

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (S) No. 1789 of 2020

Mukesh Kumar Tanti, Aged about 28 years, S/O Sri Dashrath Mahto, Resident of Sinni, P.O.- Sinni, Dist.- Saraikella Kharsawan, Jharkhand, PIN-833220.

.. **Petitioner**

Versus

1. Union of India through the General Manager, South Eastern Railway, Garden Reach, P.O. & P.S. – Garden Reach, Kolkata -43 (W.B.)

2. The Chairman Railway Recruitment Cell, South Eastern Railway, Garden Reach, P.O & P.S. – Garden Reach, Kolkata-43(W.B).

3. The Chief Personnel Officer, South Eastern Railway, Garden Reach, P.O & P.S. – Garden Reach, Kolkata-43(W.B).

4. Railway Recruitment Board, Metro Railway, A.V. Complex, Chitpur, Opposite K.G. Kar Medical Collage and Hospital, Kolkata, P.O & P.S. – Kolkata, Dist.-Kolkata-700037.

... **Respondents**

CORAM: HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Writ Petitioner	: Mrs. M.M. Pal, Sr. Advocate Mrs. Leena Mukherjee, Advocate
For the Respondents	: Mr. Dilip Kumar Chakravarty, Adv

Oral Judgment

Order No. 05 : Dated 17th August, 2021:

With consent of the parties, hearing of the matter has been done through video conferencing and there is no complaint whatsoever regarding audio and visual quality.

2. The instant writ petition has been filed under Article 226 of the Constitution of India wherein the judgment dated 18th October, 2019 passed in O.A./051/00814/2018 by the learned Central Administrative Tribunal has been assailed whereby and whereunder the Original Application filed by the writ petitioner has been dismissed.

3. The brief facts of the case, as per the pleadings made in the Original Application, which are required to be enumerated herein, read under as:

The writ petitioner while working under the Indian Railway made an application in pursuance to notification dated 14.10.2017 issued by respondents-South Eastern Railway by which the applications were invited for General Departmental Competitive Examination (GDCE) and participated in the selection process including On-line written test held on 09.12.2017, the result of which was declared on 19.02.2018 but due to lower position in the merit list, he could not have been selected.

The writ petitioner has raised the grievance by filing Original Application before the Central Administrative Tribunal to the effect that on the date of On-line written examination he became disturbed due to defective computer provided to him and during the entire period of examination his computer was not functioning well due

to which, time was wasted, and even on complaint made by him nothing has been done by the Invigilator. Lastly, when 25 minutes time were left, he started to answer the questions but due to frustration he could only answer 47 questions correctly and answered 25 questions wrong and further 28 questions were left blank; and thereby he could score 39.08 marks. Thereafter, he appeared in the Ability Test, which is mandatory for Assistant Station Master (ASM) category and scored 20.08 marks and as such his total marks stood at 47.54 but since he could not obtain marks above the cut-off marks, hence he was not called for further stage of selection.

His contention before the Tribunal was that he could not answer correctly due to defective computer set provided to him in the On-line written examination and therefore, interference ought to have been shown by the Tribunal upon the respondents to provide grace marks so that he be selected and appointed to the post in question.

On the other hand, the case of the respondent-Railway before the Tribunal was that the writ petitioner appeared in the written examination on 09.12.2017, result of which was published on 19.02.2018. So far complaint made by the writ petitioner dated 16.12.2017 is concerned, it was submitted before the Tribunal that no complaint dated 16.12.2017 was

received in the office of the respondents-Railway and only complaint received by the respondent is dated 16.12.2018, which is after the period of about more than a year that too when the writ petitioner came to know about being unsuccessful in the examination then he has tried to make out a case by making representation dated 16.12.2018 which was not a fit ground to show interference by the Tribunal. It was further submitted that case of the petitioner was considered on merit and when it was found that he had secured lesser marks than that of last selected candidate, he was declared to be unsuccessful candidate.

The Tribunal, after taking into consideration the rival submissions, has passed the impugned order dismissing the Original Application, which is the subject matter of present writ petition.

4. Mrs. M.M. Pal, learned senior counsel being assisted by Mrs. Leena Mukherjee, learned counsel for the petitioner has submitted that the Tribunal has not appreciated the fact about mal-functioning of the computer set provided to the writ petitioner in the examination hall for On-line written examination. It has further not been appreciated by the Tribunal that due to defective computer the writ petitioner could not answer all the question for no fault on his part, and no extra time

was granted to him in the written examination, therefore, in the facts and circumstances of the case order passed by the Tribunal is fit to be quashed and set aside with a direction upon the respondents to grant further grace marks so that he may be selected and appointed to the post in question.

5. Mr. Dilip Kumar Chakravarty, learned counsel for the respondents-Railways has vehemently opposed such submission by making a submission that no such complaint has ever been made by the writ petitioner as on 16.12.2017 rather complaint has been made for the first time on 16.12.2018 i.e. after lapse of a year that too when the entire selection process was concluded and taking into consideration the aforesaid aspect of the matter the Tribunal is correct in dismissing the Original Application filed by the writ petitioner, therefore, no interference may be shown to the order which is impugned in this writ petition.

6. We having heard learned counsel for the parties and on appreciation of the rival submissions as also on perusal of the relevant documents appended to the writ petition deem it fit and proper to refer certain admitted facts along with the dates:

The On-line written examination was conducted on 09.12.2017, the result of which was published on

19.02.2018. As per writ petitioner a complaint was made before the respondents-authorities on 16.12.2017 through registered post bringing to the knowledge of the authority that the computer set, which was provided to him during On-line examination, was not functioning well. The respondents' contention is that such complaint was never made rather for the first time it was made on 16.12.2018, when the entire selection process was over.

7. This Court after considering the aforesaid factual aspect along with dates found therefrom that even accepting that the computer set provided to the writ petitioner during On-line written examination was not functioning well it ought to have been brought to the notice of the respondents-examining body at the venue of the examination and further even accepting that he submitted representation on 16.12.2017, it was after seven days from the date of written examination.

Further, the writ petitioner even after making complaint dated 16.12.2017, stated to be sent through registered post, has not raised any grievance for a year rather the complaint thereafter has been made on 16.12.2018 and prior to that i.e. on 12.10.2018, the Original Application was filed. By that time the entire selection process was concluded and the appointment was made, therefore, the question herein is that even

accepting the ground of writ petitioner that he made complaint through registered post on 16.12.2017, what prevented the writ petitioner to immediately approach to the Court of law and why he had waited about a period of ten months from the date of written examination, which has not been explained by the writ petitioner.

8. This Court is further of the view that on such a factual dispute when the fact finding has been arrived at by the learned Tribunal, it would not be appropriate for this Court to disturb the aforesaid finding on fact

9. This Court therefore is of the view that the order passed by the Tribunal requires no interference.

10. Accordingly, the writ petition fails and is dismissed.

(Dr. Ravi Ranjan, C.J.)

(Sujit Narayan Prasad, J.)

Alankar/ -
N.A.F.R.