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Central Administrative Tribunal
Principal Bench

OA-659/2003

New Delhi this the 16th day of September, 2003

Hon'ble Smt. Lakshmi Swaminathan. Vice-Chairman (J)
Hon'ble Shri V.K. Maiotra. Member (A)

Mrs. Neelam Rautela.
W/o Shri V.S. Rautela.
at present posted as Head Clerk.
C.R. Branch. D.R.M. Office.
New Delhi.

-Applicant

(By Advocate: Shri K.K. Patel)

Versus

Union of India through:

1. The General Manager
Northern Railway
Baroda House.
New Delhi-110 001.
2. Divisional Railway Manager.
Northern Railway. State Entry Road.
New Delhi.

-Respondents

(By Advocate: Shri Satpal Singh)

ORDER (Oral)

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

In this application, the applicant has prayed for quashing of the letter issued by respondents dated 5.2.2003 with the further direction to the respondents to promote the applicant to the post of Office Superintendent (OS) Grade II, consequent on the selection conducted in pursuance of the notice dated 4.4.2002. The applicant has also prayed for exemplary costs of the proceedings.

2. The brief relevant facts of the case are that the respondents had issued a letter intimating the eligible candidates about the selection for the

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post of OS Grade-II. The written test was to be held on 27.4.2002 and viva voce on 31.10.2002. Respondents declared ^{the result} result of the written test on 21.8.2002 and out of three candidates. two were declared successful. including the applicant. The other candidate Smt. Chander Prabha who had qualified in the written test superannuated from service w.e.f. 30.9.2002. Respondents held the viva voce test for the aforesaid post on 31.10.2002. According to the learned counsel for respondents. there was only one candidate who had appeared for the viva voce test and hence, they are not in a position to compare the Confidential Reports as the senior most candidate Smt. Chander Prabha had retired from service.

3. Learned counsel for respondents has relied on certain instructions issued by Railway Administration dated 26.10.1999 and 6.2.2003. copies placed on record. Shri Satpal Singh. learned counsel has submitted that as there has been delay on the part of the respondents for evaluating the answer sheets of declaration of the written test held for the post of OS Grade-II, which should have been declared normally within two months for holding the test. a decision had been taken by the respondents to cancel the same, after notice to the Head of Office (HOD). Divisional Railway Manager (DRM). General Manager (GM) and others. The respondents have also stated in the reply that as there was only one candidate appearing in the viva voce test namely. the applicant. they cannot compare the Confidential Reports with other candidates. They

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have also stated that accordingly a decision had been taken to cancel the selection due to irregularities and procedural error committed by the officials in not declaring the results of the written test well in time. as required under the executive instructions issued by the Railway Administration from time to time.

4. Shri K.K. Patel, learned counsel for the applicant has submitted that in a subsequent test held by the respondents, i.e., the written test on 29.3.2003 followed by viva voce test on 28.4.2003, the applicant has been declared successful and she has been appointed to the post of OS Grade-II w.e.f. 14.5.2003. He has, therefore, proved that in the circumstances of the case as applicant cannot be blamed for any fault in non-declaration of the results in time by the respondents, she cannot be penalised. Therefore, he has submitted that a direction should be given to the respondents to treat the applicant as promoted to the post of OS Grade II in view of selection held with effect from the date of the interviews/viva voce test having been held on 31.10.2002 with all consequential benefits.

5. We have carefully considered the pleadings and submissions made by the learned counsel for the parties.

6. From the contentions of the learned counsel for respondents as well as the averments made by them

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in the counter affidavit. it is evident that the delay in declaration of the results of the written test held on 27.4.2002 only on 21.8.2002 instead of on or before 27.6.2002 is squarely that of the respondents. The instructions issued by the Railway Administration and relied upon by the learned counsel for the respondents merely state that any delay in evaluation of answer sheets beyond two months should be brought to the notice of DRM or HOD and delays of more than three months should be brought to the personal notice of the General Manager. It has been further stated that as per these instructions, the officer nominated for evaluation of answer sheets should ensure that the same should be completed within two months and delay should be brought to the notice of the aforesaid senior officers. There is no whisper at all in the counter affidavit filed by the respondents as to what action, if any, was taken by these higher officers, i.e., DRM, HOD and G.M. in the present case to fix the responsibility on the officer who had not complied with these instructions namely, to evaluate and declare the results within the prescribed time of two months. From the averments made by the respondents themselves, it appears that because they failed to declare the results of the written test within the prescribed time and delayed the matter, by which time one of the candidates, namely, Smt. Chander Prabha had superannuated, that was the reason for the cancellation of the test held in pursuance of their notice/letter dated 4.4.2002. It is also relevant to note that from the official records, they would have

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been fully aware that the other candidate, Smt. Chander Prabha was to superannuate from service w.e.f. 30.9.2002. they have declared the results of the written test after the two months prescribed in the circulars and held the viva test after the other candidate retired. Admittedly, only two candidates had qualified in the written test namely, the applicant and the candidate who had superannuated in-between. In the circumstances of the case, it cannot be held that the applicant was in any way responsible for the delay caused by the respondents themselves in declaring the results of the written test, which was conducted on 27.4.2002. At this stage, it is further relevant to note that the applicant has again qualified in the subsequent written test and viva voce test held in March and April 2003 and has been promoted to the post of OS Grade-II w.e.f. 14.5.2003. In the circumstances, we see no reason why the respondents should take advantage of their own wrongs, so as to deprive the applicant the benefits which she was otherwise entitled to following her success in the written test and viva voce test held by them on 27.4.2002 and 31.10.2002 for promotion to the post of OS Grade-II.

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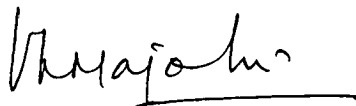
7. Therefore, in the circumstances of the case, the OA is allowed with the following directions:-

- i) The respondents shall verify from their records and in case the applicant has passed
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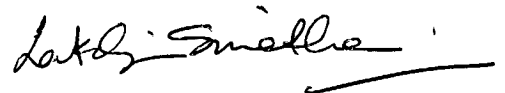
the viva voce test and is otherwise qualified under the relevant Recruitment Rules as on 31.10.2002. she shall be granted the promotion to the post of OS Grade-II w.e.f. 1.11.2002 instead of 14.5.2003. with all consequential benefits, including the benefit of seniority pay and allowances and other benefits in accordance with law, rules and instructions.

ii) The above action shall be taken within a period of two months from the date of receipt of a copy of this order with intimation to the applicant.

No order as to costs.



(V.K. Majotra)
Member (A)



(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

cc..