

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

TA No. 1 of 2013

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Ranjan Kumar Biswal, aged asabout 37 years, S/o Shri Bansidhar Biswal, resident of Sisupal, PS-Lingaraj, Bhubaneswar-2, Dist.-Khurda.

.....Applicant
VERSUS

1. Steel Authority of India Limited represented through its Chairman, Ispat Bhawan, Lodhi Road, New Delhi- 110003.
2. Executive Director, Raw Material Division, Industry House, 10 Camac Street, Kolkata – 700017.
3. General Manager, (Personnel & Administration), Industry House, 10 Camac Street, Kolkata- 700017.
4. General Manager, Bolani Ores Mines, Bolani, PO-Bolani, Dist.-Keonjhar.
5. Senior Manager, (Personnel & Administration), Bolani Ores Mines, Bolani, PO-Bolani, Dist.-Keonjhar.

.....Respondents

For the applicant : Mr.S.Mohanty, counsel

For the respondents: Mr.T.K.Pattnaik, counsel

Heard & reserved on : 27.2.2020

Order on : 17.3.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant, being aggrieved by the decision of the respondents not to finalize the recruitment process for the post of mining mates for Bolani Ores under the respondents Steel Authority of India Ltd. (in short SAIL) vide the requisitions to the District Employment Exchange (in short DEE) on 9.4.2001 and 16.6.2001, had filed the W.P. (C) No. 13656/2004 before Hon'ble High Court which was transferred to this Tribunal for adjudicating vide order dated 9.1.2013. Thereafter, this petition was registered as the TA No. 1 of 2013. It was filed by the applicant seeking the following reliefs as under:-

“The Petitioner, therefore, prays that this Hon'ble Court be graciously pleased to issue Rule NISI calling upon the Opp. parties to show cause and produce entire connected recruitment records before this Hon'ble Court on the consideration of which allow this writ petition; and

- a) Issue any appropriate writ order or direction, directing the Opp. parties to give effect to the recruitment processes for the

appointment of mining mates in Bolani Ores Mines, Bolani in a fair manner.

AND

b) Issue any other such or further appropriate writ order or direction, as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case and in the interest of justice.

AND

c) Pass such further and other order/orders as this Hon'ble Court may deem fit in the facts and circumstances of the case.

And for which act of kindness, the petitioner shall, as in duty bound, ever pray."

2. The applicant, claiming eligibility for the post of mining mates requisitioned by SAIL, averred in the TA that he was one of the candidate for the post in question being sponsored by the DEE and he was called to submit his application for the post. He was called for the written test and viva voce test on 20.7.2002 as per the letter dated 9.7.2002 (Annexure-2 of the TA). But on the day of the test on 20.7.2002, the respondents declared postponement of the test till further order and a telegraphic message (Annexure-3) was sent to the applicant, which was received three dates later. Another letter on 22.10.2002 (Annexure-4) was sent to the applicant to attend the test for the said post, which was again cancelled.

3. It is further averred in the TA that the applicant was called for the test on 28.10.2003 third time vide the letter at Annexure-5 and he appeared in the test, but the respondents have not declared the result of such test for recruitment for the post of the mining mate held on 28.10.2003. Hence, the applicant submitted a representation dated 7.6.2004 (Annexure-6 of the TA) on which no decision has been taken by the authorities and hence, this TA has been filed by the applicant.

4. Counter has been filed by the respondents denying the allegations made in the TA, by stating in para 6 as under:-

"That in reply to the averments made in para-9 of the writ petition, the deponent humbly submits that the allegation of the petitioner is not correct. The deponent never compelled the petitioner to appear in the written test and interview/viva voce test. After receipt of the call letter the petitioner and other applicants have appears in the written test and viva-voce/interview on 28.10.2003. None of the candidates sponsored by the Employment Exchange were found suitable to be recommended for appointment as Mining mate by the Selection committee. Needless, to mention here that as per practice, candidates selected get the order of appointment, but the result of the test is not declared. No irregularity has been committed by the opp. parties by not communicating the result of the test held on 28.10.2003 to the petitioner."

