

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 415/2000

Tuesday this the 28th day of May 2002.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

K.R.Mohandas
S/o Late K.G.R.Panicker
Station Master/Grade II
Southern Railway,Ottapalam

....Applicant

(By advocate Mr.T.C.Govinda Swamy)

Versus

1. Union of India rep. by
The General Manager, Southern Railway
Madras.
2. The Divisional Railway Manager
Southern Railway, Palghat Division
Palghat.
3. The Divisional Personnel Officer
Southern Railway
Palghat.
4. The Station Superintendent
Southern Railway
Ottapalam.

....Respondents

(By advocate Mrs.Sumathi Dandapani)

The application having been heard on 28th May, 2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This OA has been filed by the applicant aggrieved by the alleged refusal on the part of the authorities to consider him for promotion to the post of Station Superintendent/Station Master Grade I in scale Rs. 6500-10500/-. He sought the following reliefs through this OA:

- (a) Declare that the failure on the part of the respondents to consider the applicant for promotion to the post of Station Master Grade I in scale Rs.6500-10500 against the vacancies notified in Annexure A1 is arbitrary, discriminatory, contrary to law and unconstitutional and direct the respondents accordingly.



(b) Direct the respondents to consider the applicant for promotion to the post of Station Master Grade I in scale Rs. 6500-10500 against the vacancies notified in A-1 and to grant the consequential benefits thereof on par with his juniors.

(c) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. According to the averments of the applicant in the OA, he was alerted to be in readiness to appear for a selection to the post of Station Superintendent/Station Master Grade I in scale Rs. 6500-10500 by A-1 Alert Notice dated 18.2.99. By A-2 order dated 20.7.99 issued by the third respondent, a written examination of the applicant was fixed on 7.8.99 at the Divisional Office, Palghat. On 6.8.99 the applicant was asked to work from 6.00 hrs. to 10.00 hrs. and again from 20.00 hrs. to 00.00 hrs. to be continued up to 06.00 hrs. of 7.8.99. According to him, he had prepared himself well for the written examination and was anticipating that he would be relieved by the fourth respondent by the 534 Shornur Mettupalayam Passenger (scheduled to leave from Ottapalam at 8.13 a.m.) on 7.8.99. Fourth respondent had informed him that he could come to the station by about 7.45 a.m., that the applicant would be given his relieving order, emergent duty pass etc. for travel as also identity slip so as to enable him to participate in the examination. By the time the applicant came to the station to proceed by train, the Station Master on Duty informed the applicant that the fourth respondent had suddenly fallen ill and reported sick and that there was no reliving duty Station Master arranged to pick up 10.00 hrs. to 20.00 hrs. shift on 7.8.99. Applicant being the senior most Station Master Grade II at the station left with no alternative was thus prevented from appearing in the examination and he had to take up 10.00 hrs. to



20.00 hrs. roster on 7.8.99 even though he had broken off duty only 06.00 hrs. in the morning. Upon intimation to the departmental authorities, he was informed that a supplementary selection would be held and that he would be considered accordingly. Coming to know that some tests were conducted after the nominated days specified in A-2, he submitted A-3 representation dated 30.9.99 addressed to the third respondent duly forwarded by the fourth respondent who made endorsements on the same to the effect that no advice for supplementary test was received and hence the applicant could not be relieved. Applicant did not get any reply to A-3 representation. By A-4 list dated 5.4.2000 third respondent published the list of candidates who had passed in the written examination duly fixing the viva-voce on 18.4.2000. Apprehending that if the selection was finalized the applicant would be subjected to substantial prejudice, he filed this application seeking the reliefs mentioned above. According to him, his non consideration was not due to any fault on his part and was for reasons directly attributable to the respondents and was denial of the fundamental rights guaranteed under the Constitution.

3. Respondents filed reply statement. According to the respondents, the applicant did not attend the written examination. Thereafter he was called for the supplementary examination held on 18.9.99 on which date also the applicant did not attend. There was no representation from the applicant against non-receipt of any advice regarding the supplementary examination. A-3 representation was not received in the office of the third respondent. It was further submitted that the

applicant was on duty till 6 a.m. on 7.8.99 and thereafter he was on duty on 8.8.99 from 7 - 19 hours. On 7.8.99 Shri K.G.Rajagopal, RASM/Palghat was on duty from 6 a.m. to 19 hrs. after the applicant Shri M.V.Nandakumar was on duty from 19 hours to 24 hours on 7.8.99. Hence the applicant was not on duty from 6 a.m. on 7.8.99 to 7 a.m. on 8.8.99. (In these three dates the year was shown as 2000 in the reply statement but had been read as 1999 as submitted by the learned counsel for the respondents). Hence according to the respondents, the reasons stated by the applicant for not attending the selection was not bonafide. According to them, there was no overlooking of the applicant as alleged by him. The applicant did not turn up for the written examination both main and supplementary, for the reasons best known to him. There was nothing arbitrary or violative of the constitutional guarantees as alleged by the applicant.

