

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 13/7/2001

OA No.497/99

D.K.Vasistha s/o Shri Lalita Prasad Vasistha r/o Love-Kush Nagar-II,
Tonk Phatak, Jaipur presently working as Sr. T.A.O. (P) in the office
of Principal General Manager, Telecom, Distt. Jaipur

..Applicant

Versus

1. Union of India through the Secretary to the Government
of India, Department of Telecom, Sanchar Bhawan, Sansad
Marg, New Delhi.
2. Chief General Manager, Rajasthan Circle, Telecom Circle,
Jaipur.
3. Principal General Manager, Telecom District, Jaipur

.. Respondents

Mr. P.N.Jati, counsel for the applicant

Mr. D.K.Swamy, proxy counsel to Mr. Bhanwar Bagri, counsel for
respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. A.P.Nagrath, Administrative Member

ORDER

Per Hon'ble Mr. A.P.NAGRATH, Administrative Member

In this application, the applicant has made a prayer
that the impugned order of the respondents dated 11.9.1999 (Ann.A1) be
quashed and set-aside and the applicant be allowed to avail of 6th
chance for appearing in the examination of J.A.O. Part-I.

2. This examination was scheduled to be held on 29.10.1999
and the applicant also submitted his application to appear in the said



examination. The respondents issued a letter dated 11.10.99 refusing permission to the applicant to appear in the said examination on the ground that he had already availed of 6 chances and in terms of Rule 6-(c) of Appendix No. 37, Part-I of the P&T Manual Vol. IV, the applicant had not sought any exemption from appearing in the departmental examination held in 1997. The applicant is aggrieved with this order and has filed this OA seeking relief. The applicant's plea is that in the year 1997 the examination was held from 12.9.97 to 16.9.97. During this period he had fallen sick and had applied for leave on medical grounds. It is stated that the leave for the period from 12.9.97 to 16.9.97 was sanctioned by the respondents. Alongwith this leave application, applicant submits that he also applied for not counting this opportunity as having been availed by him. Thus, the applicant contends that he has, in fact, availed of only 5 chances and he is entitled to appear for the sixth time.

3. The respondents in their reply have denied the claim of the applicant on the ground that in terms of Rule 6(c) of Appendix No.37, Part-I of the P&T Manual Vol.IV, the applicant was required to submit an application within the stipulated period of time for withdrawal of his candidature. While the respondents accept that the applicant submitted an application for leave on medical grounds and they also maintain that there was no request from his side for withdrawing his candidature. Because of this, it has been stated, that the applicant has availed of 6 opportunities and is not entitled to appear in the said examination now.

4. In so far as rule position is concerned, there is no controversy and the same has been admitted by the learned counsel for the applicant at the arguments stage. However, the learned counsel submitted that the applicant had made his intention clear by formally



seeking withdrawal of his candidature when he submitted an application to that effect alongwith medical certificate. Rule 6(c), as referred to earlier, stipulates as under:-

"6. Withdrawal of candidature.- (a).....

(b).....

(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 the 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."

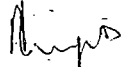
The learned counsel drew our attention to the document placed at Ann.A3 dated 16.9.97 which is very much within the time limit provided. There is an endorsement in Hindi on the same mentioning that this application was presented before the competent authority alongwith medical certificate but that authority has declined to give receipt for the same. No arguments were advanced to counter this from the opposite side. We find from the averments made by the applicant in the grounds for relief that this ground has been clearly stated in Para 5(ii). In reply to this para, the respondents have denied the contents, as stated by the applicant, and have stated that the applicant did not submit any application for withdrawal of his candidature and that the representation was submitted by the applicant only in the year 1999 but the respondents have not specifically rebutted the claim of the applicant in respect of endorsement on Ann. A3 of which we have made a mention supra. For want of clear unambiguous rebuttal on the part of the respondents, we are inclined to accept the plea of the applicant.

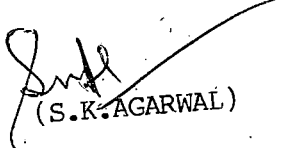
5. We, therefore, allow this OA and direct the respondents



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to permit the applicant to avail of one more chance to appear in the examination for J.A.O. Part-I. No order as to costs.


(A.P.NAGRATH)
Adm. Member


(S.K.AGARWAL)
Judl. Member