.81

for the circumstances beyond their control. The concerned authorities were asked to spare the candidates and they were also asked to be in readiness so that in case they are required to be called at short notice they have no problem. This letter was to be treated as a notice for the above selection. The plaintiff cannot say that he was ~~not~~^{3/} aware that he had to keep himself in readiness for the written test even at short notice as this letter was being treated as a notice and was sent sufficiently in advance for the information of all concerned. A similar notice was also issued on 19.1.79 for the test which was to be held on 18.2.79. An absentee written test was held on 22.7.79 while notice for which was issued on 27.6.79. Here also the candidates were advised to be in readiness in case they are called for further test in short notice. From the documents available it is therefore clear that the plaintiff had adequate warning for the test to be held. The practice does not seem to be of individual letters being sent to the candidates and the controlling officers were only asked to intimate the candidates whose names appeared in the list and the plaintiff's name did appear in this ^{3/} pleading list. We are not convinced by the plaintiff that he was not informed of the test. On his own showing he has admitted that he was informed of the test to be held on the dates ^{to which it was} postponed and it was

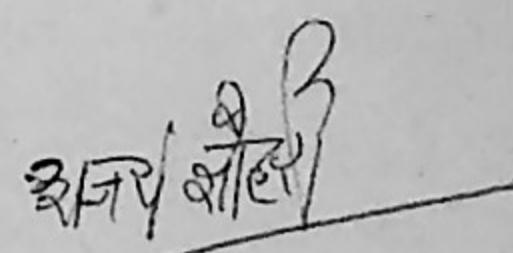
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equally his responsibility to keep a track of the dates when the tests were to be held.

5. In the result we do not find any force in the contention of the learned counsel for the plaintiff that a special test should be arranged for the plaintiff to give him a chance on the basis of the 1978 notice. The plaintiff was in full knowledge of the fact that a selection was being held and he deliberately, and without putting up sufficient cause, did not make use of the opportunity given to him for appearing in the selection and the absentee test and he cannot now come and seek the protection of this Tribunal to avail of another chance to appear in the test which he deliberately and knowingly avoided. The suit is therefore liable to be dismissed. The suit is accordingly dismissed. Parties will bear their own costs.



V.C.


A.M.

Dated the 24th Feb., 1987

RKM