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CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH, LUCKNOW.

ORIGINAL APPLICATION NO. 461/1992

this the 20th day of February, 2001.

Hon'ble Mr. D.C. Verma, Member (J)

Hon'ble Mr. A.K. Misra, Member (A)

Mahendra Singh, aged about 57 years, s/o late Sri Binda Singh, Senior Inspector of Store Accounts, office of the Senior Accounts Officer, Northern Railway, Alambagh, Lucknow.

....Applicant

By Advocate: Sri J.P. Mathur

Versus

1. Union of India, through General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.

2. Financial Advisor and Chief Accounts Officer (Administration), Northern Railway, Headquarter Office, Baroda House, New Delhi.

3. Senior Accounts Officer (S&W), Northern Railway, Alambagh, Lucknow.

.....Respondents.

By Advocate: Sri S.Verma

ORDER

A.K. MISRA, MEMBER (A)

The applicant to this OA has prayed for quashing of the result dated 11.5.92 of the test held on 2.4.91 and on 27.4.91 and the interview held on subsequent dates for making selection of 75% quota on the post of Asst. Accounts Officer, in contravention of the ^{instructions} dated 22/23.6.1974 of the Railway Board. A further prayer is for issue of direction to the respondents to consider the applicant for promotion as Asst. Accounts Officer w.e.f. the date his immediate juniors namely Sri R.R. Dixit, S.P. Sahu and V.C. Shukla were promoted after being selected in the year 1987. It has also

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been prayed that the applicant be paid the entire arrears along with interest @ 21% per annum.

2. Pleadings on record have been perused and learned counsel for the parties have been heard.

3. The applicant who was working as Senior Inspector Stores Accounts claims : promotion to the post of Assistant Accounts Officer (AAO) on the basis of his seniority. There is no dispute that the post of AAO is a Group 'B' Post in the Accounts cadre and there is a quota of 75% for appointment as AAO by promotion on selection in the departmental examination . Although the relief claimed in the OA is for quashing the written test held on 2.4.91 and 27.4.91, it will be necessary to briefly give the background in which the said relief has been claimed.

4. According to the applicant he was eligible to take the written examination in the year 1987 but he was denied the opportunity to appear in the examination and consequently was ignored in promotion though 3 persons junior to him namely Sri R.R. Dixit, S.P. Sahu and V.C. Shukla who appeared in the said examination were selected and promoted as AAOs on the basis of the selection list declared in the year 1987. Subsequently, in the written test held in 1988, the applicant appeared but due to illness he could not attend the interview held on 25.3.88. According to the applicant, no opportunity was given to him for appearing in the supplementary interview. Another opportunity to appear in the test was availed by the applicant in the year 1989 but he was again not successful.

5. A circular letter dated 29th January, 1991 was issued in respect of the selection for 1991 against 75% quota for promotees with a view to drawing up a panel of 28 candidates for promotion



as AAOs. The date of written examination as per the circular letter of 29th January, 1991 was initially fixed for 6.3.91 which was postponed to 2nd April, 1991. Because of illness, the applicant failed to appear in the examination held on 2.4.91 but he was able to appear in the supplementary examination held on 27.4.91. As a result of the written examination, 31 candidates were called for viva voce test fixed for 30.7.91 and 31.7.91 but the name of the applicant did not figure in this list. According to the applicant in the result declared after the written examination, the respondents had changed the procedure for selection and thereby had eliminated the persons after written test on the ground that these candidates have failed to secure qualifying minimum marks. In the changed procedure, the requirement of a separate viva voce test was ~~also~~ done away with. The change in the procedure of selection was challenged by the applicant by ^{also} making a representation dated 17.7.91. The applicant filed an original application No. 251/91 in this Bench of the Tribunal which was disposed of by order dated 6th August, 1991 directing the respondents to dispose of the applicant's representation dated 17th July, 1991 within 2 months by a speaking order. One Sri Kundan Singh challenged the changed procedure adopted by the respondents for the written test held on 2.4.91 in the principal bench, New Delhi by filing OA No. 2002/91 which was decided on 11.10.91. The Principal Bench in the case of Kundan Singh held that the letter of 12.7.91 excluding the names of the applicants from viva voce test ^{deserves to be} quashed. The principal bench further held that all the applicants should be governed by the instructions of the Railway Board dated 22/23 June, 1974, their viva voce test should be taken and their professional ability




aggregate
should be judged on the basis of ^{aggregate} marks obtained both in the written test and in the viva voce test. According to the Railway Board's letter dated 22/23rd June, 1974, for promotion from Class III to Class II posts in the accounts department, 25 marks were allotted for written test and 25 marks for viva voce test and aggregate of 30 marks was to be obtained out of the 50 marks (25 + 25) allotted for written test and viva voce test. By subsequent letter issued on 8.5.91 by the Railway Board, the requirement of viva voce test was done away with and 50 marks were allotted to the written test for judging the professional ability, out of which the qualifying marks required for passing were 30. Thus as against 25 marks each for written test and viva voce test allotted as per railway board's letter dated 23.6.74, 50 marks were allotted ~~only~~ to the written test as per revised norms fixed by the Railway Board's letter dated 8.5.91. The Principal bench in its order dated 11.10.91 in the case of Kundan Singh directed that the cases of the applicants should be governed by instructions of 22/23.6.74 and viva voce test be taken and the professional ability of the candidates should be judged on the basis of the aggregate marks obtained in the written and viva voce test, in the light of the fact that the written test was held on 2.4.91 when the revised instructions of the Railway Board dated 8.5.91 merging the written test and viva voce test were not in existence. The applicant ^{to the present O.A.} ~~was~~ ~~however~~ given an opportunity to appear in the interview/viva voce test in consequence of the supplementary examination of 27.4.91 but the applicant was not selected as per the select list declared on 12.6.92. According to the applicant, ^{though} he was ~~not~~ called for interview on 12.3.92 but the interview letter dated 9.3.92 was served on him only on

