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CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD

LUCKNOW CIRCUIT BENCH

Registration O.A. No.381 of 1990

K.S. Chaubey Applicant

Versus

Union of India & Others.... Respondents

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. A.B. Gorthi, Member (A)

(By Hon. Mr. A.B. Gorthi, Member (A))

This application from Shri K.S. Chaubey, is an Commercial Inspector, Northern Railway, Lucknow alleging that the respondents wrongly denied him an opportunity to appear for the Limited Departmental Competitive Examination held on 22/23.9.90 for selection to group 'B' service in the Commercial Branch of T(f) & C Department. His prayer is that the respondents be directed to hold the examination again so as to enable him to appear for it.

2. Some time in January, 1989, NR Hrs. office decided to hold a selection for promotion to group 'B' service for filling up 25% vacancies in the Commercial Branch of T(T) & C Department through a Limited Departmental Competitive Examination. Applications from eligible candidates were invited and a list of those found to be eligible to take the examination was finalised. The said list was forwarded to all the Divisions including Divisional Railway Manager (DRM for short), Lucknow. The examination, which was initially

scheduled to be held on 29/30.7.89 was postponed a number of times.

3. DRM, NR Circular letter dated 10.7.90 (Annexure-1 to the application) states that examination would be held on 21/22.7.90 at the Hqrs. office NR Delhi, that eligible candidates should be given authority letters or identity cards and that they should be relieved from duties so as to enable them to appear for the test at Delhi on the due dates. The name of the applicant appears at Sl.No.23 in the list of candidates attached to the said circular letter (Annexure-1). The applicant's case is that he was completely ignorant of the contents of this letter and of the fact that the examination was to be held on 21/22.7.90. In any case, the examination was once again postponed to 8/9.9.90, but even these dates were finally changed to 22/23.9.90 as can be seen from N.R. Telegrams dated 4.9.90 and 19.9.90 (Annexures C-13 and C.14 to the Counter Affidavit). The applicant states that none of the aforementioned communications were brought to his notice by the concerned authorities. It was only on 12.10.90 that he came to know through his colleagues that the examination was, in fact, held on 22/23.9.90 and that he was one of the candidates who should have appeared there at. The case of the applicant, in short, is that he should not be penalised for his non-appearance at the examination as he was never informed about it due to the fault of the concerned officials in the Divisional Office at Lucknow.

4. The respondents' version as can be seen from the

Counter Affidavit is that the applicant was given copies of DRM, NR Circular letter dated 10.7.90 (Annexure-1) and DRM, NR Telegram dt. 19.9.90 (Annexure-C.14) through official messengers. The applicant was thus all along aware of the examination scheduled and of its postponement. As regards the circular letter dated 10.7.90, the DRM had explained to the General Manager on 22/2/91 as under :-

" Checking of the Dak Guidance Book maintained by Free Service Railway Dak Office for C.M.I/LKO for the period from 6.1.90 to 31.12.90 reveals that the letter of even No. dated 10.7.90 was entered in the Dak Guidance Book on 12.7.90 indicating the chalan No. by which this particular letter was sent to Free Service Dak Office by the Despatch Section of DRM Office, Lucknow that is 16. After sorting the letters marked to C.M.I, those are kept in the pigeon hole earmarked for C.M.I/Lucknow which has been given S.No.77. As per practice the letters pertaining to a particular subordinate are either collected personally or by deputing his peon who in turn puts his initials on the Dak Guidance Book as a token of having collected the letters kept in the pigeon hole. In this particular case the letter which was kept in his pigeon hole bearing No.77 has been collected by somebody, may be his peon who has put his initial as a token of receipt of the letter on behalf of the C.M.I/Lucknow to whom it was addressed."

5. Similarly, as regards the telegram dated 19.9.90 (Annexure-C.14), it has been stated by the respondents that "it was delivered at the residence of the applicant as certified by Head Signaller,

Charbagh Station Building, Lucknow vide his Memo dated 22.2.91¹ (Annexure-C.15)**. The said certificate states that the telegram was delivered on 19.9.90 at 22.00 hours at the residence of the C.M.I. (the applicant) and that it was received by one Bipat Ram as per copy of the Message Delivery Receipt.

6. The applicant in his rejoinder alleged that the documents ~~for quoting~~ purporting to show that the relevant official communications sent to him were, in fact, fabricated by the concerned officials with a view to protect themselves from being held responsible for their negligence.

