

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 738 of 2002

Dated: This the 28th day of September, 2004

HON'BLE MR. JUSTICE S.R.SINGH, V.C.
HON'BLE MRS. ROLI SRIVASTAVA, A.M.

Om Prakash Singh son of Udai Pratap Singh,
R/o 83/2-A Chhota Baghara, Allahabad Now
posted as Enquiry cum Reservation Clerk at
Ballia.

.... Applicant.

By Advocate: S/Shri Sudama Ram,
A.K. Shukla

V E R S U S

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. General Manager (Personnel), North Eastern Railway, Gorakhpur.
3. Divisional Railway Manager (Personnel), Northern Eastern Railway, Varanasi Division, Varanasi.
4. Senior Divisional Commercial Manager, North Eastern Railway, Rambagh, Allahabad.
5. Station Superintendent, Allahabad City, North Eastern Railway, Rambagh, Allahabad.
6. Daya Shankar Prasad Srivastava, Office Superintendent-I, Divisional Railway Manager(Transport) Varansi now posted as Law Assistant at Ijjatnagar.
7. Ashok Kumar Srivastava, Yard Charger, Office of the Chief Transport Manager, Gorakhpur now posted as Law Assistant in Commercial Department.

.... Respondents.

By Advocate : Shri K P Singh.

O R D E R

By Hon'ble Mr. Justice S.R.Singh, V.C.

Heard, Shri Sudama Ram, counsel for the applicant and Shri K.P. Singh, learned standing counsel appearing for the respondents. None has appeared on behalf of private respondents despite service of notice.

2. A written test was held for selection of Law Assistant

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in the grade of Rs.6500-10500. The applicant and 11 others appeared in the written test, out of whom applicant and two others qualified for viva voce test. By means of letter dated 23.02.2001 addressed to Divisional Controller, Varanasi, Station Superintendent, Allahabad City/Varanasi City and two other authorities the applicant was posted under Station Superintendent Allahabad. By means of the said letter, it was made clear that the applicant and two others referred to in the letter had succeeded in the written examination and qualified for interview, the date of which would be intimated later on. However, no intimation was given to the applicant directly or through Station Superintendent, Allahabad City and accordingly the other two candidates arrayed herein as party respondents no.6 and 7 were selected for the post of Law Assistant. The applicant instituted O.A. No.60 of 2002 for setting aside the result of interview and appointments made on the basis of interview held on 21.04.2001, of which no intimation was given to the applicant. The Tribunal by its Judgment and Order dated 28.01.2002 directed the respondents to give reply to the representation dated 23.08.2001, filed by the applicant in a "speaking manner within a period of two months". This Tribunal has decided the aforementioned O.A. having regard to the fact that ^{the} ~~only~~ question involved was whether the applicant was informed or not informed before the interview was held for the post of Law Assistant on which appointments were made vide letter dated 25.04.01. Consequent upon the directions given by the Tribunal, the General Manager(P) North Eastern Railway, Gorakhpur passed the speaking order holding that there was no provision for giving a chance to the absentees of Viva Voce.. The speaking order reads as under:-

 "Representation dt.23.08.2001 submitted by

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Shri OM Prakash Singh, Sr. Comml. Clerk, Allahabad City, has been considered in compliance to the order dt.28.01.2002 passed by Hon'ble CAT/Allahabad in O.A.No.60/2002.

Intimation for sparing candidates for appearing in VIVA VOCE fixed on dt.21.04.2001 for selection of Law Assistants(6500-10500) was issued vide General Manager(P)/NER/GKP's letter No.E/254/15/18/Part 6/ VI Dt.30.03.2001 and Shri Om Prakash Singh was also included in the list consisting of 12 candidates who were called for VIVA VOCE test. Shri Om Prakash Singh S.No.12 of the list and junior most in the list of 12 eligible candidates for VIVA VOCE was absent on the date of VIVA VOCE test on 21.04.2001. Selection Committee finalized the result and formed the panel of two senior most suitable candidates. There is no provision for giving a chance to the absentees of V-IVA VOCE."

3. Perusal of the order aforesaid shows that the General Manager (P) N.E. Railway, Gorakhpur has failed to give a finding as to whether the applicant had intimation of the date of interview. The applicant has specifically alleged in the O.A. that he had no intimation of the date of interview. In support thereof he has placed reliance on the following facts cited by Station Superintendent, Allahabad City, N.E. Rly. on his representation dated 23/8/01:

इनके भौखिक परीक्षा की तिथि किसी माध्यम से भेरे जानकारी भै प्राप्तासन द्वारा नहीं लाई गई है। अतः इनके प्रार्थना पत्र पर सहानुभूतिपूर्वक विचार करने की कृपा करें।"

The representation was addressed to General Manager(P) North Eastern Railway, Gorakhpur. The answer to para 4.16 of the O.A. is contained in para-22 of the counter-affidavit which says "need no comments".

4. In the circumstances, therefore, we have every reason to believe that the applicant was not informed of the date of interview and therefore, selection for

the post of Law Assistant stood vitiated due to denial of opportunity to the applicant who had qualified for the interview. The impugned selection, in our opinion, is violated by the provisions of Article 14 and 16 of the Constitution of India. The General Manager(P) was not right in his order dated 10.04.2002 that there was no provision for giving chance to the absentee of the viva voce test. In paragraph no.316 of the Indian Railway Establishment Manual Volume I, it is provided that a railway servant who, for the reasons beyond his control, is unable to appear in the examination/test in his turn alongwith others, shall be given the examination/test immediately he is available and if he passes the same, he shall be entitled for promotion to the post as he had passed the examination/test in his turn. The expressions "reasons beyond his control" appearing in para-316 above includes non-receipt of intimation of the examination/test owing to being on leave or on duty elsewhere than at the headquarters or for any other reasons acceptable to the administration.

5. In view of the facts stated above it is evident that the applicant could not appear in the viva voce test because of the fault of administration in not giving intimation of the date of interview to the applicant i.e. for the reasons which can be stated to be beyond his control.

6. In the circumstances, therefore, entire selection for the post is vitiated and on this ground impugned selection can be quashed but having regard to the fact one of the candidates who was selected and appointed, has retired and the applicant was selected

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for the post of Law Assistant in the subsequent selection, we direct the competent authority to arrange for viva voce test of the applicant and if he ~~passes~~ ^{secures} the viva voce and secures a position higher than the respondents no.6 and 7, then in that event he would be deemed to have been selected for appointment to the post of Law Assistant in the earlier selection and his seniority would be reckoned in the manner provided in para-306 of the Indian Railway Establishment Manual. The concerned General Manager shall take appropriate decision in this regard within a period of two months from the date of receipt of a copy of this order. With these observations, O.A. stands disposed of. No order as to costs.

Ramkrishna
Member (A)

/M.M./

Ranjan
Vice Chairman