

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH, LUCKNOW

**Original Application No.136/2008
This the 14th Day of November 2011**

**Hon'ble Mr. Justice Alok Kumar Singh, Member (J)
Hon'ble Mr. S.P. Singh, Member (A)**

Acharan Narain Lal Srivastava, aged about adult, S/o Late Shri Suraj Narain Lal Srivastava at present working as Section Engineer (Works), Northern Railway, resident of E-L-1, Type-II-K, Guard Running Colony, Varanasi.

...Applicant.

By Advocate: Sri Praveen Kumar.

Versus.

Union of India, through

1. The General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. The Senior Divisional Engineer (Co-Ordination), Northern Railway, Hazratganj, Lucknow.

.... Respondents.

By Advocate: Sri Amarnath Singh Baghel holding brief for Sri S. Verma.

ORDER (Dictated in open court)

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for the following relief's:-

- "1. To allow the applicant to participate in the examination of the selection notified vide notification dated 17.10.2007 and include the name of the applicant in the impugned list dated 20.02.2008.
2. To quash the order-dated 26.05.2008 and to accord all the consequential benefits like promotion and pay fixation etc.

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2. Applicant's case is that Respondent No.2 issued a notification-dated 17.10.2007 by which post of Assistant Engineer has been advertised against 70% quota. Alongwith the said list, an eligibility list showing the persons eligible for participating in the selection was also notified (Annexure-2). It is said that the applicant was at that time working on the post of Section Engineer (Works), which is one of the feeder cadre. His name therefore also figured at serial no.90. This written examination was to take place on 16.12.2007. Unfortunately, applicant's mother expired on 28.11.2007. Therefore, he immediately represented on 30.11.2007 (Annexure-A-3) and requested that the ceremony will be completed by 18.12.2007. Therefore, he was unable to appear in the said selection, which was scheduled to be held on 16.12.2007. This request was duly forwarded by Additional Divisional Engineer, Northern Railway, Varanasi to The Divisional Engineer-I, Northern Railway, Lucknow on 02.01.2008 (Annexure-A-4). But, no order was passed in the knowledge of the applicant on that application. However, on 28.03.2008, it come to the knowledge of the applicant that a supplementary examination was held but the applicant was not informed about it. He therefore immediately submitted a representation on 28.03.2008, indicating the reason for not appearing in the selection on account of death of his mother. He also made a mention about his aforesaid representation dated 30.11.2007. Not only this, he also mentioned that some of the candidates, who could not appear in the main selection, were permitted to appear in the supplementary selection but he was

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deprived from the same. Lastly, he mentions that from 12.03.2008 to 16.03.2008, he was on leave (Annexure-5). Subsequently, he came to know that supplementary examination was notified for 15.03.2008 at Head Office, Baroda House, New Delhi. But, in the list of candidates his name did not figure. Therefore, he again handed over a representation-dated 02.04.2008 to the supervising authority for taking an appropriate action but no heed was paid (Annexure-A-6). Hence, this OA.

3. The respondents contested the OA by filing a Counter Affidavit. The only relevant averment contained in the counter affidavit is that the supplementary written test is held for those candidates, who could not appear in earlier written test under certain conditions which is clear in para 223 (1) (i) (c) of Indian Railway Establishment Manual, 1989. In the relevant provision which has been quoted, the relevant words are "Sickness of the candidate or other reason over which the employee has no control". Further contention in the counter affidavit is that the applicant has intimated that due to death of his mother, he would not be appearing in the written test on 16.12.2007. Some candidates who could not appear in the written test due to sickness by Railway Doctors were allowed to appear in supplementary written test to be held on 15.03.2008. It is further said that there is no provision for holding second supplementary written test to Group 'B' selection against 70% quota.

4. The applicant filed M.P.No.191/2009 on 27.01.2009, for making certain amendments which was allowed on 29.01.2009 and the

amendments were carried out on 12.02.2009. But, the respondents did not care to file any reply to the amended OA. Today the Standing Counsel was present in the morning and made a request for the afternoon for hearing but was sent his brief holder to appear. The brief holder fairly concedes that any reply to the amended OA has not been filed. He also submits that the standing counsel had to leave the Court because of sudden sickness of his wife. He however reiterates the contents of the counter affidavit and says that there is no necessity to file any further reply after amendment.

5. We have heard the learned counsel for the parties and perused the material on record.

6. There is no quarrel on the point that the selection in question was scheduled to take place on 16.12.2007 in respect whereof a list of eligible candidates was notified vide Annexure-A-2, wherein, the name of the applicant finds place at serial no.90. There is also no dispute on the point that the applicant's mother unfortunately died on 28.11.2007 and the applicant moved an application on 30.11.2007 (Annexure-A-3) showing his inability to appear in the selection. It is also not controverted that this application was duly forwarded by the authority concerned vide Annexure-A-4 and in absence of any specific denial of pleadings it is also not disputed that the respondents did not take any action on this application. On the basis of the pleadings of the parties, it is also established that the supplementary selection took place on 15.03.2008 in which about 148 candidates were called to appear, who could not

appear due to sickness etc. It is also not disputed that the name of the applicant was not included in the aforesaid list of 148 candidates.

7. On behalf of the applicant, it is submitted that the death of mother was also a reason over which the applicant had "no control" and therefore in view of the provision contained in para-223 of Indian Railway Establishment Manual, 1989 Vol.1, he ought to have been included in the list of candidates, who were permitted to appear in the supplementary selection. The relevant provisions are as under:-

"para-223-Supplementary Section/Suitability Test.

