

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH

LUCKNOW

(A.S)

T.A. No. 791/87

(Writ Petition No. 3872 of 1981)

M.C. Jain and another

Petitioner.

versus

Union of India & others

Respondents.

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

Hon. Mr. A.B. Gorthi, A.M.

(Hon. Mr. Justice U.C.S., V.C.)

This is a transferred case under section 29 of the Administrative Tribunals Act. The applicant filed writ petition before the High Court, Lucknow Bench, which by operation of law has been transferred to this Tribunal.

2. The applicants are Inspectors of Works in the North Eastern Railway and were at the relevant time posted at Gonda, filed the above writ petition praying for issue of a mandamus to respondents to hold a supplementary absentee written test with a view to enable the petitioners to appear in the same and a mandamus be also issued restraining the respondents from proceeding with the proposed viva voce test schedule to be held on August 11 and 12, 1981 without first affording the opportunity to petitioners to appear in the same. Vide letter dated 27.12.1980, the General Manager, North Eastern Railway, Gorakhpur intimated the decision to hold a selection against 75% of the vacancies

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for the post of Assistant Engineer Class II and along with it two lists were bunched and the names of the applicants were also shown in the same list at serial Nos. 63 and 65 respectively. The list included the names of those persons who were eligible for appearing at the said selection whose names were indicated in the list. The applicants indicated their willingness in writing to appear in the said selection test. The applicant's grievance is that the respondent No. 2 i.e. Chief Engineer(Construction) N.E. Railway under whom the applicant No. 1 was working did not spare the applicant for appearing in the written test in view of the administrative exigency because of the work of conversion of the line which was going on those days. This was intimated by him to the General Manager. The applicants accordingly could not appear in the written test which was held on 15.2.1981. As was provided in the letter dated 27.12.81, the written test was scheduled to be held on 1.3.1981. A letter was sent to the applicant telling that they should be ready for the same. Thereafter they were informed by the letter dated 27.2.81 by the Executive Engineer(Construction) that the date has been postponed till further orders. Then they were receiving telegraphic message to the effect that the written test will be held on 14.3.1981, but the same was also postponed vide letter dated 13.7.81, it was intimated that the same will now take place on 19.7.81. The applicants have stated that although the said copy of the letter was addressed to the applicant No. 1, he was not served with the said letter and accordingly he had no knowledge that the written test will be held on 19.7.81. The applicant No. 2 was spared to appear in the written test but he suffered

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from conjunctivitis and was admitted in the hospital under the Divisional Medical Officer, N.E. Railway, Gonda who issued the necessary medical certificate. So he could not appear in the test. After coming to know that the written test has taken place, the applicants preferred the representations. The relevant rules of promotion and selection of Non-gazetted railway employees makes the post of Assistant Engineer Class II selection post and the relevant rules in this behalf (rule 501) provides that the selection shall be made on the basis of recommendation of the selection committee after examining the service record, interview and holding written examination. Rules provide that the candidate for selection will normally be given notice for atleast 4 weeks prior to the holding of examination so that they can in turn give a full fortnight notice to the candidates concerned. According to the applicant both were entitled for absentee examination but no absentee examination for them was conducted and viva voce examination took place but they were not called to appear in the same.

In the counter affidavit it has been said that in the list of absentee candidates the name of the applicant was mentioned and the Executive Engineer Gorakhpur advised the applicant to appear in the written test and advised to obtain duty check passes from the office. It has also been stated that it was clearly stated in the General Manager's notification dated 27.12.80 that no more selection will be held and as the name of the applicant was included in the list of absentee candidates there is no question of inclusion of their names.

(AD)

The applicants in the rejoinder have reiterated what was stated by them in their application. The applicant No. 1 has reiterated that no notice whatsoever was given to him on 19th July 81. There is no denial in the counter of the assertion that no notice of the date on which the written test was held was given to the applicant. No document was filed which could indicate that ^{any} notice was given to him or that he was spared for the purpose. The applicant No. 2 was granted medical certificate and there was no fault of his own and he could have been given the opportunity. The respondents ^mstook the Railway Board's letter and deprived the applicant from appearing in the examination; whether deprived because of service was not effected to and the second time because of ~~in~~ the case of bonafide illness.

Accordingly this application deserves to be allowed and the respondents are directed to allow the ^{absentee} applicants to appear in the Supplementary/examination for promotion to the said higher post and let it be done within a period of ~~three~~ three months from the Supplementary ~~to be held~~. This application is disposed of as above finally. No order as to costs.

J. M. Singh
A.M.

U
V.C.

Lucknow Dated 5 -7-91.