

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH, LUCKNOW.

D.A.No. .... 423/80 ..... 1990 (L)

T.A.No. .... / ..... 199 (TL)

Date of Decision - 18.12.96

Nand Kishore Srivastava Petitioner

Sri S.C. Srivastava Advocate for the  
Petitioner(S)

V E R S U S

Union of India & others Respondent.

Sri B.K. Shukla Advocate for the  
Respondents.

C O R A M

Hon'ble Mr. V.K. Sethi Member(A)  
Hon'ble Mr. D.C. Verma Member(J)

1. Whether Reporter of local papers may be allowed to see the Judgment. ✓
2. To be referred to the reporter or not? ✓
3. Whether their Lord Ships wish to see the fair copy of the Judgment? ✓
4. Whether to be circulated to other benches? ✓

Vice-Chairman/Member

Lucknow this the 18<sup>th</sup> of December 1996.

ORIGINAL APPLICATION NO.423 of 1990

HON'BLE MR. V.K. SETH, A.M.

HON'BLE MR. D.C. VERMA, J.M.

Nand Kishore Srivastava, ~~aged about 58 years~~,  
S/o late Sri Lal Ji Lal Srivastava  
R/o 5/511, Vikas Nagar, Lucknow.

..Applicant

Versus

1. Union of India through  
the General Manager, Northern Railway,  
Baroda House, New Delhi.
2. Senior Divisional Accounts Officer,  
Northern Railway, Lucknow.
3. Chief Cashier, Northern Railway, Delhi.

..Respondents

For the applicant: Sri A.M. Pandey, Advocate.

For the respondents: Sri B.K. Shukla, Advocate.

O R D E R

D.C. Verma, Member(J)

By this O.A. the applicant Nand Kishore Srivastava has claimed promotion on the post of Inspector, Divisional Cashier and Assistant Chief Cashier from the date his junior was promoted. He has also claimed all consequential benefits and increments due from 1984 till the date of retirement.

2. The brief facts of the case is that the applicant joined the post of Shreff in the Northern Railway on 22.12.59. Subsequently he worked on the post of Junior Cashier & Senior Cashier. By order dated 19.4 the applicant was suspended and was served with a chargesheet dated 13.11.84. However, the said charge sheet <sup>was</sup> subsequently withdrawn and a fresh chargesheet

..2

12

was served on 10.1.86 on the ground of carelessness and negligence in keeping and holding of government money. After brief enquiry the suspension order was revoked on 16.1.86 and the applicant was posted as clerk in the Provident Fund in the office of Senior Divisional Accounts Officer, Northern Railway (Annexure 3 to the O.A.). By the impugned order (Annexure-1) dated 29.12.89 Officer junior to the applicant were promoted to the post of Inspector without observing the principle of seniority and suitability, hence this O.A.

3. The respondents' case is that the cause of action arose to the applicant in the year 1984 but the applicant preferred no representation till the date of his retirement i.e. 31.12.90 hence the present O.A. is barred by limitation. Further it has been stated in the counter affidavit that the applicant was under suspension and was awarded punishment of severe (recorded warning) in December 1972 and was 'censured' on 2.6.72. The applicant's increment was also withheld temporarily but was subsequently revised as "recorded warning" on 10.5.77. A case in connection with the shortage of government money of approximately Rs.1,23,000/- is pending against the applicant before the Court of Special Judge (Anti Corruption), Lucknow. It has further been stated that after the applicant was reinstated on 16.1.86, he was posted at "non cash handling seat" in the office of Senior Divisional Accounts Officer, Lucknow. It is further stated that the applicant was under suspension from <sup>time to</sup> ~~two~~ time on different periods and even at the time of retirement the applicant was under suspension. According to the respondents, in the first two selections for the post of Inspector, the applicant did not send his willingness and in the third selection though the applicant sent his willingness, he did not appear in the selection

deliberately and as such his claim for promotion to the post of Inspector of Cashier without passing out the test and interview does not arise.

4. It is admitted to the parties that promotion to the post of Inspector is dependent on clearing the selection. It is also admitted that the first selection examination was held in the year 1984, second selection examination was held in April 1987 and the third selection examination was held in April 1989. It is also admitted that the applicant did not appear in any of the three examinations. After the examination of 1989 i.e. the third examination, the impugned order (Annexure-1) was issued on 29.12.89.

5. Thus the main question for determination is- whether the applicant was aware of the examination and was afforded opportunity for the same or not. As per the respondents case, the applicant was informed about all the three selection tests but the applicant had not sent his willingness for the first and second selections. For the third selection held in April 1989, the applicant sent willingness but deliberately avoided to appear in the examination. In the first selection, which was held in 1984, the applicant was under suspension. Similarly in the third selection, held in 1989, the applicant was under suspension. The applicant's case is that as he was under suspension he was not informed about holding of the suitability test for the post of Inspector. In para-11 of the rejoinder affidavit, the applicant has reiterated that when the first examination was held in 1984 at New Delhi, the applicant was posted at Faizabad and was under suspension. Though information of examination

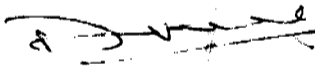
A/3

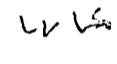
was given to all the prospective candidates by the opposite parties but the same was not given to the petitioner and hence he had no knowledge of the same. Contrary to this in para 4.15 of the C.A., it is mentioned that the applicant was not given any chance for suitability test since 1984 and he had sent several representations for his promotion on 16.7.86, 2.1.89 and 23.3.89. This shows that the applicant was aware of the examination held in 1984 and so he sent the representation. Copy of the representation mentioned in this para has not been annexed. Thus even from the record it is clear that the applicant is concealing the fact of information, knowledge and communication about holding of the examination of the year 1984. The conduct of the applicant is, therefore, such that his assertion about having no knowledge of the examination in 1987 also, cannot be accepted. It is also noted that when the third examination was held in April 1989, the applicant was under suspension, still he was directed by annexure R-4( to the C.A.) to appear in the written test. After getting the willingness of the applicant, railway pass was sent with letter annexure R-2( to the O.A.) to the applicant. As per the endorsement on annexure R-2 and on the back of annexure R-4 the railway pass for attending the examination was not received by the applicant. The applicant himself has stated that the information regarding holding of the third test was not given to him well in time. Thus it is admitted that the applicant had information about the third examination, still he on the ground that it was not well in time, deliberately avoided. It is, therefore, well established that the applicant was given opportunity to appear in the suitability test examination but the applicant failed to avail. In the circumstances, the applicant is not

entitled to promotion as claimed.

6. The learned counsel for the applicant has submitted that as the applicant retired on 31.12.90 and he failed to appear in the three suitability tests held earlier, it should be deemed to have cleared the same in view, junior to the applicant have been promoted. In our view, such an inference cannot be drawn. As per rules (para 4.16 of the C.A.) promotion to the post of Inspector is subject to qualifying the examination i.e. written and viva-voce test as per Railway Board's letter E(NG)-I-72/PMI/158 dated 12.12.73. The applicant is not entitled to promotion to such post unless he qualifies the selection. As the applicant never appeared in such selection test and rather deliberately avoided, his claim for promotion much less presumption of clearing the test, cannot be accepted.

7. In view of the above, the applicant is not entitled to any of the relief claimed in the O.A. and same is dismissed. Cost on parties.

  
J.M.

  
A.M.

Dated: Lucknow: December 18, 1996.

Narendra/-

18.12.76

Hon'ble Mr. D.C. Verma J.M.

Judgment pronounced  
in the ~~sup~~ open court  
today.

h

!  
h  
J.M.