

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**



O.A./350/00436/ 2016



**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member**

Sri Subit Kumar Das,
Son of Sri Haradhan Das,
Residing at 12/F, Monohar Pukur Road,
Police Station – Tollygunge,
Kolkata – 700026.

..... Applicant.

Versus

1. Union of India,
Service through its Secretary,
Ministry of Information and Broadcasting,
Government of India,
Sastri Bhavan,
New Delhi – 110 001.
2. The Director General,
All India Radio,
Akashvani Bhawan,
New Delhi – 110 001.
3. The Chief Engineer (East Zone),
AIR & TV, Akashvani Bhawan,
Eden Gardens,
Kolkata – 700 001.
4. Station Director,
All India Radio,
Calcutta Akashvani Bhawan,
Kolkata – 700 001.
5. Superintendent Engineer,
All India Radio,
Calcutta Akashvani Bhawan,
Kolkata – 700 001.
6. Station Engineer,

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All India Radio,
Akashvani Bhawan,
Kolkata – 700 001.

..... Respondents.



For the applicant : Mr. D. Saha, Counsel
Ms. A. Roy, Counsel

For the respondents : Mr. S.K. Ghosh

Reserved on : 15.11.2019

Date of Order : 09.1.2020

ORDER

Per : Bidisha Banerjee, Judicial Member

This application has been preferred to seek the following reliefs:

"8.a) An order do issue directing the concerned respondent authorities to consider the applicant against the category of SC in the post of Technician and/or the post in question by setting aside the speaking order dated 19th February, 2016 in terms of the said assurance on behalf of the Respondents as mentioned in the said solemn order dated 27.11.2015 passed in O.A. no. 739 of 2013.

b) An order do issue to keep one post vacant in the category of SC in the East Zone for the post in question in view of the judgment and/or order passed by the Learned Tribunal in O.A. No. 739 of 2013.

c) To call for the records of the instant case so that conscionable justice may be rendered by passing an appropriate order.

d) Any other appropriate order or orders, direction or directions as this Hon'ble Tribunal may deem fit and proper to protect the right of the applicant."

2. The records of the case reveal the following facts:

(i) In his earlier journey to this Tribunal the applicant preferred O.A. 989/97 which was disposed of with the following order:

"2. According to the applicant, he received one letter dated 23.12.98 (Annexure-B to the application) addressed to one Sri Biswajit Mondal, it shows that department is going to make a panel for filling up the post of technician at All India Radio, Calcutta on 15.1.99 at 10.00 A.M. Hence he has filed this application before this Tribunal apprehending that his name might not have been considered for the empanelment of the post of technician on the basis of the interview letter dated 23.12.98. So his chances of absorption, as prayed for in the earlier application may be adversely affected.

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Mr. Mallick, Id. counsel for the applicant has drawn our attention to the judgment annexed with the application itself.

3. We have heard Ms. Banerjee, Id. counsel for the respondents also. We find that the applicant already obtained an ad-interim order from this Tribunal on 25.8.97 where it is found that in view of the urgency the Hon'ble Tribunal directed by way of interim measure that any appointment given to the private respondent Nos. 6, 7 and 8 shall abide by the result of the application. Now, Mr. Mallick submits the said order relates to the respondent Nos. 6, 7 and 8 only. Thereby the rights of appointment on the basis of the earlier selection should be protected.

3. Mrs. Banerjee, Id. counsel for the respondents submits that till the filling up of post of technician from the reserved quota viz. 1 OBC and 1 ST is taken by the respondent authorities, the applicant's case would not be considered. She further submits as soon as vacancy would arise against the SC quota, the applicant would be absorbed.

4. In view of the aforesaid circumstances, we do not find any reason to give any further order in this application by way of injunction as sought for. The applicant will get all benefits, if he ultimately succeeds in this case. Accordingly the application is disposed of.

5. No order is passed as to costs."

(ii) In the next round, he preferred O.A. 989/97 that was disposed of as under:

"The applicant in this case is seeking an order directing the respondents to appoint him in the post of Technician in All India Radio, Calcutta and to cancel, set aside the selection made of the 1st, 2nd and 3rd persons on the panel.

