

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J O D H P U R

.....

Date of order : 31.8.2000

O.A.NO.266/1997

Bhikaram S/o Shri Maknaji aged about 48 years, R/o Chhoga Cottages Tatartoli Via Abu Road, Distt. Sirohi, at present employed on the post of Clerk in the office of D.F.O. (DL), Abu Road, Western Railway.

.....Applicant.

versus

1. The Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Ajmer Division, Ajmer.

.....Respondents.

.....

Mr.J.K.Kaushik, Counsel for the applicant.

Mr.R.K.Soni, Counsel for the respondents.

.....

CORAM :

Hon'ble Mr.A.K.Misra, Judicial Member

Hon'ble Mr.Gopal Singh, Administrative Member

.....

Per Hon'ble Mr.A.K.Misra, Judicial Member :

The Applicant had filed this Original Application with the prayer that the respondents be directed to interpolate the name of the applicant in order dated 22.5.97 Annex.A/2, to conduct his suitability test and allow all consequential benefits at par with the next junior. The respondents be further directed to modify the impugned order dated 23.5.97 (Annex.A/1) so as to declare the result by a single order according to rules.

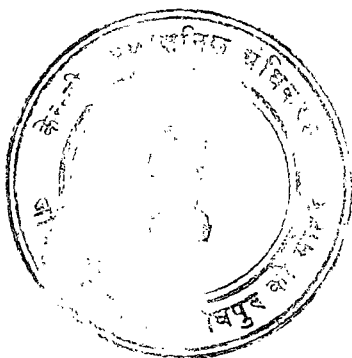
✓

2/m

2. Notice of the O.A. was given to the respondents who have filed their reply to which no rejoinder was filed.

3. We have heard the learned counsel for the parties and have gone through the case file.


4. The applicant has alleged in the application that he was initially appointed as Khalasi on 22.7.67. In the due course, he was promoted to the post of Diesel Mechanic Grade III and Grade II in the year 1979 and 1987 respectively. In the year 1991, the applicant became sick and was treated in Railway Hospital. However, the Chief Medical Superintendent informed that the applicant should be employed on some alternative job not involving working with trains. Consequently, the applicant was absorbed on alternative job of Clerk in the year 1992. Since then, he is working on the post of Clerk. It is alleged by the applicant that the next promotion of the post of Clerk is on the post of Senior Clerk. The promotion is accorded on the basis of seniority-cum-suitability and suitability is to be judged subjecting the candidates to a written test. One such suitability test was organised vide letter dated 5.2.97 (Annex.A/3) for filling-up 36 vacant posts of Senior Clerk. The applicant was within the zone of consideration and was called to appear in the said test which was scheduled to be held on 29.3.97 vide Annex.A/4 dated 12.3.97. It is alleged by the applicant that he fell seriously ill on 27.3.97 and remained sick under treatment of a Railway Doctor up to 29.3.97. Thereafter, he was issued a fit certificate. Due to illness, the applicant could not undertake the suitability test which was held on 29.3.97. It is alleged by the applicant that vide application dated 17.4.97, Annex.A/7, he requested the Divisional Railway Manager (Estt), Ajmer that he could not appear in the said examination due to illness and he be called for examination. Thereafter, vide Annex.A/8



3m

dated 24.5.97 he again requested the concerned authority to call him for examination scheduled to be held on 31.5.97 but he was not allowed to appear in the examination. He was also not communicated any reasons by the concerned authority. Hence, this O.A.

5. On the other hand, it was stated by the respondents that the applicant had not applied for grant of permission for a supplementary test within ten days of the examination, as envisaged in letter dated 20.6.91/4.7.91 (Annex.R/2), therefore, the applicant was not called for examination. Subsequent applications of the applicant and other candidates, who could not appear in the examination conducted on 29.3.97 and 31.3.97, were rejected by the competent authority. It is also alleged by the respondents that the Certificate issued by the Medical Officer was not in accordance with Para 223 of the Indian Railway Establishment Manual, as the applicant had not disclosed the fact that he was to appear in the examination, therefore, the applicant is not entitled to any relief.



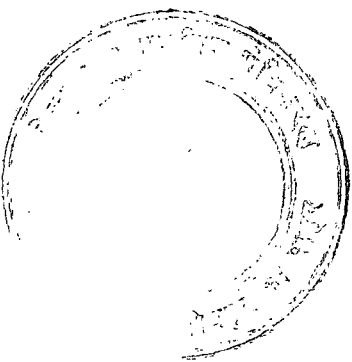
6. Both the learned counsel for the parties had elaborated their arguments on the lines of their pleadings. The candidates who had appeared in the alleged examination and were declared successful in the year 1997 must have been promoted in accordance with the result and seniority. In our opinion, it would not be just and reasonable to direct the respondents to organise a supplementary test after a lapse of three years so as to enable the applicant to get his name interpolated in the result of the said examination. This will amount to unsettle the settled position. From Annex.A/1, it appears that senior most eight candidates in which the applicant figures at No. 4 were either absent or were declared fail in the examination. The candidate figures at No. 9 was declared successful and again candidates upto Sl.No. 14 were either declared fail or were absent.

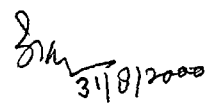
Signature

If the applicant is now permitted to appear in a supplementary examination and is declared successful then lot of disturbance would be caused to the already promoted candidates so far as their seniority is concerned. We would not like to contribute such a situation. The applicant was not vigilant enough to apply for a supplementary examination within the prescribed time limit of ten days and, therefore, he cannot now be granted opportunity of a supplementary examination.

7. It is pertinent to note that the medical certificate relating to the alleged illness of the applicant, is for three days i.e. 27.3.97 to 29.3.97 and the applicant was advised rest but no disease has been mentioned in the certificate. No doubt, one can suddenly fell ill but the name of the illness would be the guiding criteria whether the applicant was not at all fit to appear in the examination. In this case, nothing has been mentioned in the medical certificate from which it can be ascertained that applicant was so seriously ill that he was unable to appear in the examination. During the pendency of the O.A., the applicant had never prayed for conducting a provisional examination relating to him, therefore, at such a belated stage, we are not inclined to grant the relief to the applicant relating to a supplementary examination. During these three years, regular examination might have taken place or could now ^{be} ordered to be organised by the competent authority and the applicant can avail the opportunity of appearing in the examination as and when the same are declared.

8. In view of the above discussions, we are of the opinion that the applicant is not entitled to any relief as claimed by him in the O.A. The O.A. deserves to be dismissed and is hereby dismissed, with no orders as to cost.


(Gopal Singh)
Adm. Member


(A.K. MISRA)
Judl. Member

.....

PS: Ro 719

R/Copy
m 719
Ply
A-1

Part II and III destroyed
in my presence on 7-2-07
under the supervision of
section officer () as per
order dated 10/12/06
V. G. R. M.
Section officer (Recent)