

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No. 290/476/2011

Order Reserved on: 17.12.2018

DATE OF ORDER: 30.01.2019

CORAM

HON'BLE MR. SURESH KUMAR MONGA, JUDICIAL MEMBER
HON'BLE MS. ARADHANA JOHRI, ADMINISTRATIVE MEMBER

Dharmendra Kumar Soni S/o Shri Gopi Chand Soni, aged about 41 years, R/o Qtr. No. L-25-B, Near Railway Club, Railway Colony Ratangarh, Dist. Churu, at present employed on the post of Chief Coaching Clerk, Railway Station Ratangarh, North Western Railway (Rajasthan).

....Applicant

Mr. J.K. Mishra, counsel for applicant.

VERSUS

1. Union of India through General Manager, HQ Office, North-Western Railway, Malviya Nagar Near Jawahar Circle, Jaipur-17.
2. Divisional Railway Manager, North Western Railway, Bikaner Division, Bikaner.
3. Station Superintendent, Rly/Station Ratangarh, North Western Railway, Ratangarh, Distt. Churu.
4. Shri Jitendra Sharma, Assistant Commercial Manager-I, Ajmer Division, Ajmer, North Western Railway, Ajmer.
5. Shri Sanjeev Kumar Srivastava, Assistant Commercial Manager-II, Ajmer Division, Ajmer, North Western Railway, Ajmer.

....Respondents

Mr. Salil Trivedi, counsel for respondents no. 1 to 3.
None present for respondents no. 4 & 5.

ORDER

Per: SURESH KUMAR MONGA, JUDICIAL MEMBER

The pleaded case of the applicant herein is that he was initially appointed as Booking Clerk on 21.12.1995 at Suratgarh

Junction. He was promoted as Senior Booking Clerk in the pay scale of Rs. 4000-6000 in February, 1998. He was further promoted as Head Booking Clerk in the pay scale of Rs. 5000-8000 with effect from 01.11.2003. It has further been averred that after the recommendations of 6th Central Pay Commission, the pay scales of Head Booking Clerk i.e. Rs. 5000-8000 and Booking Supervisor i.e. Rs. 5500-9000 were merged into single pay scale of Rs. 9300-34800 with grade pay of Rs. 4200/- and the post was re-designated as Chief Coaching Clerk. It has further been averred that respondent no. 1 issued a notification dated 12.01.2011 for conducting a Limited Departmental Competitive Examination (LDCE) against 30% quota for promotion to Group 'B' posts of Assistant Commercial Manager. The applicant fulfilled all the eligibility conditions as he had rendered more than 05 years of service and, therefore, he submitted his application on 05.02.2011 to appear in the said examination. However, he was not informed about the subsequent development of selection process. For the first time, a letter dated 25.03.2011 was received on 01.06.2011 at Ratangarh Junction when the applicant came to know that the written test was scheduled to be held on 16.04.2011. Thereafter, he immediately sought information under Right to Information Act vide letter dated 03.06.2011 regarding examination in question. He was provided the information by the Public Information Officer on 20.06.2011 to the effect that till date respondent no. 3 has not received any information / mail in connection with the aforesaid selection and, therefore, he was not relieved for appearing in the examination. The applicant, therefore, submitted a detailed representation on 30.06.2011.

The said representation was forwarded by respondent no. 3 and he gave false information to respondent no. 2 that the applicant was informed regarding the date of written examination as per letter dated 25.03.2011. The applicant has asserted that he did not receive any information regarding aforesaid examination upto 01.06.2011. It has further been averred that the applicant was deprived of his right of consideration for promotion to higher post and as such his service career has been jeopardized. Aggrieved by the said action of the respondents, the applicant has invoked the jurisdiction of this Tribunal by way of preferring the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 and has prayed for issuance of a direction to respondents to conduct a supplementary examination and grant him promotion to the post of Assistant Commercial Manager under 30% LDCE quota.

