

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. : 454 of 2000.

Dated this Monday, the 27th day of August, 2001.

Pranay Govind Survey,

Applicant.

Shri S. P. Kulkarni,

Advocate for the
Applicant.

VERSUS

Union Of India & Another,

Respondents.

Shri V. S. Masurkar,

Advocate for the
Respondents.

CORAM : Hon'ble Shri Justice B. Dikshit, Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

(i) To be referred to the Reporter or not ? Yes

(ii) Whether it needs to be circulated to other X
Benches of the Tribunal ?

(iii) Library. X

B. N. BAHADUR
MEMBER (A).

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Pranay Govind Survey,
Complaints Inspector (Officiating),
East City Division, Mumbai - 14.

Residing at - 3/3, Raigad Nagar,
Acharya Donde Marg,
Parel Village,
Mumbai - 400 012.

... Applicant

(By Advocate Shri S. P. Kulkarni).

VERSUS

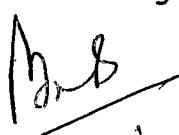
1. Union of India through
The Chief Postmaster General,
Maharashtra Circle,
Old G.P.O. Building,
Fort, Mumbai - 400 001.
2. Member (Posts),
O/o. the Director General (Posts),
Dak Bhavan, New Delhi - 110 001. .. Respondents.

(By Advocate Shri V. S. Masurkar)

O R D E R (ORAL)

PER : Shri B. N. Bahadur, Member (A).

This is an application made by Shri P. G. Survey,
seeking in substance, the relief as follows :



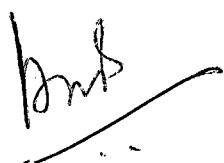
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"8.b) Hold and declare provision of Rule-6(a) (i.e. last Sentence) of Appendix-37 P & T Manual Volume-IV as autocratic arbitrary and violative of Article-14 of the Constitution of India. The said last sentence be quashed and set aside.

8.c) Quash and set aside impugned orders at Exh. A-1 and A-2 and A-3 rejecting withdrawal of Candidature for Exam. 1997 and 1998."

We have seen the papers in the case filed on behalf of rival parties and have heard the Learned Counsels, namely - Shri S. P. Kulkarni for the Applicant and Shri V. S. Masurkar for the Respondents.

2. The core facts, as they emerge from the reading of the papers in the case and the facts brought out during arguments, are that the Applicant challenges the refusal by the Respondents in rejecting his applications made to the effect that his withdrawal from the two departmental examination be permitted. Candidates like the Applicant are afforded four opportunities for examination to be able to compete and declared successful for the post of Inspector in the Respondents' department. Admittedly, the Applicant had taken two chances earlier to the ones being challenged, and had not been successful. (This point is confirmed by the Learned Counsel for Applicant during arguments.) There are two examinations for which he did not appear although he had applied both times. The first examination was held between 27.01.1999 and 29.01.1999. We have gone through the details of the process of application made by the Applicant and the



facts of his withdrawal, specially the dates and the reasons for so doing. The Applicant has stated that, in view of illness, he had approached the K.E.M. Hospital which had provided him with the certificate regarding his unfitness. The illness related to a pain in the abdomen. This factor, in fact, has been highlighted by the Respondents in their Written Statement at pages 77 and 79 where it is stated that the Applicant was an O.P.D. Patient only and that the application was submitted after return from leave.

3. Arguing the case on behalf of Applicant, the Learned Counsel made the point with reference to the rules that withdrawal of an application is allowed in cases like this, since the applicant fell ill and he made an application within ten days of his return from medical leave, which was duly sanctioned. To appreciate the point clearly, we shall reproduce below the relevant para of the Rule, a copy of which is available in extract at page 71 of the Paper Book. Rule 6 relating to Departmental Examination (Appendix No. 37) reads as under :

"6. Withdrawal of candidature - (a) Permission to a candidate to withdraw his candidature from an examination may be granted by the same authority who had granted him the permission to appear at that examination or by such other authority as may have been specially authorised in this behalf. The decision of such authority will be final.

