

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

**O.A. No. 149/2017
M.A. No. 324/2017**

Reserved on: 28.11.2018
Pronounced on:14.12.2018

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)**

Sunil Kumar Mishra son of Shri Dhruv Kumar Mishra, aged 35 years, Fitter-I (Mechanical – Carriage & Wagon), DRM Office, Ajmer & resident of House No.146/38, Sangam Vihar Colony, Gali No.3, Jongsanj, Ajmer. Group-C.

...Applicant.

(By Advocate: Shri S.K.Saxena)

Versus

1. Union of India through the General Manager, North Western Railway (NWR), Head Quarter, Jawahar Circle, Jaipur.
2. The Divisional Railway Manager (Establishment), North Western Railways, DRM Office, Ajmer.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

ORDER

Per: A.Mukhopadhaya, Member (A):

This Original Application, (OA), arises, as per the applicant, from the protracted inaction of the respondent authorities on his request to allow him to sit for a supplementary examination where he failed to appear for the same on the original date owing to being medically unfit.

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2. Briefly, the facts of the case are that the applicant did not appear in the Limited Departmental Competitive Examination, (LDCE), for the post of Junior Engineer, (Carriage and Wagon), held on 15.12.2016. This, he states, was because he fell ill a day prior to the date of written examination on 14.12.2016 and remained under treatment at the Railway Hospital, Ajmer till 25.12.2016. On rejoining duties, he applied in writing for being granted an opportunity to take the aforesaid examination on 23.01.2017, (Annexure A/1), i.e. within a month of rejoining his duties after having made an oral request earlier for the same to one Shri Amrit Lal, the then Office Superintendent, DRM Office, (Mechanical Wing), in this regard; (Para-4 of the rejoinder to the respondents' reply in this case refers). When the respondents proceeded nevertheless to publish the result of the examination on 21.03.2017, he again represented to them vide letter dated 22.03.2017, (Annexure 1A), stating that his application to be allowed to sit in a supplementary examination was based on Clause 223 of the Indian Railway Establishment Manual, (IREM), and that such liberty should be given to him while holding the merit list issued on 21.03.2017 in abeyance. Since none of these actions were taken he approached this Tribunal seeking the following relief:-

Relief

- i) An appropriate order or direction to the respondents for invoking Clause 223 of the IREM and to convene supplementary

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selection test (written examination) in regard to the applicant in pursuance to the advertisement dt. 05.09.2016 (Annex-2).

- ii) An appropriate order or direction to the respondents after grant of relief No.(i) to assess the merit of the applicant as compared to the other eligible candidates of General Category and if found suitable as per merit, to issue appointment order on the post of Junior Engineer (Carriage and Wagon) with consequential relief.
- iii) An appropriate order or direction to quash any order passed during the pendency of this application adversely affecting the purpose of this application.
- iv) Any appropriate order or direction to the respondents, as deemed just and proper in the circumstances of the case.
- v) Cost of the application.

Interim Relief:-

An appropriate order or direction to the respondents ad-interim staying further process in pursuance to the advertisement dt. 05.09.2016 (Annex-2) and result dt. 21.03.2017 (Annex-11) qua the General Category or in alternate, to issue interim directions to the respondents to hold supplementary selection test (for written examination) in regard to the applicant in pursuance to the advertisement dt. 05.09.2016 prior to finalisation of the panel for the advertisement in question pending decision of the original application.

3. The Tribunal passed an interim order in this case on 27.03.2017 directing the respondents not to finalise the panel for selection under the 25% LDCE quota for the post of Junior Engineer, (Carriage and Wagon), Department, Ajmer Division

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under General Category on the basis of the result dated 21.03.2017; (Annexure A/11). The Tribunal also observed in the same order that there would be no bar on the respondents from taking a decision on the requests made by the applicant for supplementary selection test/examination as per applications dated 23.01.2017, (Annexure A/1) and 22.03.2017; (Annexure A/1A).

4. In reply, the respondents state that Para 223 of the IREM relied upon by the applicant stipulates that the selection in question was to be held within a month of the first selection or return to duty of the employee absent from the examination provided that the employee returned to duty not later than three months after holding of the first selection. They contend that since the applicant rejoined duty on 26.12.2016, his first representation dated 23.01.2017 for being allowed to sit in supplementary examination was submitted far too late for any meaningful action to be taken.