2. The respondents by way of filing a joint reply have joined the defence and opposed the claim set up by the applicant in his O.A. The fact with regard to his appointment as Commercial Clerk and subsequent promotions upto the post of Head Booking Clerk has not been disputed by the respondents. However, in order to oppose the applicant's claim, it has been submitted in the reply that the respondent no. 1 vide letter dated 04.03.2011 had issued a provisional eligibility list as Annexure 'A' and ineligibility list as Annexure 'B' for selection to Group 'B' post of ACM against 30% quota meant for LDCE. The said letter was got noted from the employees so as to keep them ready for written test at a short notice and the same was circulated vide office letter dated 25.03.2011. The name of the applicant was at

Sl. No. 5 in Annexure 'A' list of eligible employees. Further, in terms of respondent no. 1's letter dated 21.03.2011, the date for written test was scheduled to be held on 16.04.2011 and the Subordinate Incharge was duly informed about the same vide office letter dated 25.03.2011. Accordingly, the applicant was informed that the examination will be held on 16.04.2011 in reference to respondent no. 2's letter dated 25.03.2011 by the Subordinate Incharge. The applicant could not be placed on selection panel on account of the fact that he did not appear in the written examination conducted on 16.04.2011. With all these assertions, the respondents have prayed for dismissal of the O.A.

3. Heard learned counsels for the parties.

4. Learned counsel for the applicant contended that the letter dated 25.03.2011 was never got noted from the applicant and, therefore, he could not appear in the written test held on 16.04.2011. Learned counsel while referring a letter dated 29.06.2011 (Annexure A/7) argued that the list of eligible candidates, who were to appear in the written test, was not received by respondent no. 3 at Ratangarh and, therefore, there was no occasion with him to get the letter dated 25.03.2011 noted whereby the scheduled date i.e. 16.04.2011 for written test was notified. Learned counsel, thus, submitted that a serious prejudice has been caused to applicant as he lost a chance to participate in the written test for promotion to a higher post.

5. Per contra, learned counsel for the respondents submitted that the list of eligible candidates was notified on the official website of the respondent-department and the same was within the knowledge of the applicant. He further submitted that the applicant was duly informed about the date of examination i.e. 16.04.2011 as he was apprised about the letter dated 25.03.2011. Learned counsel further argued that the applicant could not be placed on the selection panel on account of the fact that he did not appear in the written examination conducted on 16.04.2011 despite having the knowledge about the same. He further submitted that even in the subsequent years, the applicant failed to appear in the Limited Departmental Competitive Examination. Therefore, it cannot be believed that he was not in the knowledge of the scheduled date i.e. 16.04.2011 for written examination, which was conducted pursuant to notification dated 12.01.2011.

6. Considered the rival contentions of learned counsels for the parties and perused the record.

7. The fact that the applicant's name was included in the list of eligible candidates is not in dispute. The list of eligible candidates was also uploaded on the official website of the respondent-department and as per the applicant's own admission in paragraph 6 of the O.A., he could get a copy of said eligibility list through internet. There is no denial to the fact that a letter dated 25.03.2011 was issued by the respondents wherein the date for conducting the written test was notified. The said letter dated 25.03.2011 was sent to respondent no. 3.

Though the applicant was informed about the date of written test by Subordinate Incharge but still he failed to appear in the said test conducted on 16.04.2011. A perusal of applicant's representation dated 30.06.2011 (Annexure A/6) reveals that he was verbally informed by Station Superintendent, Ratangarh Junction that he did not receive any post or information and, therefore, the applicant could not be relieved for appearing in the written test, cannot be believed. Admittedly, the applicant was having the knowledge about the eligibility list, which was uploaded on the official website of the respondent-department. His name was also included in the said list at Sl. No. 5. We do not find anything on record as to why the Subordinate Incharge will not apprise the applicant about the letter dated 25.03.2011 vide which the date of written test was notified. The respondents while placing reliance upon a document/letter Annexure R/3 dated 29.06.2011 have specifically pointed out that the applicant was duly apprised about the date of written test. The fact that the applicant even did not appear in the Limited Departmental Competitive Examination in subsequent years also cannot be ignored and it can be safely inferred that the applicant was not inclined to appear in the written test in order to get promotion on the higher post. Since he failed to appear in the written test conducted by the respondents, therefore, we do not find any infirmity in the action of the respondents whereby his name has not been placed on the selection panel.

8. In the conspectus of discussions made hereinabove, we do not find any merit in the present Original Application and the same deserves to be dismissed.

9. Accordingly, the present Original Application is hereby dismissed. However, there shall be no order as to costs.

(ARADHANA JOHRI)
ADMINISTRATIVE MEMBER

(SURESH KUMAR MONGA)
JUDICIAL MEMBER

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