(b) Withdrawal of candidature should not ordinarily be allowed unless the circumstances of the case fully justify the concession. After the assignment of roll numbers, candidates should be allowed to withdraw his

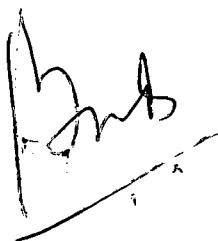


candidature only if he could not avail of the chance owing to circumstances beyond his control, and if the Head of the Circle (or any other competent authority, as the case may be) is fully satisfied about the genuineness of the case.

(c) No candidate should be allowed to withdraw his candidature after the examination except under very rare circumstances. Even when a candidate has been on medical leave during the days of examination, the request for withdrawal must be submitted within 10 days from the date of his return to duty. No such request submitted later should ordinarily be entertained.

4. Now in regard to the examination held between 27th to 29th January, 1999, we find that the Applicant indeed had made an application for medical leave supported by the aforesaid medical certificate. The leave was also granted. It is also correct that his request for that chance not to be treated as one of the four chances was made within ten days. It is on this point that the Learned Counsel, Shri Kulkarni, repeatedly stressed that the rules allowed him to seek exemption and hence the action by the respondents in rejecting his request was wrong and not justifiable.

5. Learned Counsel, Shri Kulkarni, also dwelt with the aspect of the relief sought in declaration of the rules as being arbitrary and autocratic on the ground that the rule itself states that no representation or appeal will be allowed. In fact, his representation to the superior authorities in the Government in New Delhi has been rejected on this ground alone.



6. Let us now look at the rules vis-a-vis the facts of the case with regard to the examination held in January, 1999. It is important to note that while there is a provision providing powers for withdrawal to be allowed, it is circumscribed by a clear provision that withdrawal should not ordinarily be allowed unless the circumstances fully justify the concession, and circumstances are beyond his control. It is stated in sub-rule (c) of Rule 6 that "No candidate should be allowed to withdraw his candidature after the examination except under very rare circumstances." It is true that there is a provision for ^{allowing an} application within ten days of return from leave; however, we have to examine the action of the Respondents in rejecting the request of applicant on the touchstone of reasonableness. In this regard, we do consider it an important factor that the applicant had been treated at the hospital as an out-door patient, and not one who was admitted. This fact has not been contraverted by the Applicant except that Shri Kulkarni argued that merely because a patient was an O.P.D. patient that did not mean that he was fit to appear for the examination. Unfortunately, a copy of medical certificate has not been provided to us in the application or even at the time of arguments. We are, therefore, not able to determine the details of the illness and are not satisfied with the mere mention of abdominal pain. This does not help the case of the Applicant. In this regard, we are impressed by the arguments made by the Respondents in their written statement, and orally by their Learned Counsel, that the Applicant was merely an O.P.D. patient.



We also note that the illness was of three days duration which coincide with the three days of examination.

7. In regard to the second examination, which was held from 18.08.1999 to 20.08.1999, the exemption by the Applicant is sought on the ground of illness of his wife. The application was submitted for withdrawal of candidature on 07.07.1999 which was rejected by the respondents vide letter dated 19.07.1999 i.e. merely a month before the examination was to commence. The circumstances here are not of his own illness, but that of his wife. It is important to note that the rejection came merely a month before the examination was to commence. This is important vis-a-vis the nature of the illness that is pleaded in the case and later reiterated by the Learned Counsel during argument. Here also what we have to see is, whether the rejection was in any way arbitrary or unjustified. Taking into consideration all facts and circumstances and the arguments made by respective sides, we are not convinced that the Respondents' rejection suffers from any of these infirmities.

8. In view of the above discussions, we are not convinced that a case has been made out for any interference by us. In the consequence, the O.A. is hereby dismissed. No order as to costs.

B.N.Bahadur
(B.N.Bahadur)
Member (A)

B.Dikshit
(B.Dikshit)
Vice Chairman