

Central Administrative Tribunal
Calcutta Bench

OA No.751 of 1996

27-9-2002

Present : Hon'ble Mr.S.Biswas, Member(A)
Hon'ble Mr.S. Raju, Member(J)

Dipak Chowdhury

-Vs-

Eastern Railway

For the applicant : Mr.S.N. Mitra, Counsel

For the respondent : Ms K. Banerjee, Counsel
Ms R.Basu, Counsel

ORDER

Mr.S.Raju, Member(J) :

By this amended OA, applicant impugned the order dated 11-1-96 whereby his appeal has been rejected and earlier order passed on 13-9-95 wherein his request for permission to study the Answer Books written by him in the Appx-IIIA (IREM) Exam. has been rejected. He has sought the direction to be declared passed in the IREM examination of the year 1993 and direction to produce Answer Scripts for the year 1993-94.

2. The applicant is working under the CAO (Stock Verifier) as Stock Verifier. He was promoted to the post of Grade-I Clerk. The next promotional avenue from Grade-I Clerk is Travelling Inspector of A/Cs, Inspector of Stores & Accountants and Section Officer (A/Cs) & as such for promotion to the next higher grade he approached in the Appx IIIA exam. for the post of Travelling Inspector (A/Cs) consecutively in the years from 1982 to 1986 but was declared unsuccessful.

3. Applicant also appeared in the year 1991, 1993 and 1994 respectively for the post of Inspector of Stores Accounts, but was not successful.

4. On the basis of his service records, he was selected as Probationer Stock Verifier and thereafter passing the requisite

exam. of Appendix IV he was confirmed to the post of Stock Verifier w.e.f. 10-2-96.

5. Being aggrieved and dissatisfied about the result of the aforesaid exam. he made representation to the respondents on 16-8-94 but no action was taken.

6. In the year 1994, he also appeared in Appendix IIIA exam. of Inspector of Stores Accounts Group but could not qualify. He made representation, but the same was rejected with the observation that there is no provision in the IREM for permission to study the Answer Book of the respondents or for their revaluation since the answer script are evaluated by the examiners who are the experienced and responsible officers and also after the answer scripts are evaluated those are reviewed by the Principal also and the marks obtained in the subjects are being checked with reference to the record and no discrepancies has been noticed in the result announced but the said reply was not communicated to the applicant.

7. He preferred an appeal on 22-11-95 addressed to the respondents, which was rejected reiterating the earlier stand, thus he filed the present OA.

8. The learned counsel for the applicant placed reliance on a Circular dated 24-6-81 which is the procedure as laid down by Government of India, Ministry of Finance as to the preservation and custody of Answer Books, contends that the time limit to preserve the Answer Paper is at least for one year from the date of selection and in the Special Instruction it is laid down that in case of involvement of Court Cases or representation of staff, specific order of the authority approving the panel should be obtained before papers are destroyed. It is stipulated that where the representation filed by the staff, papers should not be destroyed till final disposal of the cases. In this manner it is stated that the action

was arbitrary and as per his performance he was successful in 1993 exam. but respondents have deliberately declared him unsuccessful and his answer scripts were destroyed without prior approval of the Competent Authority. He placed reliance on OA 856 of 1987 in P.Bhattacharjee & another V. UOI and Oths., where on the grounds of the Answer Sheets have not been produced for consideration, the applicants were declared deemed to have qualified in the Examination. Here in this OA the applicant seeks extension of the judgement.

9. On the otherhand, respondents denied the contention of the applicant and in their reply to the amended OA contended that there is no provision of re-checking of the Answer Sheets under the rules and the instructions produced by the applicant would not apply to the Rlys. However, placing reliance on the decision of the Hon'ble Apex Court in Anil Khatiyar V. UOI & Oths. in 1997(1) SC SLJ 261 the learned counsel contended that unless the selection is assailed as being vitiated by malafides or on the ground of it being arbitrary, Tribunal cannot sit in judgement over the selection. The learned counsel also placed reliance on the decision of the Hon'ble Apex Court in Durga Devi & another V. State of H.P. and others (1997(2) SC SLJ 209) wherein the Hon'ble Apex Court has held that in selection the Tribunal cannot judge the comparative merit of the candidate and termed the order of the Tribunal as illegal and thus quashed. Ld. Counsel also produced a copy of the tabulation sheet pertaining to the exam. where the applicant is shown to have failed the 1993 exam. as well as the 1994 exam. where the applicant could not qualify.

10. It is contended by the learned counsel for the respondent that pass percentage of marks in each compulsory subject is 40%, in optional subjects 40% with an aggregate of 45% in the two papers of each optional subject. The answer sheets are evaluated by Junior Administrative Grade, Senior Administrative Grade Officers and 4 examiners. A procedure also exists for the officers setting question

papers and those evaluating the answer books. There is also a provision of 10% test check by the principal examiner. Moreover, the examiners while checking the answer sheets do not know the identify of the candidate as fictitious roll numbers are used. It is being done to ensure that no candidate suffer on a/c of personal bias of the examiner. It is stated that re-checking is permissible, but no evaluation is permissible in the rule. It is lastly stated that the applicant has no right to see the answer script. Thus, the present OA is liable to be dismissed.

11. We have carefully considered the rival contentions of the parties & perused the documents on record.

12. In so far as the circular dated 24-6-81 and the decision of the Tribunal (supra), the same would have no application in the present case. In that case the applicant has prayed for promotion & challenged the poor marks in the Answer Sheets. The case was not contested by the Rly Board. The Circular of 1981 was discussed and the Answer Sheet was destroyed just after the publication of the result. In view of the decision of the Hon'ble Apex Court's decision in Durga Devi & another V. State of H.P. and oth. (1997(2) SCSLJ 209), we have no hesitation to observe that the decision of the Tribunal which is peculiar in the facts and circumstances of the case shall not apply in the instant case. For the reasons that the applicant's tabulation has been produced to show that he has failed. Consequently, the applicant has not raised or established any ground of malafide as to why he has been deliberately declared unsuccessful. In our considered view, every unsuccessful candidate has the tendency to say that he had performed well but assessed poorly. There is no provision in the Rlys to allow inspection or evaluation of the Answer Sheet or a provision to show it to the person concerned.

13. Once the applicant has participated in selection and having failed in it, it does not lie within his right to challenge the proceeding on the ground of malafide or violation of rules, which the applicant failed to point out.

14. In the result, we are satisfied that the applicant has not been treated in an arbitrary manner and having participated in the selection and failed to achieve the requisite merit, he has raised the issue that he has to be declared qualified. In the result, the OA is found bereft of merit and the OA is dismissed. No costs.

S. Raju

(S. Raju)
Member(J)

S. Biswas

(S. Biswas)
Member(A)