(1) (i) (c)

Sickness of the candidate or other reason over which the employee has no control. Unavoidable absence will not however, include absence to attend a wedding or similar function or absence over which he has controlled. Sickness should be covered by a specific service from Railway Medical Officer."

8. Interestingly, the respondents have also quoted this provision in their counter reply, but nowhere they have said that death of mother does not come within the ambit of "other reason over which the employee has no control." Further, reading of this provision shows that such unavoidable absence will not include absence of wedding or similar function or absence over which he has control. But, the death of mother has not been excluded. Otherwise also, it is needless to say that death of one of the parents is definitely a valid and bonafide reason over which an employee has no control. It is true that normally such rituals are concluded on 13th day. But, rituals differ from place to place and family to family

etc. Moreover, in para-25 of the amended OA, it has been specifically said that in the family of the applicant such customs run for 20 days. As said above, no supplementary counter affidavit has been filed by the respondents against the amended O.A. Therefore, this averment is uncontroverted and hence proved. Even if, in the eyes of the respondents, it was not a bonafide reason then in all fairness the respondents should have taken a decision on the application and they ought to have conveyed the same to the applicant so that he could have appeared. But as mentioned above they did not pass any order at all which shows their carelessness and callousness. A modal employer is supposed to redress at least genuine grievance of an employee by taking a pragmatic approach and not pedantic approach as has been observed by the Hon'ble Apex Court many times. But, in the present case the only thing which we could see is the unfortunate inaction on the part of the respondents depriving the applicant from getting redressal of his genuine grievance under the aforesaid provision. This is all in respect of relief no.1.

9. In respect of relief no.2 i.e. for quashing the order dated 26.5.2008 and to accord consequential benefits etc., it is noteworthy that the respondents slept over the matter and did not pass any order on his representation dated 28.03.2008 (Annexure-A-5) until an order was passed by this Tribunal dated 17.04.2008, directing them to dispose of the pending representation within 15 days. We are inclined to observe that probably filing of this O.A. and passing of the aforesaid direction of the Tribunal further

annoyed the respondents on account of which they wrongly rejected the aforesaid representation by means of impugned order dated 26.05.2008, which they have filed alongwith supplementary counter affidavit on 25.03.2009. We have carefully perused this order. Four reasons have assigned for rejection. Reason No.1 has no significance. In reason no.2, it is said that applicant did not seek permission to appear in the supplementary written test between 15.02.2008 to 15.03.2008. As already mentioned in Annexure-A-5, the applicant's mother expired on 28.11.2007. The examination was held on 16.12.2007. On account of rituals he could not appear in the examination and on 30.11.2007 (within 2 days of the death of his mother) he had sent this information. No order was passed on his application dated 30.11.2007. Certain other absentees, who could not appear in the said examination on account of sickness, were however permitted to appear on 15.03.2008 in the supplementary examination held at New Delhi. But, he was deprived. He was also not informed as to why he was not permitted in this supplementary examination while he was on leave from 12.03.2008 to 16.03.2008. Para-9 of the O.A, it has been said that on 28.03.2008 only it came to his knowledge that a supplementary examination has been held on (15.03.2008). This pleading has not been specifically denied in the counter affidavit. There is only general and sweeping denial. Thus, as soon as he came to know about first supplementary examination, he moved the aforesaid representation on the same date i.e. 28.03.2008 (Annexure-A-5) which was also kept pending by the respondents. Now we come to ground no.3. It is mentioned

in this ground that only those candidates, who are sick with Railway doctor or who could not appear in the written test due to administrative exigency are allowed in supplementary test, whereas, the case of the applicant was not covered under these instructions. This is totally wrong interpretation. The relevant instructions contained in para-223, which have been relied upon not only by the applicant but have also been quoted by the respondents in their counter affidavit as mentioned hereinbefore. It specifically mentions that besides sickness of the candidate, there may be "other reasons over which the employee has no control" as discussed hereinbefore. The sudden death of one of the parents is definitely a valid and bonafide reason over which the applicant has no any control. The fourth and the last ground for rejection is that there is no provision for holding 2nd supplementary written test hence no action can be taken. It appears that again this careless observation has been made without going through the relevant provisions particularly para-223 of Indian Railway Establishment Manual, 1998 Vol.I Sub para (iii) which provides as under:-

"(iii). Not more than one supplementary selection should normally be held to cater to the needs of absentee due to sickness, non-intimation/late intimation of dates of tests etc. The second supplementary selection should be held rarely and with the personal approval of Chief Personnel Officer based on merits of each case."

10. From the above, it is clear that though normally more than first supplementary selection should not be held. But second supplementary selection can be held with the permission of Chief Personnel Officer based on merits of each case. Thus, we reach to

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a conclusion that even the second impugned order rejecting the above representation of the applicant deserves to be quashed with necessary directions to the respondents.

11. Finally O.A. is, therefore allowed. The order dated 26.05.2008 is hereby quashed. The respondents are directed to permit the applicant to appear in a second supplementary examination on the selection in question to be arranged by the respondents under intimation to the applicant. Thereafter, in case, the applicant succeeds in the examination of the selection, then all consequential steps may be taken in accordance with the relevant rules in respect of promotion, pay fixation etc. No order as to costs.

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14.11.11
(S.P. Singh)
Member (A)

Alok Kumar Singh
(Justice Alok Kumar Singh)
Member (J) 14.11.11

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