2. The applicant belongs to Scheduled Caste and is Higher Secondary pass in Science group. His name was sponsored by the Employment Exchange and along with other candidates he appeared before the Selection Committee on 15-1-97. He was held to be No. 4 in order of merit and since the selection was listed to 3 candidates against three vacancies his name was placed on the reserved panel at Sl. No. 1. The private respondent Nos. 6, 7 and 8 were selected and placed at Sl. Nos. 1, 2 and 3 of the panel. The applicant has submitted that he possessed the necessary qualifications and did well in the selection, but was placed only in the 4th position. It is alleged by him that the Selection Committee selected private respondents 6, 7 and 8 in a biased manner without following the proper procedure. The applicant has been asked to appear before the Interview Board and contrary to OM dated 3-6-93 providing for 75/25 marks in practical/interview, no practical test was held for the post and the applicant was released after asking certain questions.

3. It is specifically alleged that Shri Niranjan Mondal, Private Respondent No. 6 was not qualified as per recruitment qualifications spelt out in memorandum dated 25-6-96 because instead of 2 years experience after obtaining the certificate from ITI in Air Conditioning and Refrigeration, he only had one year's experience. It is alleged that the Selection Committee selected him by going out of its way at the instance of Mr. P.C. Sikdar, Station Engineer, All India Radio, who was one of the members of the Selection Committee and he was allowed to join even though the Police Verification Report was incomplete. It is submitted that other posts of Technician are lying vacant and as such the respondents are duty bound under law to consider the appointment of the applicant. It is asserted that a person requires to be considered for appointment

if his name is appearing on the panel as is the case with the applicant. By adopting a wrong procedure the panel has been prepared which amounts to discrimination because ineligible persons have been selected. On 25-8-97 the Tribunal had ordered that any appointment given to private respondents 6, 7 & 8 shall abide by the result of the application.

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12. We have heard the learned counsel for both parties at length and perused the voluminous pleadings. From the recorded minutes of the selection carried out on 15-1-97 by the Selection Committee of three it is seen that private respondents 6, 7 and 8 were selected in order of merit for the first three positions based on the marks awarded to them as per attached mark-sheets wherein marks were given for both oral test out of 25 and practical test out of 75 and then combined together to determine the order of merit. Accordingly, the applicant's name and that of Sukumar Das were placed at SIs 1 and 2 of the reserved panel only for appointment in case the first three selected candidates did not join the posts. The applicant has alleged favouritism and improper appointment against Niranjana Mondal in particular based also on his lack of qualification and experience as per the requirements contained in memo dated 25-6-96.

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There appears to be no departure from the procedure and instructions required to be followed in selection. The Hon'ble Supreme Court in *UPSC v. Hiranyalal Dev*, AIR 1988 SC 1069 observed –

"The powers to make selection were vested into the Selection Committee under the relevant rules and the Tribunal could not have played the role which the Selection Committee had to play. The Tribunal could not have substituted itself in place of the Selection Committee and made the selection as if the Tribunal itself was exercising the powers of the Selection Committee."

In another case of *Dr. Durydhan Sahu & Ors etc. v. Jitendra Kumar Mishra & Ors* (1999 (1) AISLJ 205 (SC)), the Apex Court while considering the question of eligibility qualification held.

"Once the concerned authorities are satisfied with the eligibility qualifications of the person concerned it is not for the Court or the Tribunal to embark upon an investigation of its own to ascertain the qualifications of the said person (Para 23)."

13. Further the allegation of bias can hardly be attributed to the members of the Selection Committee of three who have all considered the same records and each has separately awarded marks whereby Niranjana Mondal scored the highest amongst all candidates. Bijoy Naskar and Tribeni Ram secured the next highest and the applicant was 4th candidate placed in the reserved list.

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We are of the opinion that the records of the selection proceedings do not reveal any infirmity or bias that would vitiate the selection. The applicant with whom the burden of proof lies, has also not established by any material produced that the candidate was related to any member of the selection committee.