5. The respondents further state that a perusal of the sickness certificate dated 14.12.2014, (Annexure A/8), produced by the applicant along with the prescription memo does not disclose any such medical condition as would prevent the applicant from appearing in the examination and aver that in this case no specific service was made by a Railway medical officer as

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required under Para 223 of the IREM. Referring to the fitness certificate dated 26.12.2016, (Annexure A/10), the respondents aver that the note from the Senior DMO, (Administration), merely states that "**Patient has inform that he has to attend deptl. examination on 15.12.2016. But condition does not allow to attend the examination**". This, according to the respondents, is merely a reproduction of a statement made by the applicant and is not to be read as a certificate to the effect that he was indeed too ill to attend the examination in question. Thus, the applicant, having failed to inform the doctor with regard to the circumstances that rendered him unfit to sit in the examination on 15.12.2016, later made such a statement before the doctor who reproduced this in the fitness certificate issued on 26.12.2016 but did not certify the same.

6. In his rejoinder, the applicant has again reiterated that the note by the doctor in the fitness certificate issued on 26.12.2016 is indeed a certification by him to the effect that the applicant was not in a condition to take the examination in question on 15.12.2016 and that therefore in terms of Para 223 of the IREM he should now be afforded an opportunity to do so.

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7. Learned counsels for the parties were heard and the material available on record was perused. Para 223 of the IREM, referred to and relied upon both by the applicant and the respondents, reads as under:

223. Supplementary Selection/Suitability Test

I. (i) A supplementary selection may be held in the following types of cases:—

(a) Summons for interview being received too late by the candidates making it difficult for him to reach the place of interview;

(b) Administration's failure to relieve him in time for interview;

(c) Sickness of the candidate or other reason over which the employee has no control. Unavoidable absence will not however, include absence to attend a wedding or similar function or absence over which he has controlled. Sickness should be covered by a specific service from the Railway Medical Officer.

(ii) The supplementary meeting of the Selection Board should as far as possible be attended by the same Officers who were present at the first Selection Board and held within one month of the first selection or the return to duty of the employee concerned provided that the employee returned to duty not later than three months after the holding of the first selection. In case the return of the employee is delayed beyond three months, the result of the selection need not be deferred, the name of the employee being incorporated as if he had appeared at the selection when first held. The employee will not be eligible to be considered if he returns to duty more than six months after the date of the first selection.

(iii) Not more than one supplementary selection should normally be held to cater to the needs of absentee due to sickness, non-intimation/late intimation of dates of tests etc. The second supplementary selection should be held rarely and with the personal approval of Chief Personnel Officer based on merits of each case.

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II. For non-selection post, if an employee is unable to appear in a suitability test within a period of six months due to reasons beyond his control, such as prolonged illness, he should be subjected to supplementary suitability test within a reasonable period after return to duty and being found suitable for promotion, he should be assigned proforma seniority position vis-a-vis his juniors promoted earlier.

A consideration of this provision and the admitted facts of the case shows that the applicant formally applied for being allowed to sit in a supplementary examination within a month of rejoining duties and therefore, it cannot be said that his application was out of limitation as no specific period of less than one month duration has been prescribed for making such an application. As far as the sickness and fitness certificates issued by the Railway medical authorities are concerned, (Annexures A-8 and A-10), a plain reading of the same does not indicate in any way that the note placed in the fitness certificate, (Annexure A/10), is merely a reproduction of patient/applicant's statement and not a certification by the doctor. As such therefore, there is a clear finding by the respondent authorities' own medical officer, *albeit* post facto on 26.12.2016, that the applicant's **"condition does not allow (him) to attend the examination"**. Given that the respondents have also not chosen to challenge the statement recorded by their own medical officer, there appear to be no substantive grounds for not regarding the same as a certificate giving the doctor's own findings.

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8. In view of the aforementioned finding read with Para 223 of the IREM, it appears clear that the respondents are required to provide the applicant an opportunity to sit for a supplementary examination for qualifying for the post in question.

9. Accordingly, this OA is allowed and the respondents are directed to convene a supplementary selection test, (for the written examination), for the applicant in pursuance of the advertisement dated 05.09.2016, (Annexure A/2), thereafter assess the merit of the applicant vis-à-vis other eligible candidates of General Category and, if found suitable as per merit, process his case along with others already on the panel, (Annexure A-11); as per rules.

10. Since the OA has been allowed, therefore, MA No.324/2017, for vacation of interim order, is rendered infructuous and the same is disposed of accordingly.

11. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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