5. It is also averred in the Counter that due to delay in the recruitment process, the posts in question were filled up from amongst the regular employees of the mines vide the orders at Annexure-A series of the Counter.

6. Rejoinder filed by the applicant disputed the averment in the Counter that none of the candidates who appeared the test on 28.10.2003 was found suitable, based on the information obtained through information under the RTI Act, 2005 on 16.1.2012 (Annexure-7, 8 and 9 of the Rejoinder). It is alleged that the respondents committed irregularities by not announcing the results of the test and although the applicant was selected in the test for the post in question as per the documents at Annexure 7, 8 and 9.

7. Learned counsel for the applicant was heard. He submitted that the contention of the respondents that no one was found suitable in the test in question, was incorrect as the merit list at Annexure-8 of the Rejoinder shows the applicant at serial No. 4 of the merit list and vide the note at Annexure-9, the applicant's name was recommended for appointment in addition to other names. It was argued that such false contentions in the Counter show malafide on the part of the respondents and the recruitment test was not completed as a result of arbitrary exercise of power by the authorities. Learned counsel for the applicant also filed a date chart with a note of his submissions in the case.

8. Learned counsel for the respondents was heard and he also submitted a written note with a date chart. It is submitted that although the selection was finalized by the committee and proposal was submitted for appointment, the competent authority cancelled the entire selection on 17.7.2004. It was further submitted that as stated in para 7 of the Counter, the vacancies were filled up through internal sources from the regular employees of the SAIL working under Bolani Mines. The judgment of Hon'ble Apex Court in the case of Shankarsan Dash vs. Union of India, AIR 1991 SC 1612, has been cited in support of the action of the respondents.

9. Learned counsel for the respondents has cited the judgment in the case of Shankarhan Dash (supra), in which the applicant, who was a candidate for IPS, was selected in a Group B Police service on the basis of the merit position. When a number of persons did not join in the IPS, the reserved category officers of Group B service were appointed in IPS, but case of the applicant who was a general category candidate, was not considered for appointment to IPS. The decision was challenged in the cited case and the Constitution Bench of Hon'ble Apex Court held in that case as under:-

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant

recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha and Others, [1974] 1 SCR 165; Miss Neelima Shangla v. State of Haryana and Others, [1986] 4 SCC 268 and Jitendra Kumar and Others v. State of Punjab and Others, [1985] 1 SCR 899.”

10. Similarly in the case of State Of Orissa And Ors vs Bhikari Charan Khuntia And Ors. reported in (2003) 10 SCC 144, the respondent-candidate's name was sponsored for a post by Employment Exchange, but Government decided not to go ahead with the recruitment citing the reason that there were surplus employees available to be appointed. It was held in the case by Hon'ble Apex Court as under:-

“A Constitution Bench of this Court in Shankarsan Dash v. Union of India [1991] 2 SCR 567 held that candidates whose names appear in the merit list do not acquire indefeasible right of appointment if vacancies exist. The State is under no obligation to fill up all or any of the vacancies, unless the relevant recruitment rules so indicated. Though, the State is under no legal duty to fill up all or any of the vacancies, it does not mean that State has licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for proper reasons. If vacancies or any of them are filled up, the State is bound to respect the comparative merit of candidates as reflected in the recruitment test and no discrimination can be permitted. This position was reiterated in All India SC & ST Employees Association and Anr. v. A. Arthur Jeen and Ors., (2001) 6 SCC 380 and Ludhiana Central Co-operative Bank Ltd. v. Amrik Singh and Ors., (2003) 6 Supreme 196.”

In the above case, it was held that the authorities have power to cancel the recruitment process by taking a bonafide decision and such a decision should not be taken arbitrarily.

