

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA**

NO. O.A.1454 OF 1997

Date of Order: 31.3.2005.

PRESENT : HON'BLE JUSTICE B. PANIGRAHI, VICE-CHAIRMAN
HON'BLE MR. N.D.DAYAL, ADMINISTRATIVE MEMBER

DINABANDHU ACHARYYA

VS.

UNION OF INDIA AND ORS. (S.E. Rly.)

For the Applicant : Mr. A. Chakraborty, Counsel

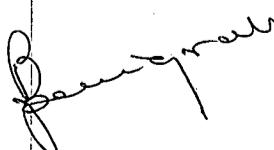
For the Respondents : Mr. S. S. Pal, Counsel

ORDER

PER JUSTICE B. PANIGRAHI, V.C.:

The applicant was working as Head Clerk under SE/P.Way/Uluberia, S.E. Rly. The Divisional Personnel Officer, S.E. Rly., Kharagpur received a letter for holding selection test for the post of O.S. Grade-II in the scale of Rs. 1600-2600(RPS) of Civil Engineering Department, Kharagpur on 25.1.97 at 10.30 a.m. The selection test was held for 18 posts out of which 8 posts were ear-marked for S.C. and S.T. candidates. The name of the applicant appeared against Sl. No.26. The applicant was found to be eligible for promotion to the post of O.S. Grade-II in the event he would qualify in the written test. He appeared in the written test held on 27.9.97 and he reliably learnt that he was selected in the written test but the respondent authorities without giving much reliance on such result abruptly cancelled the written examination on the ground that objective questions had not been set. Therefore, they proposed to conduct a fresh written examination for filling up the aforesaid posts.

2. The main thrust of the submission advanced by Mr. Chakraborty, Id. counsel appearing for the applicant is that in this case his client was kept in dark with regard to the subsequent cancellation of the examination as a reason whereof he could not appear in the test subsequently held for giving promotion to the O.S. Grade-II. Even



otherwise, the respondent authorities could not have cancelled the examination once it was held properly and merit list was drawn up. Mr. Paul, ld. counsel appearing for the respondents while disputing the aforesaid submission of Mr. Chakraborty has stated that the authorities have absolute power to cancel the examination in appropriate cases where the examination was held without following the proper procedures. He has also drawn our attention to the rules Establishment Sl. No. 67/84 which revealed that the percentage of objective type of questions (i.e. 50) is intended for guidance only but it should not be taken as constituting an inflexibly percentage. On reading the rules it has transpired that it is only by way of guidance and the examiner has his own freedom to prepare his questions as per his convenience to judge the suitability of the candidates who would appear in the selection test. We also found that the respondents conspicuously failed to produce the previous question papers in which the applicant had appeared. But on going through the question papers and also the answer scripts it is very difficult to express any opinion as to whether the examiner had improperly set the question papers or not in the examination in which the applicant had appeared.

3. In this case it is also very strange to note that although the Divisional Personnel Officer has claimed to have circulated the cancellation notice of the examination bringing to the notice of the offices in which the eligible candidates were working, but no record has been filed by the respondents to show that it was ever brought to the notice of the candidates who had appeared in the selection test. Unless brought to the notice of the individual candidates about such cancellation of examination, how could they know about such cancellation.

4. Mr. Paul, ld. counsel has relied upon a judgment reported in 2003 Supreme Court Cases (Labour & Service) page 708 in the case of State of Andhra Pradesh & Ors. Vs. D. Dastagiri & Ors. On a careful perusal of the judgment we found that the facts stated in the judgment are distinguishable from the present case. In the aforesaid case because of change of policy by introducing ban on liquor consumption the selection of Excise Constable was considered to be redundant. But such analogy



cannot be pressed into service in this case. There is nothing on record to show that the applicant was ever made aware of the cancellation of the selection test in which he was selected. It is also admitted by both parties that the applicant retired from service w.e.f. 30.11.2004. Some of the juniors to the applicant had been given promotion to the post of O.S. Grade-II.

5. In that view of the matter, we direct the respondents to consider the applicant's case as to whether he could be given promotion to the post of O.S. Grade-II from the date when his juniors had been given such promotion in the peculiar situation stated above. Had he been in service, we ought to have asked the respondents to conduct a fresh selection test by providing reasonable opportunity to the applicant for appearing in the selection test. But since he has now retired we cannot issue such direction to hold special selection test. Therefore, with his past service record and the performance in the written test which was subsequently cancelled by the respondents, the applicant's suitability to the post of O.S. Grade-II may be determined and if he is found suitable, he be given such promotion. Since he has not worked in O.S. Grade-II till date of retirement, he cannot be allowed to draw any salary till that date but his pay shall be notionally fixed and all retiral benefits and all other service benefits be given to him. This exercise shall be completed within four months.

6. With the above direction, the application is disposed of. No costs.



MEMBER(A)



VICE-CHAIRMAN