4. Applicant filed rejoinder.

5. Heard the learned counsel for the parties. Mr.T.C.Govinda Swamy, learned counsel for the applicant took us through the OA. He submitted that A-2 was addressed to all the supervisory officials and the instructions of the supervisory officials including the Station Superintendent, the fourth respondent herein were that the candidates were required to be relieved without fail to attend the written examination on the dates to the nominated centres. He further submitted that the respondents had accepted the applicant's absence on 7.8.99 and that was the reason why they had called him for the written examination and



the supplementary examination on 18.9.99 as averred by them in the reply statement. As per the endorsement of the fourth respondent in A-3 representation, the endorsement regarding the supplementary examination was not received in Ottapalam Station. According to him, consideration for promotion was a fundamental right and as his non consideration was directly attributable to the respondents, the applicant was entitled to the reliefs sought for. Learned counsel for the respondents took us through the reply statement, reiterated the points made therein and resisted the claim.

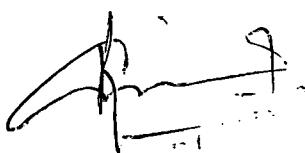
6. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have perused the documents brought on record. We find from the reply statement that even though the respondents have submitted that the absence of the applicant in not attending the written test on 7.8.99 was not bonafide, according to their averment, they had called him for the supplementary examination to be held on 18.9.99. When such is the case, we find substance in the applicant's contention that non attendance of the applicant on 7.8.99 could not be an issue. But at the same time the applicant has not specifically denied the averments of the respondents that he was not on duty on 7.8.99 from 10 hrs onwards (learned counsel for the respondents submitted that in the reply statement the year was mentioned as 2000 in three places in para 6 instead of 1999 and may be read as such). Respondents' contention was that for conducting the second supplementary test, the Chief Personnel Officer's specific permission has to be obtained and such permission was only given in exceptional cases. Whether this is an exceptional case or not is not clear.

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7. There are four respondents in this OA and the fourth respondent is the Station Superintendent of Ottapalam Station. The reply statement has been filed on behalf of all the respondents by the third respondent. At the same time, while the third respondent submits that A-3 representation had not been received, there is no specific denial or acceptance of the averment by the applicant in the OA that the fourth respondent had advised the applicant that he would be given the required relieving order, emergent duty pass for travel and identity slip on 7.8.99 on 7.45 hrs. The endorsement made by the 4th respondent bears no comments in the reply statement.

8. Keeping all the aspects as contained in the pleadings and submissions of the counsel in view and taking into consideration the rule position that the second supplementary written test can be conducted only with the specific approval of the Chief Personnel Officer, we are of the considered view that the entire matter should be considered first by the first respondent to decide as to whether a second supplementary test is justified in the facts and circumstances of the case or not.

9. Accordingly we direct the second respondent to place the full matter before the first respondent, the General Manager, Southern Railway, Chennai, to consider the matter and decide the issue as to whether a second supplementary test should be conducted for the applicant in this case or not. We direct the respondents that the above exercise shall be completed and communicated to the applicant within a period of three months

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from the date of receipt of a copy of this order. The second respondent while placing the matter before the first respondent shall also place the copies of the OA and the rejoinder filed by the applicant before the first respondent. Till such time a decision is taken and communicated by the first respondent, the interim order of this Tribunal not to fill up one post of Station Master Gr.I shall remain in force.

10. We dispose of this OA with the above directions with no order as to costs.

Dated 28th May, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

APPENDIX

1. Applicant's Annexures:

1. A-1 : A true copy of the notice bearing No.J/P 608/VIII/SS/ Vol.III dated 18.2.99 issued by the 3rd respondent.
2. A-2 : A true copy of the order dated 20.7.99 No.J/P 608/VIII/ SS/Vol.III issued by the 3rd respondent.
3. A-3 : A true copy of the representation dated 30.9.99 addressed to the 3rd respondent.
4. A-4 : A true copy of the order bearing No.J/P 608/VIII/SS/ Vol.III dated 5.4.2000 issued by the 3rd respondent.
5. A-5 : True extract of 'Tapal Register' at Ottappalam.

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