

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this the 18th day of February, 2002

Coram: Hon'ble Mr.Justice Ashok Agarwal - Chairman
Hon'ble Mrs.Shanta Shastry - Member (A)

O.A.574 OF 2001

Banmali Prasad,
Chief Vigilance Inspector,
(Traffic Accounts)
General Manager's Office,
(Vigilance Branch)
Mumbai CST
Mumbai 400 001.
(By Advocate Shri G.S.Walia) - Applicant

Versus

1. Union of India
through the General Manager,
Headquarters Office,
Mumbai CST,
Mumbai.
2. Financial Advisor and
Chief Accounts Officer
Central Railway,
Headquarters Office,
Mumbai CST,
Mumbai 400 001
(By Advocate Shri V.D.Vadhavkar) - Respondents

ORAL ORDER

By Hon'ble Mrs.Shanta Shastry - Member (A) -

The applicant who holds the post of Chief Vigilance Inspector had appeared for the written/supplementary examination held on 12.10.2000 and 9.11.2000 for promotion to the post of Assistant Accounts Officer Group 'B' through 70% selection notified on 6.7.2000. The applicant had cleared the written test and appeared for the viva-voce held on 2.3.2001 and cleared that also. However, later on, according to the applicant the aforesaid selection process was cancelled vide order dated 19.3.2001 by the competent authority. Thereafter a further examination was held on 9.6.2001 and the supplementary examination on 5.7.2001. The applicant though appeared, failed

to qualify in the aforesaid examination. He was therefore not permitted to appear for the viva-voce. The applicant being aggrieved has prayed to quash and set aside the cancellation of the selection to the post of Assistant Accounts Officer vide the imgugned order dated 18.3.2001. The applicant has further sought that his name should be included for viva-voce test along with those who had succeeded in the second written test held on 18.7.2001 and to promote the applicant to the post of Assistant Accounts Officer with all consequential benefits of seniority and increments.

2. The contention of the applicant is that the reasons for the cancellation of the earlier selection were not made known and also the candidate is required to obtain 30% marks aggregate in written test and also viva-voce. Therefore, the applicant could not have been disqualified merely on the basis of performance in the written test. The applicant is however not pressing ~~on~~ the ground of 30% marks any more.

3. The learned counsel for the respondents submits that the selection held earlier had to be cancelled as the zone of consideration for the vacancies to be filled had not been determined correctly and, therefore with the approval of the General Manager, the selection was cancelled. Excess persons were included in the zone of consideration earlier. The learned counsel further submits that before holding the next selection, i.e. written test, the reasons for cancelling the earlier

selection had been mentioned in the notification of 23.4.2001 which was issued after about more than nine months of the cancellation of the earlier selection on 6.7.2000. The applicant was aware of the fact and knowing fully well, he took up the fresh written test. He is therefore not legally entitled to challenge the cancellation of the selection which had taken place earlier. He is estopped from doing so.

4. The learned counsel has relied on the judgment in the case of Union of India and another Vs. N.Chandrashekaran, (1998 SCC (L&S) 916). It was held therein that when a selection procedure is made known to the candidates before selection, if such a candidate is unsuccessful, he is not entitled to challenge it afterwards. In the present case, the applicant is challenging the cancellation of the selection after he took the chance and appeared in the written test for the second time. Therefore, he cannot now challenge the cancellation of the earlier selection.

5. The learned counsel for the applicant also cited the decision in the case of Raj Kumar & others Vs. Shakti Raj & others, (1997 SCC 1029) wherein the judgment in the case of State of Jammu & Kashmir Vs. Madan Lal, (1995 (3) SCC 486) was distinguished. He therefore presses that applicant could not be estopped from challenging the selection even if they appeared in a subsequent selection. Besides, the applicant is challenging the cancellation of selection and not any irregularities committed in the selection.

6. The respondents have also contended that the applicant has not made those candidates who succeeded in the written test in the second selection and who appeared for the viva-voce as parties. This application suffers from non-joinder of parties and deserves to be dismissed on this ground itself.

The learned counsel for respondents has also brought to our notice another judgment in the case of All India SC & ST Employees Association and another Vs. A.Arthur Jeen and others, (2001 (1) SCS L.J.345) in support of his contention. In Para 13 of this judgment it was held that "successful candidates whose names were included in the panel of selection were not made parties. The argument of the learned counsel that since the names and particulars of the successful candidates included in the panel were not given, therefore they could not be made parties, has no force. The applicants before the Tribunal could have made effort to get the particulars, at least they ought to have impleaded some of the successful candidates, may be in a representative capacity, if a large number of candidates were there and if there was any difficulty in service of notices on them, they could have taken appropriate steps to serve them by one of the modes permissible in law with the leave of the Tribunal."

7. In the present case the learned counsel for the applicant submitted that the challenge is to the cancellation of the selection held earlier and also the applicant did not know about the successful candidates.

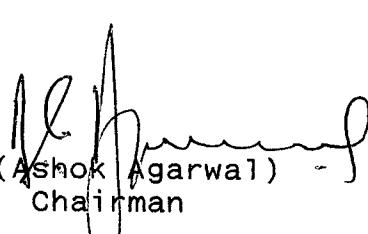
8. In view of the judgment cited by the respondents this ground does not hold good.

9. In our considered view the fact is that the applicant appeared in the next selection knowing fully well that the earlier selection was cancelled. He did not challenge the cancellation. The applicant argued that he had appeared under protest but no material has been produced before us in support of that. Had the applicant passed in the written test, perhaps he might not have challenged the selection. Having failed, the challenging of the cancellation of the earlier selection, in our considered view is only an afterthought and, therefore, the OA fails. The OA is accordingly dismissed both on the grounds of non-joinder of parties as well as on merit without any order as to costs.

Kanta S-

(Smt. S. Shastry)

Member (A)


(Ashok Agarwal)
Chairman

mb

Quoted
to Appellant and Respondent(s)



14/3/2002