11. Applying the ratio of the judgments cited above to the instant OA, it is clear that the applicant does not have the indefeasible right to be appointed only on the ground that he was included in the merit list and the authorities have the power to cancel the recruitment process for reasons. But such decision of the authroities should not be arbitrary and it is to be taken bonafide. The power of the authorities to cancel the process is therefore subject to the condition that it should not act arbitrarily. We take note of the fact that in both the cases as cited above, Hon'ble Apex Court examined the facts and circumstances of the matter before concluding that the decisions of the authorities to reject the claim of the applicant in those cases were not arbitrary. **In the circumstances, the question to be decided in the instant OA is whether the respondents have acted arbitrarily (as alleged by the applicant), while cancelling the**

recruitment process in question.

12. The applicant's contention is that the action of the respondents to cancel the recruitment in question was malafide and arbitrary since a false claim has been made in the Counter that none was found suitable, whereas the documents enclosed to the Rejoinder show that the applicant was selected for the recruitment in question. It is also claimed in the Rejoinder that the respondents did not disclose valid reason for not completing the recruitment process. It is seen that the contentions in the Counter are that the recruitment process was not completed since none was found suitable for selection and the posts were filled up by regular employees working in Bolani Mines. In the written note submitted on behalf of the respondents, it has been admitted that proposal was placed before the competent authority to appoint the candidates who were selected for the posts in question and vide the letter dated 17.7.2004 (copy enclosed to the written note of the respondents) in which it was stated that due to certain lapses in the process of selection in question, the competent authority decided to cancel the selection in question and initiate a fresh recruitment process with modified norms. However, no details about the lapses identified in the process have been furnished in the Counter.

13. From above facts, it is clear that the respondents' stand about the reasons for cancellation of the recruitment in question has not been consistent and the reasons disclosed for such cancellation are not at all convincing. The note dated 17.7.2004 enclosed to the written note did not say anything about filling up of the posts in question through regular employees, as averred in the Counter (para 7). The letter dated 17.7.2004 has disclosed the reason that the competent authority has found lapses in the selection process in question, without disclosing anything about the lapses detected by the competent authority in the recruitment process in question. The Counter does not mention anything about the lapses in the selection referred to in the letter dated 17.7.2004.

14. Even if the letter dated 17.7.2004 furnished with the written note of the respondents' counsel is ignored as it was a new documents which should have been furnished with the pleadings on record, the contentions of the applicant in the Rejoinder that the applicant was selected for the post in question, have not been contradicted by the respondents. Hence, the reasons furnished in the Counter for cancellation of the aforesaid recruitment process are not convincing based on the materials placed on record. It is noticed that no documents have been furnished by the

respondents in support of the contention that the posts were filled up through regular employees with approval of the competent authority. Hence, it cannot be said that the competent authority has taken the decision to cancel the aforesaid recruitment in bonafide for sufficient reasons and the judgment in the case of Shankarsan Dash (*supra*) will not be of any assistance to the respondents.

15. In the circumstances as discussed above, we are of the view that the decision of the respondent authorities to cancel the recruitment in question is not based on sound reason and such action of the authorities was arbitrary as contended by the applicant. Accordingly, the respondents /competent authority are directed to consider the applicant's case for appointment against the post in question taking into consideration the documents furnished with the Rejoinder of the applicant and pass an appropriate order giving copy to the applicant within 3 (three) months from the date of receipt of a copy of this order. For the purpose of this selection, the applicant will not be denied selection/appointment only on the ground of age, since he was eligible when his case was considered for selection by the Committee as per the Annexure-8 and 9 of the Rejoinder. It is also made clear that while passing this order, we have taken into consideration the fact that the applicant had challenged the non-completion of the recruitment process by the respondents by filing a representation within one year from the date of appearing in the selection test on 28.10.2003 and had filed the writ petition before Hon'ble High Court within one and half year from 28.10.2003.

16. The TA is allowed as above. Under the circumstances, the respondents will pay a cost of Rs.5000/- (five thousand) to the applicant as cost of litigation.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)