

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.847/1998

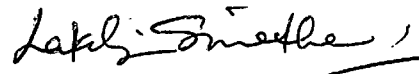
New Delhi this the 4th day of December, 2002

P.B. Siddique	...	Applicant.
Shri G.S. Walia	...	Advocate for the applicant.
Versus		
Union of India & Anr.	...	Respondents.
Shri V.S. Masurkar	...	Advocate for the respondents.

CORAM:

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Smt. Shanta Shastry, Member (A).

- (i) To be referred to the reporter or not? - Yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal? - No
- (iii) Library? - No



(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.847/1998

Mumbai this the 4th day of December, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Smt. Shanta Shastry, Member (A).

P.B. Siddique,
R/o Room No. 22, 1st Floor,
Dheeraj Colony,
Jimmy Baug,
Kalyan (E)
PIN -431 306.

.... Applicant.

(By Advocate Shri G.S. Walia)

Versus

1. Union of India, through
General Manager,
Central Railway,
Headquarters Office,
Mumbai CST,
Mumbai -400 001.
2. Divisional Railway Manager,
Mumbai Division,
DRM's Office,
Central Railway,
Mumbai CST,
Mumbai-400 001.

... Respondents.

(By Advocate Shri V.S. Masurkar)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

The applicant has filed this application, praying for a direction to the respondents to include his name in the panel dated 7.8.1995 to the post of CF/WF in the grade of Rs.2000-3200 (RP), C&W Department. He has also prayed for grant of seniority along with other persons selected in that panel in the proper place, in the post of Section Engineer (SE) in the pay scale of

Rs.6500-10500 (RS) which post was earlier in the pay scale of Rs.2000-3200 (RPS), with all consequential benefits.

2. The brief relevant facts of the case are that the applicant has stated that the respondents had issued a Notification dated 28.2.1995 for filling up the vacancies in the posts of SE. The applicant's name was included in the list. However, as the applicant became seriously ill from 10.2.1995 to 03.5.1995, he had made a request to the respondents to allow him to appear in the supplementary test. The written examinations were conducted on 8.4.1995 and 22.4.1995. The respondents have admitted that the applicant could not appear for the written test because he was under sick list from 10.2.1995 to 03.5.1995.

3. In the panel dated 7.8.1995, the respondents have included a paragraph as follows:

"One post for unreserved and one post for Scheduled Caste employees have been kept aside till the conduct of second supplementary selection/written test, in favour of the employees represented for".

4. The applicant's case had been recommended to Headquarters office for obtaining permission to conduct the second supplementary test vide letter dated 4.8.1995. Thereafter, the applicant was called by the respondents for selection to the post of SE vide letter dated 24.2.1996 and they had allowed him to appear in the written test on 28.2.1996. The respondents have stated in their reply that although he had attended the office on 24.2.1996 but due to administrative reasons the examination was postponed and he was advised that he would be called on another day. He was later called for selection to the said post along

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with others under Notification dated 5.6.1997. The result of the written test was declared on 4.7.1997 and the name of the applicant was included at Serial No. 20. Thereafter, the panel was issued by Office Order dated 30.12.1997 and his name was included but by a separate order dated 14.1.1998, the applicant was posted as SE. The posting of the other successful candidates in the selection held in 1997 was also done by an order of the same date, that is 14.1.1998. The applicant had made the representations to the respondents requesting them for restoration of his seniority along with other candidates who were selected in the panel of 7.8.1995 against the post which had been kept aside in the panel, as noted in paragraph 3 above. According to him, no reply had been received to his representations and this O.A. has been filed on 29.7.1998 seeking the reliefs mentioned above.

5. We have seen the reply filed by the respondents and heard Shri V.S. Masurkar, learned counsel. The learned counsel has submitted that it is correct that the applicant was called on 24.2.1996, that is for the second supplementary test which was to be held on 28.2.1996. However, due to administrative reasons, that examination was postponed and the applicant had appeared in the written test in 1997 in the subsequent selection. Learned counsel for the respondents has submitted that the O.A. suffers from non-joinder of necessary parties, as the persons ^{who} are likely to be affected in case the reliefs prayed for by the applicants ^{have not been impleaded} are allowed, and that it is barred by limitation. He has contended that the applicant has appeared in the selection held for the post of SE following the Notification dated 5.5.1997 along with other seniors and at this stage he cannot be given

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seniority in the panel issued on 7.8.1995 as it is barred by limitation. With regard to the one post being kept unfilled which is stated to be in the name of the applicant in paragraph 10 of the counter affidavit, he has submitted that this was a mistake committed by the respondents. The respondents have also submitted that the applicant could not be placed on the panel declared in 1995 because senior persons to the applicant were also found suitable during that selection and they have got to be accommodated and not the applicant. The respondents have submitted that the seniormost person who was found suitable in the earlier selection has been interpolated rectifying the error made in the selection post, although the relevant orders and who the senior person is have not been mentioned in the reply. Learned counsel has submitted that the respondents had made mistakes in keeping one post unfilled for the applicant in the panel of 1995 and thereafter, cancelling the second supplementary test that was scheduled to be held on 28.2.1996. He has, therefore, contended that as the applicant had appeared in the subsequent selection of 1997, he cannot get the benefit of the provisions of paragraph 306 of IREM and cannot get seniority. On the other hand, Shri G.S. Walia, learned counsel has relied on the provisions of paragraph 306 of IREM and he has also been heard in rejoinder.