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In *Sanjoy Bhattacharjee v. Union of India and Others* (1997 (4) SCC 283) the Apex Court has held that –

"Merely because the petitioner has been put in the waiting list, he does not get any vested right to appointment. It is not his case that anyone below his ranking in the waiting list has been appointed which could give him (not legible) grievance. Thus he cannot seek any direction (not legible) appointment."

Therefore in so far as the respondents have taken from initiative for recruitment. It cannot be interfered with on the ground that reserved panel prepared on the basis of selection held on 15-1-97 had not been fully utilised and the applicant should be given appointment before any new person is selected.

18. As per the order of this Tribunal dated 15-1-99 in MA 30/99 the learned counsel for the respondents had stated before the Tribunal that till filling up of the concerned reserved quota of one OBC and one ST is taken up the applicant's case would not be considered and that as soon as the vacancy would arise against the SC quota the applicant would be absorbed. Therefore, by their subsequent qualification of this assurance it cannot be conceded that the respondents will not be bound by the submission made by them before the Tribunal in MA 30/99. Hence, the respondents are directed to consider the case of the applicant in terms of the assurance given by them to this Tribunal as above and take steps to absorb him against available vacancy in accordance with law within three months from the date of communication of this order. If no such vacancy exists at present, he should be absorbed against the next available vacancy within a period of 6 months."

(iii) The order dated 9.12.04 in O.A. 989 /97 (extracted supra) when assailed before the Hon'ble High Court, it was modified to the extent that –

"We find that the Tribunal after observing that he would be considered as and when vacancy would arise, directed consideration within a period of six months. We only observe and modify to the extent that such period of six months may not be applicable in case no vacancy arises within the stipulated period."

(iv) In the third O.A. preferred by the Applicant being O.A. 739/13 disposed of on 27.11.2015 (Annexure – 9) it was recorded that,

"Inasmuch as the direction of this Tribunal, to consider the applicant against 'next available vacancy' with a rider of six months, was done away with by the Hon'ble High Court keeping the consideration left open for an unlimited period this Tribunal would not venture to sit over the decision of the Hon'ble High Court lest it constituted a Contempt. It would rather subject itself to the judicial supremacy of the Hon'ble High Court. Therefore, indubitably ~~that~~ the respondents would be bound by their assurance that they had given before this Tribunal in 1999, the order passed by this Tribunal in O.A. No. 987 of 1997 directing consideration against next available vacancy, and the direction of the Hon'ble High Court extending the limit of consideration beyond six months. The respondents thus inarguably would be bound by their assurance to consider the applicant against available SC quota vacancy."

6. As such, the present O.A. is disposed of with a direction upon the respondents to act in terms of the orders as referred to hereinabove against

available SC quota vacancy, if any, has arisen in the meantime. Let appropriate order be passed within three months."

(v) Pursuant thereto the Deputy Director General (P) issued a speaking order dated 19.2.2016 which is impugned in the present O.A. It is extracted hereinbelow for clarity:

