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**(2005) 02 RAJ CK 0083**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 3312 of 2003**

K.K. Saxena

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 22-02-2005

**Acts Referred:**

**Citation :** (2006) 2 RLW 1493

**Hon'ble Judges :** S.C. Singhal, J;Gyan Sudha Mishra, J

**Bench :** Division Bench

**Advocate :** Shailendra Shrivastava, for the Appellant; G.C. Garg and Alok Garg, for the Respondent

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## Judgement

Gyan Sudha Misra, J.—The petitioner-herein Shri K.K. Saxena has filed this writ petition praying for modification or for setting aside the judgment and order dated 27.9.2000 passed by the Central Administrative Tribunal (for short "CAT") Jaipur Bench, Jaipur by which the learned Members of the Tribunal were pleased to hold that the applicant was entitled to be considered for the post of Assistant Engineer (for short A.En.) after he was found medically fit for the post, by a duly constituted Medical Board. The Tribunal thereafter disposed of the application of the petitioner with a direction to the respondents to consider the candidature of the applicant-petitioner herein for promotion on the post of Assistant Engineer against any future vacancy.

2. In order to clarify the position it may be stated that the petitioner was functioning as Chief Inspector of Work (for short CIOW) in the year 1994 and was posted at Jaipur. It appears that some vacancies were available for selection to the post of Assistant Engineer Group-B post on 13.3.1996 against which the petitioner also was considered and for this purpose he was allowed to appear in the written test which was conducted by the respondent, for such promotion. The petitioner successfully passed out this written test but the trouble arose for him as in the medical examination he was declared disqualified due to his weak eyesight.

3. The petitioner feeling aggrieved with the report of the Medical Officer regarding his alleged weak eye-sight, preferred an appeal before Chief Medical Director who thought it fit that the Medical Board be constituted for this purpose. The petitioner went through the check up of his eye sight by the Medical Board who finally certified that the petitioner could not be disqualified on the ground of bad eye-sight. In the meantime the petitioner had also filed an application before the CAT at Jaipur Bench, Jaipur for granting him promotion on the post of A.En. as it was stated that lie had passed out the written test and was also not incapacitated in any manner due to his eye-sight. It further transpires that while this dispute was going on, the respondents were also conducting interview for the promotional post of A.En. and the petitioner although approached the respondents seeking interview by the Board, which permission had been granted to him by way of an interim order of the Court, the same could not be made effective in so far as the petitioner is concerned, since the interview was already over by that time. The petitioner brought this fact to the notice of the Tribunal but the Tribunal having considered the matter, was of the opinion that since the process of selection is already complete, he may be considered for promotion against future vacancies.

4. The petitioner feeling aggrieved with the aforesaid order of the Tribunal has filed this writ petition wherein it has been urged that the petitioner having passed the written test and also having been found medically fit, he should have been granted promotion on the post of Assistant Engineer.

5. But this argument is not acceptable outright as the petitioner and his counsel are clearly missing that although the petitioner had successfully passed out the written test and was also found medically fit, he could not appear for the interview as the interim order of the Tribunal for granting him interview could not be communicated to the respondents and for the reasons beyond control of the respondents he could not appear for the interview and it is for this reason that although he succeeded in his contest before the Tribunal, he could only secure a direction to the respondents that he may be considered against future vacancies. Thus the petitioner having failed to appear in the interview for reasons beyond control, it cannot be held that the respondents should straightaway grant him promotion on the post of A.En. it cannot be accepted as correct and an unblemished argument. The counsel for the petitioner also rightly could not confront the order of the Tribunal beyond a point in so far as the direction for promotion on the post of A.En. is concerned, but it was submitted by him that once he had passed out the written test and was also found medically fit, it was the respondents who were duty bound to grant him an opportunity to appear in the interview by conducting a special interview and if he could not appear for the interview for reasons beyond his control, which is narrated herein before, he could not be denied the promotion for such a lacuna and the Tribunal also had failed to consider this aspect of the matter.

6. Having deliberated over the submissions of the counsel for the petitioner on

this aspect, we find that in so far as the requirement to appear in the written test is concerned, the prayer that he should be exempted from appearing for the second time in the examination, appears to be correct. In fact the Tribunal has also not stated in its order that he is required to appear afresh for the written test, but the apprehension of the petitioner that the order might be misinterpreted by the respondents, we deem it appropriate to clarify that the petitioner shall not be required to appear for the written test afresh for promotion on the post of A.En. since he has already cleared it earlier and it was the respondents who could not hold interview for him at the relevant time. Hence, in so far as the consideration for promotion against future vacancies is concerned, opportunity be granted to the appellant to appear in the interview as and when it is conducted and thereafter as per his performance he shall be considered for promotion on the post of A.En and no impediment shall be put in his way in so far as his eye sight is concerned as he has already succeeded on this count by obtaining clearance from the Medical Board. The order of the Tribunal, therefore needs no interference and the same has merely been clarified in the interest of justice, to the petitioner, that the petitioner shall be considered for promotion to the post of A.En, only after facing the interview in this regard and the requirement to appear afresh in the written test as also the medical test shall not be required of the petitioner as he has already cleared these two tests. He shall therefore, be considered for promotion on the post of A.En. on the basis of his performance in the interview which he will face in future. The writ petition in the light of this order be treated as disposed of.

(The following note is being appended as directed by Hon"ble the Acting Chief Justice vide order dt. 04.04.2005).

The order/judgment was dictated and delivered in open Court by the D.B. comprising Hon"ble Mr. Justice G.S. Misra & Hon"ble Mr. Justice S.C. Singhal (As he then was) on 22-2-05, but signature of Hon"ble Mr. Justice S.C. Singhal could not be obtained on the order/judgment because his sad demise on 08-3- 05.