6. We have carefully considered the pleadings and the submissions of the learned counsel for the parties.

7. From the reply filed by the respondents, it is noticed that due to the illness of the applicant, he could not appear

82

in the examinations which were conducted on 8.4.1995 and 22.4.1995. He had been called for the second supplementary test which was to be held on 28.2.1996. He had attended the office to take this test on 24.2.1996 but because of administrative reasons, the examination was said to have been postponed and he was advised to come on another date. However, when he again appeared for the selection as per the Notification issued by the respondents dated 5.5.1997, the respondents have treated the applicant as having been called for the subsequent selection.

8. The reason why the respondents did not hold the second supplementary test for the applicant as earlier intended by them, when they postponed the test which was scheduled to be held on 28.2.1996 has not been explained. It is also relevant to note that in the panel issued by the respondents dated 7.8.1995, they have clearly stated that one post was kept aside for an unreserved employee and one post for SC employee. The applicant belongs to the unreserved category. It is also relevant to note that by office order dated 14.1.1998, the applicant was promoted as SE. On the same date, the respondents have also issued promotion and transfer orders of SEs with respect to 28 other employees. In the facts and circumstances of the case, the contention of the learned counsel for the respondents that the respondents had made a mistake in keeping one post aside for a unreserved employee in the order dated 7.8.1995 appears to be a deliberate action. They have also not cared to hold the second supplementary test for the applicant after postponing the date which also appears to be arbitrary. The fact that promotion orders with respect to the

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applicant have also been issued separately on 14.1.1998 is also relevant as they have issued another separate order on the same date for other employees who have qualified in the test held pursuant to the Notification dated 5.5.1997.

9. The contention of the learned counsel for the respondents that there were senior persons to the applicant who had qualified in the 1995 selection and, therefore, the applicant cannot get seniority in the panel issued on 7.8.1995 at this stage, is rejected. The details of the senior persons have not been disclosed by the respondents in the reply. Besides, it appears that there has been no protest from the senior persons who had qualified in the 1995 test to the action of the respondents in keeping aside one post as they had done in the order dated 7.8.1995. In the facts and circumstances of the case, the contention of the learned counsel for the respondents that the O.A. should be dismissed for non-joinder of necessary parties, cannot be accepted. The applicant is challenging the action of the respondents in not giving him seniority in the panel issued on 7.8.1995 and the plea of non-joinder of parties is accordingly rejected in the circumstances of the case.

10. With regard to the ground taken by the learned counsel for the applicant that the O.A. is barred by limitation, taking into account the action of the respondents in first postponing the second supplementary test in 1996 and allowing the applicant to appear in the subsequent selection which was held in 1997, the results of which have been declared on 14.1.1998, it cannot be

88

held that this application is barred by limitation. This plea taken by the respondents is also rejected.

11. Learned counsel for the respondents has also submitted the relevant Departmental records which we have seen. It is seen from the Notification dated 5.5.1997 issued by the respondents that the employees who have remained absent in the main written examination due to the reasons beyond their control are allowed to appear in the supplementary written examination. In the present case, as mentioned above, the reason why the respondents did not hold the second supplementary test after holding the 1995 test, has not been mentioned in the case of the applicant. Therefore, in the facts and circumstances of the case, with regard to the applicant, the selection held by the respondents in 1997 has to be considered as the second supplementary test to which the respondents themselves had earlier called the applicant to appear which was postponed for administrative reasons. It is also not disputed that the applicant belongs to the unreserved category for which the respondents had kept aside one post to be filled after conducting the second supplementary selection/written test. In the facts and circumstances of the case, the O.A. is liable to succeed, considering the result of the applicant declared on 14.1.1998 as part of the panel issued on 7.8.1995.

12. In the result, for the reasons given above, the O.A. succeeds and is allowed with the following directions:

The respondents shall grant the applicant seniority at the appropriate place in the post of Section Engineer in the

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panel declared by them dated 7.8.1995, in accordance with the relevant law, rules and instructions, keeping in view the observations made above. This shall be done within two months from the date of receipt of a copy of this order, with intimation to the applicant. No order as to costs.

Shanta

(Smt. Shanta Shastry)
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'