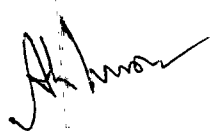
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11.3.92 giving him barely 24 hours to prepare for interview whereas XXXX at least 15 days time should be allowed to a candidate for appearing in the viva voce test. According to the applicant since he was given no time to prepare for the interview, he could not succeed and his name did not figure in the select list of 11.6.92. Thus although the applicant was called for interview on 12.3.92 in consequence of the order dated 11.10.91 of the principal bench passed in the case of Kundan Singh Vs Union of India, he could not be selected because he was not given any time for preparation for interview. The next departmental examination for promotion as AAOs was to be held on 14.7.93 but the same was postponed to 10.8.93 and since the applicant retired on superannuation on 31.7.93, he could not appear in the examination held on 10.8.93. Thus according to the applicant he was deprived of his promotion as AAO though his juniors were promoted way back in 1987.

6. Respondents have raised preliminary objections with regard to limitation as prescribed under section 21 of the AT Act, 1985 and have stated that the amendment application moved by MP No. 1261/99 in so far as it relates to selection held in the years 1987 & 1988 cannot be entertained as the same is barred by limitation. The amendment moved by MP No. 1261/99 was allowed on 8.7.99 subject to limitation. it was submitted on behalf of the respondents that the applicant cannot be deemed to have been selected unless he appeared in the examination and he was selected to the post of AAO. Since the applicant was never selected as AAO in pursuance of the written examination and viva voce test, the OA was stated to be devoid of merit.

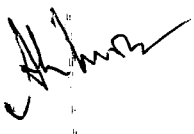


In the light of the factual position are discussed above we of the considered view that there is no merit in the O.A. filed by the applicant. In the first place result of the written tests held in 1987, 1988 and in 1989 have not been challenged by the applicant in the relief clause. Therefore no relief whatsoever can be claimed by the applicant in so far as the written test of 1987, 88 and 1989 are concerned. Besides it may be stated that in 1988, the applicant appeared in the written test but on account of his illness ^{he} could not appear in the viva voce test and therefore was not selected. In 1989 also, the applicant appeared in the written test but was not selected. In the written test held on 2.4.91, the applicant again could not appear on account of his illness. However, in the supplementary test held on 27.4.91, the applicant appeared and though the changed procedure of selection as per instructions of the Railway Board dated 8.5.91 was adopted doing away with the requirement of viva voce test, the applicant was called for viva voce test in consequence of the order dated 11.10.91 passed by the principal bench in the case of Kundan Singh Vs. Union of India. The applicant was not selected in pursuance of the test held on 27.4.91 and the subsequent viva voce test. The written test was thereafter to be held on 14.7.93 but was postponed to 10.8.93. By this time, the applicant had already superannuated on 31.7.93 and therefore, he could not appear in this test. Thus the applicant could not be promoted as AAO and retired. As regards the claim of seniority made by the applicant vis-a-vis his juniors namely Sri R.R. Dixit, S.P. Sahu and Sri V.C. Shukla, they were selected and appointed as AAO on the basis of the selection held in 1987. The applicant did not




appear in the selection of 1987. Although he was eligible . It ~~xxx~~ also cannot be said that the applicant was not given the benefit of the decision of the Principal bench dated 11.10.91 in the case of Kundan Singh Vs. Union of India as he was duly called for interview on 12.3.92 in consequence of the supplementary test held on 27.4.91 and in adherence to the decision of the Principal bench in the case of Kundan Singh Vs. union of India. The order dated 9.5.2000 passed by this Tribunal in OA No. 96/91 in the case of Ramesh Chander Srivastava Vs. Union of India relied upon by the applicant would not apply to the facts and circumstances of the present case because in the case of Ramesh Chander Srivastava, the applicant was given intimation on 9.4.89 of the written test to be held on 10.4.89 and therefore the applicant in that case could not appear in the written test. In the case of the applicant to the present OA, the intimation of viva voce test was received by him on 11.3.92 whereas the viva voce test was to be held on 12.3.92. The applicant duly appeared in the viva voce test but was not selected. In the instant OA, it is not the case ^{that} for want of sufficient time the applicant could not attend the viva voce test.

Therefore, the order of this bench of the Tribunal in OA No. 96/91 in the case of R.C. Srivastava Vs. Union of India would not apply to the facts in the case of the applicant. The decision of the Hon'ble Supreme Court in the case of State of Maharashtra Vs Jagannath Achyut Karandikar reported in (1989) 10 ATC page 593 would also not apply to the facts obtaining in the case of the applicant because in the case of Jagannath Achyut Karandikar (Supra), the apex court was deciding a case where the petitioner had suffered loss of seniority in the promotional post of Superintendent on account of



late passing of the departmental examination for promotion for the reason that the government had failed to hold the departmental examination in certain years in spite of rules enjoining the Govt. to hold the examination every year. Under these circumstances, the apex court held that the petitioner should not be made to suffer. The facts as obtaining in the case of the applicant are clearly distinguishable. The applicant could not appear in the examination held on 10.8.1993 as he had already superannuated by 31st July 1993 and no departmental examination for promotion to the post of AAO could be held between 1991 and 1993 because of the delay caused on account of certain clarifications sought from the Railway Board consequent upon the decision of the principal bench in OA No. 2002/91 in the case of Kundan Singh Vs Union of India.

8. In the light of the foregoing discussion, the OA has no merit and is accordingly dismissed. Cost easy.


MEMBER (A)


MEMBER (J)

LUCKNOW: DATED: 20th Feb. 2001

HLS/-