

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 28th day of January, 2003.

QUORUM : HON. MR. JUSTICE R.R.K. TRIVEDI, V. C.
HON. MAJ. GEN. K.K. STIVASTAVA, A.M.

O. A. No. 1225 of 1995

Kripa Shanker Tiwari S/O Sri Puran Tiwari C/O Sri Daya Shanker
R/O 132, K.V. Rajya Vidyut Parishad Colony, Chilla Road, Banda.
..... Applicant.

Counsel for applicant Sri L.P. Singh & Sri J.N. Mishra.

Versus

1. Union of India, Ministry of Railways, Rail Bhawan, New Delhi through its Secretary.
2. Railway Recruitment Board, Bombay Divisional Office Compound, Bombay through its Secretary.
3. The Chaiman, Railway Recruitment Board, Divisional Office Compound, Bombay Central Bombay..... Respondents.

Counsel for respondents : Sri A.V. Srivastava.

ORDER (ORAL)

BY HON. MR. JUSTICE R.R.K. TRIVEDI, V.C.

By this O.A. under section 19 of A.T. Act, 1985, the applicant has prayed for a direction to respondents to issue fresh interview/call letter ~~for~~ psychological test ~~for~~ applicant, for the post of Assistant Driver (DSL/Elec.) and give appointment letter.

2. The facts of the case are that in pursuance of the employment notice No.1/1994, the applicant applied for the post of Assistant Driver (Dsl/Elec.). The advertisement was published by Respondent No.2. The applicant appeared in the written test with the Roll No.364175 (Control No.367332). The written test was held on 9.4.1995 at S.P. Mandal Pnl Kanya Shala, Khwaja Miya Road, Jalgaon. The applicant was declared successful in the written test which was published in the news paper. It is stated that the Recruitment Board on 3rd July 1995 wrote a letter to the applicant intimating that he has to

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appear for psychological test with fresh Roll No.6617. The psychological test was to be held on 5.8.1995 in the office of Railway Recruitment Board, Bombay. The letter was despatched on 11.8.1995 and it was delivered ^{to} the applicant on 30th Aug.1995. As the letter was not received by the applicant before 5.8.95, he could not appear for the psychological/ ^{and} viva voce test, ^{hence} this application has been filed.

3. Resisting the claim of the applicant, a counter reply has been filed by the respondents. It has been stated that out of 19,000 candidates, who appeared in written examination held on 9.4.1995 at different centres, 7356 qualified, who were called for psychological test which was scheduled to be ^{between} ~~commenced on~~ 18th July 1995 to 8th August 1995. It is admitted that the applicant was one of the candidates, who qualified in the written test and he was called for appearing in psychological test. It is stated that the call letter was sent well in advance on 11th July 1995. It is further stated that the late delivery ^{was} on account of postal delay and the respondents are not responsible in any manner and the applicant is not entitled for any relief. Counsel for the applicant has submitted that in the facts and circumstances of the present case, post office happened to be the agent of the Respondent Nos.2 & 3 and if there was delay, the respondents shall be responsible. For this purpose, reliance has been placed in Para 9 of the advertisement in Col.(d), ^{by} ~~it~~ which the applicant was required to supply two self address stamped envelopes. It is submitted that the applicant had no choice to request respondents for another ^{mode} for safe and quick communication of the date. Learned counsel has placed reliance on a Division Bench judgment of Hon'ble High Court decided on 12th Sept.2000 in Civil Misc. Writ Petition No.40351/00 Shashi Bhushan Kumar Vs. U.P. Higher Education Service Commission and another. Hon'ble High Court has summarise the legal position in following words :-

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"We have given our anxious consideration to the submission of the learned Counsel. In Commissioner of Income-Tax, Bombay South Versus M/S Ogale Glass Work Ltd. AIR 1954 SC 429 (Vol.41 C.N.104) a question arose as to whether the post office would be the agent of the addressee in a case where the cheque was sent by the post on request of the Creditor.

The Supreme Court held as under :-

'There can be no doubt that as between the sender and the addressee ^{it} is the request of the addressee that the cheque be sent by post that makes the post office the agent of the addressee.'
And further :-

'After such request the addressee cannot be heard to say that the post office was not his agent..... of course, if there be no such request, express ^{is} implied, there ^{is} the delivery of the letter or the cheque to the post office is delivery to the agent of the sender himself.

The decision afore stated has been referred and followed by the Supreme Court in the Indore Malwa United Mills Ltd. Vs. The Commissioner of Income Tax (Central) Bombay A.I.R. 1966 S.C. 1466 (U.53 C.288

wherein it has been reiterated that :-

'If by an agreement, express or implied by the Creditor, the debtor is authorised to pay the debt by a cheque and to send the cheque to the creditor by post, the post office is the agent of the creditor to receive the cheque and the creditor receive payment as soon as the cheque is posted to him.'

Relying upon the aforesaid decision of the Supreme Court a Full Bench of this Court in B. Lal & others Vs. M. Lal, 1970 A.L.J. 470 has held as under :-

'From an analysis of these decisions two principles emerge, the First is that if the creditor and the debtor reside at two different places served by the postal system from the very fact that the creditor makes a demand through the post an authority to the debtor to meet his obligation through the post is implied."


4. From the aforesaid it is clear that the responsibility of the delay has to be fixed on basis of the fact whether the post office served as agent of the applicant or the respondents.

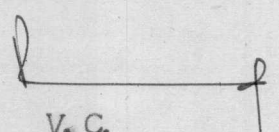


As already observed earlier, there is no doubt that the respondents had ^{prescribed} ~~said~~ in the advertisement itself the mode for communication through post office. The applicant was not left with any choice to request for ^{any} ~~another~~ ^{mode}. In the circumstances, the post office acted as agent of Respondent Nos.2 & 3 and if the delay was caused, they have to bear the responsibility. In the above legal position, the applicant is entitled to relief and he cannot be ^{allowed to} ~~suffer~~ on account of the postal delay. ^{Knowing} ~~On~~ knowing about the true facts, the applicant ^{for redressal of his grievance} made a representation without delay on 30.8.95. However, the respondents did not grant him any relief and consequently he approached this Tribunal. In the circumstances, in our opinion, the applicant is entitled for relief.

5. The O.A. is accordingly allowed. Respondent Nos.2 and 3 are directed to arrange for a psychological test of the applicant within two months from the date a copy of this order is filed before them and if applicant selected, recommend his name to the Central Railway for appointment.

There shall be no order as to costs.


A.M.


V.C.

Asthana/