7. The respondents raised a preliminary objection on the ground that since there was no "order" of the respondents on which the applicant felt aggrieved, ^{the application is} is not maintainable. The objection is obviously inspired by the wording of Section 19 of the Administrative Tribunals Act, 1985 which lays down, inter alia, that the person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance (emphasis added). The arguments, though verbally attractive, lacks in substance. It is obvious that the applicant considers himself aggrieved by the order of the respondents holding the examination to which he had no prior information whatsoever.

8. The respondents have drawn our attention to the case of L.P. Sonkar and Others Vs. Union of India and Others (C.A. No.1/91) decided by the Allahabad Bench

of this Tribunal on 25.1.91. In that case too, Sonkar and several others similarly situated as the applicant in this case, alleged that they were not aware of the examination held on 22/23.9.90. Several of the applicants in that case belonged to the reserved category and were given special training to prepare for the said examination. It seems that one of the reasons for the postponement of the examination was to enable them to complete their training, which concluded in August, 1990. Another three applicants in that case were those who had declined to take the examination. For these and certain other reasons, it was held in that case that the applicants therein had prior knowledge of the examination that was to be held on 22/23.9.90. It being essentially a finding of fact, will be of no assistance to us in this case which has to be examined on its own merit.

9. The short but crucial question is whether or not the applicant knew of the examination before it which was held on 22/23.9.90. The facts adduced by the respondents do not clearly establish that the two official communications (Annexure-1 and C-14) were indeed received by the applicant. The circular letter dated 10.7.90 is said to have been put in the pigeon hole meant for the applicant from where his peon or someone picked it up. The applicant stated in the rejoinder that the C.I. office peon was Sukhdin and his signature does not appear on the dak book (Annexure-C.19). As regards the handing over of the telegram dated 19.9.90 (Annexure-C.14) to Bipat Ram, the applicant contended that he knew no

such Bipat Ram. He was not his servant nor a family member nor a colleague.

10. In all these allegations and counter allegations, what comes to our notice rather strikingly is the DRM's letter to the General Manager (P) NR dated 23.10.90 (Annexure-A3). It reads as under :-

" Some of the Commercial staff of this Division who had earlier volunteered for the aforementioned examination and were eligible, have represented through proper channel through the representation dated 26.9.90 (copy enclosed for ready reference) that they were neither intimated nor spared for the aforesaid examination, which was scheduled to be held at HQrs. office on 22/23.9.90.

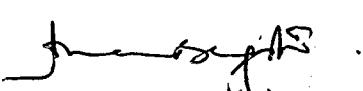
The intimation was received on 6.9.90 from HQrs. office and circulated on 19.9.90 whereas the examination was fixed on 22.9.90 and 23.9.90. But it could not be circulated upto 18.9.90 resulting thereby the staff could not be circulated upto 18.9.90 resulting thereby the staff could not be informed and therefore, they could not attend the examination.

It is, therefore, recommended that these staff may be given an opportunity to appear in the supplementary examination."

11. The above communication clearly establishes that there were some members of the commercial staff who represented that they were not informed of the examination scheduled to be held at Delhi on 22/23.9.90. There was also a clear admission by the DRM that "the information of the examination dates could not be circulated upto 18.9.90 resulting thereby the staff could not be informed and therefore they could not attend

the examination. The respondents tried to assert that the DRM subsequently withdrew the said letter. We do not agree. The DRM merely regretted having made an incorrect recommendation for the holding of a supplementary examination for the affected candidates, as such a recommendation was contrary to the policy laid down earlier by the Northern Railway HQrs for not holding any supplementary examination. The DRM's official statement to the General Manager (P) sufficiently refutes the respondents' contention that there was no question of the candidates not knowing about the examination. On the other hand, it lends credence to the applicant's complaint that he was not informed of the dates of the examination. We are therefore inclined to accept the contention of the applicant in this regard.

12. The application is allowed and the respondents are hereby directed to give the applicant atleast one chance to take the Limited Departmental Competitive Examination which the respondents shall hold as early as possible and in any case within two months from the date of communication of this order. The question of giving the consequential promotion to the applicant will of course depend on the comparative performance of the applicant in the said examination vis-a-vis those already selected. Parties to bear their own costs.



Member (A)



Vice Chairman

Dated the 5 July, 1991.

RKM