" PRASAR BHARATI
(INDIA'S PUBLIC SERVICE BROADCASTER)
ALL INDIA RADIO; KOLKATA

No.Kol-I(24)/2015-S (Court Case) 17/

Dated: 19.02.2016

SPEAKING ORDER

1. Whereas, Shri Subit Kr. Das filed an OA No. 739/2013 in CAT, Kolkata seeking direction upon the respondents to absorb Shri Das, the applicant in SC category the post of Technician, the vacancy shown as per notification published in the Employment News dated 23.02.2013 to 01.03.2013 in accordance with the order passed in earlier O.A. of 1997.
2. Whereas, the Hon'ble Tribunal disposed of the said OA No. 989 of 1997 vide order dated 09.12.2004 with the direction to the respondents to consider the case of applicant in term of the assurance given by the respondents to the tribunal as per order dated 15.01.1999 in M.A. No. 30 of 1999 that, till filling up of concerned reserved quota of 1 (one) OBC and 1 (one) St is taken up, the applicant's case could not be considered and that as soon as the vacancies would arise against SC quota the applicant would be absorbed. The Tribunal further directed the respondents to consider the case of the applicant in terms of the assurance and to take steps to absorb him against the available vacancies in accordance with law within three months or against the next available vacancy within a period of six months. The order dated 9.12.2004 went up to the Hon'ble High Court in WPCT No. 276 of 2005 and Hon'ble High Court vide their order dated 23.02.2009 modified the Hon'ble Tribunal order dated 09.12.2004 to the extent that "such period of six months may not be applicable in case no vacancy arises within the stipulated period."
3. Whereas, disposing of the present O.A., the Hon'ble Tribunal directed the respondents "to act in terms of the orders as referred to hereinabove against available SC quota vacancy, if any, has arisen in the meantime. Let appropriate order be passed within three months".
4. Whereas the applicant was at Sl.No.4 in the panel prepared during the year 1997 against the 3 vacancy at AIR, Kolkata. Post of technician was local recruitment post to be filled by Station level.
5. Whereas, all the posts for which panel were prepared during the year 1997 had been filled up as per merit list. The applicant being at Sl.No.4 in merit list would not be absorbed.
6. Whereas, there was general assurance for absorption against the future available SC vacancy of AIR, Kolkata but that assurance was subject to fulfilment of all the conditions of the general Recruitment Rules. And in the meantime, there is no vacancy available in the post of Technicians at AIR, Kolkata as on date for SC Category.
7. Whereas, date of birth of Shri Subit Kr. Das, the applicant is 02.01.1973. And his age is above the maximum age limit prescribed in the Recruitment Rules of Technician. Hence, as on date he is not eligible to be recruited to the post of Technician in SC category as per rule. It is also to inform that no Court direction has been found to absorb the applicant by relaxing the Recruitment Rules.

Hence, in view of the above and to obey the Hon'ble Tribunal Order in respect of the OA No. 989 of 1997 that "to take steps to absorb him against the available



vacancies in accordance with law" as well as present O.A, it is not possible to absorb Shri Subit Kr. Das, the applicant in the post of Technician as (i) there is no post vacant at AIR Kolkata, (ii) the applicant can not be absorbed against the vacancy notified in the Employment News dated 23.02.2013 to 01.03.2013 because, he is not eligible for the post as on date as per Recruitment Rules notified for the said vacancy.

Sd/-
(Dr.(Mrs.) Sudha Mishra)
Dy. Director General (P)."

3. In the face of the above position the applicant has alleged on the basis of a notification dated 23rd February, 2013, as annexed to the instant original application (at page no. 63) that it is crystal clear that, there were large number of vacancies of SC category, but the respondent authorities deliberately and intentionally flouted the judicial mandate, as referred to herein above, for which the applicant was compelled to file the original application, being O.A. No. 739 of 2013 before this Hon'ble Tribunal. Be it mentioned that, it is a settled law that the applicant instead of instituting any proceeding under the provision of law of contempt may chose to file an original application assailing infringement of his legal right.

The said annexure demonstrates that in 2013 five vacancies arose in East Zone, depicted as under:

"C. Zone wise projected vacancies for the post of Technician:

Zone	SC	ST	OBC	PWD*	Ex-Servicemen	UR	Total
North	32	07	33	3	14	68	140
North East	01	07	05	1	4	18	31
East	05	05	05	1	4	20	35

4. Applicant has however failed to demonstrate occurrence of vacancy post 27.11.2015 where the order in O.A. 739/13 was issued, as enumerated supra.

5. Therefore the O.A. is disposed of with a direction upon the respondents to issue a speaking order indicating the number of Technician vacancies that occurred after the order on 27.11.2015, and whether the applicant was entitled to be considered in accordance with the decisions of this Tribunal.

6. Speaking order be issued in three months from the date of receipt of a copy of this order. No costs.


(Dr. N. Chatterjee)
Administrative Member


(Bidisha Banerjee)
Judicial Member

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