

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**



O.A.Nos. 350/1659/2016 & 350/890/2017

Order dated: 10.2.2020.

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

In O.A.No. 350/890/2017

1. Satyasis Pradhan,
s/o Sri Ranajit Pradhan,
aged about 35 years,
residing at Village – Purba Gurguria,
P.O. Madhya Gurguria, P.S. Kultali,
District : South 24 Parganas,
West Bengal – 743349.
2. Madhusudan Mal,
s/o Sri Gangadhar Mal,
aged about 40 years,
residing at Village + P.O. Bairakanpur,
P.S. Arambagh, District : Hooghly,
West Bengal – 712413.
3. Pitam Ghosh,
s/o Sri Pranay Kr. Ghosh,
aged about 30 years,
residing at Village – Amanmouri,
P.O. Insura, P.S. Pandua,
Sub Division – Chinsura,
District – Hooghly,
West Bengal – 712134.

..... Applicants.

Vrs.

1. Union of India,
Service through the Secretary,
Ministry of Human Resource Development,
Department of School Education and Literacy,
Government of India,
C-Wing, Shastri Bhawan,
New Rajpath Area, Central Secretariat,
New Delhi – 110 001.

2. The Commissioner,



Navodaya Vidyalaya Samiti,
Ministry of Human Resource Development,
Department of School Education and Literacy,
Government of India,
B-15, Institutional Area,
Sector-62, Noida – 201309,
District – Gautam Budh Nagar, U.P.

3. The Deputy Commissioner,
Navodaya Vidyalaya Samiti,
Regional Office, Karpuri Thakur Sadan,
Kendriya Karyalay Parisar, Block – A & B,
5th Floor, Ashiyana Digha Road,
Patna – 800 025, Bihar.

4. The Secretary
Ministry of Personnel,
Public Grievances and Pensions
Department of Personnel and Training
Government of India
North Block,
New Delhi – 110 001

..... Respondents.

In O.A.No. 350/1659/2016

1. Mrinmoy Konar, S/o Sri Mohan Konar,
aged about 34 years, residing at Vill+P.O.
Balsi, P.S. Patrasayer, Dist. Bankura-722206;
2. Manoj Saha, S/o Late Mahadev Saha,
aged about 33 years, residing at Kanchannagar,
Bhuthbaga, Dist: Burdwan-713102;
3. Sk. Mustak Ali, S/o Sri Sk. Lidar,
aged about 38 years, Residing at Vill+P.O.+P.S.
Kankartala, Block-Khoyrasole, Dist: Birbhum-731125;
4. Pintu Samanta, S/o Sri Kartick Samanta,
aged about 36 years, residing at Vill+P.O.
Ramnarayanpur, P.S. Tarakeswar,
Dist: Hooghly-713413;
5. Shukla Konar, W/o Sri Asit Konar,
aged about 31 years, residing at 21/169,
Narakonda Colony, Durgapore, P.S. Faridpur,
Dist: Burdwan-713385;
6. Shabina Khatun, D/o Late Md. Jamalluddin,
Aged about 30 years, residing at Vill. Mohalmore,

Near M.S.K. School, P.O.+P.S. Pandabeswar,
Dist: Burdwan-713346;

7. Anupam Santra, S/o Sri Sanyasi Santra,
ged about 35 years, residing at Vill. Barabari,
P.O.Bachra-Mohanpur, P.S. Haroa,
Dist: North 24 Parganās-743456;

8. Rajkumar Dey, S/o Sri Pranab Kumar Dey,
aged about 32 years, residing at Vill+P.O. Paraj,
P.S. Galsi, Dist: Burdwan-713403

.....Applicants

Vrs.

1. Union of India, through the Secretary,
Ministry of Human Resource Development,
Department of School Education and Literacy,
Government of India, New Delhi-110048;

2. The Commissioner, Navodaya Vidyalaya Samity,
Ministry of Human Resource Development,
Department of School Education and Literacy,
Government of India, B-15, Institution Area,
G.B. Nagar, Sector-62, Noida-201309, U.P.;

3. The Deputy Commissioner,
Navodaya Vidyalaya Samity,
Regional Office, Borring Road, Opposite
to A.N. College, Patna-800013, Bihar

.....Respondents

For the Applicants: Mr. B.R.Das, Counsel

For the Respondents: Mr. K.Roy, Counsel

ORDER

Bidisha Banerjee, Judicial Member

Since identical issues have been raised and identical reliefs have been sought for, the matters are taken up analogously to be disposed of by this common order. However, O.A. 890/2017 is delineated and discussed herein below.

2. The applicants in the O.A. have sought for the following reliefs:

"(i) Rescind, recall and/or withdraw and cancel the order A1 inasmuch as it implies cancellation of the employment notification dated 24.3.2012 as regards recruitment of 43 Regional Language Teachers in Bengali.

(ii) Declare the selection process as not vitiated and de facto completed arising out of non-declaration of date and venue for interview as per Annexure A6.

(iii) Appoint the petitioners on the basis of their selection in order of merit position in written examination, dispensing with the interview as per directives of Government of India being annexure A8.

(iv) Pass such other order/orders and/or direction/directions as deemed fit and proper.

And your petitioners further pray that your Lordships would graciously be pleased to grant:

Leave to the petitioners to move jointly in view of the facts that the petitioners are similarly circumstanced and have common interest within the provision of Rule 4(5)(a) of the Central Administrative (Procedure) Rules, 1987.

(v) Costs."

Written notes have been exchanged. The facts gathered from the written notes filed by the applicant are as under:

The applicants in both the cases, 11 in number, duly applied for recruitment against 43 vacancies of TGT- Bangla Teachers, having satisfied all the essential and desired qualifications apart from satisfying the upper age limit of 35 years as on 31.01.2012 as per advertisement. The vacancies were meant for Patna Region extended over 9 States. They were all selected in the written test held on 20.10.2013 and their names appeared in the list of 62 successful candidates in the written examination. They were called for interview to be held on 03.04.2014 & 04.04.2014, which was subsequently postponed as per code of conduct for General Election 2014, and rescheduled on 22.05.2014 & 23.05.2014. The interview was further



postponed by an order dated 13.05.2014 but without assigning any reasons. The order stated that fresh dates and venue would be communicated very soon which, however, was not done. A fresh notification dated 10.09.2016 was issued to fill up the posts including those posts that were covered under the previous advertisement, pursuant to which the applicants had undergone selection.

The applicants preferred OA No. 1659 of 2016 and MA. No. 567 of 2016, the M.A. was disposed of on 07.12.2016 by this Tribunal by an interlocutory order that no process of selection will continue with reference to subsequent advertisement which however is in force till this day.

During pendency of the cases, the respondents came out with a notice dated 04.04.2017 to the effect that the selection process pursuant to the advertisement in the Employment News dated 24-30 March, 2012 and subsequent corrigendum advertised in the Employment News dated 28 April - 04 May, 2012 stood vitiated due to administrative reasons implying thereby the selection process as cancelled.

The applicants in both the cases have assailed the notice dated 04.04.2017 and sought for resumption and completion of the selection process as per the earlier advertisement and prayed for orders directing the Respondents to commence the selection from the stage of holding interview and to come out with final selection list.

According to the applicants, the respondents in cancelling the selection process have acted in error of fact as well as law, inasmuch as,

RB



- a). The statement that the criteria prescribed for calling the process of interview in the ratio 1:5 was not adhered to, holds no ground as the interview was yet to commence.
- b). The plea taken by the Respondents that due diligence was not shown in dispatch and receipt of the result in the written examination by the Regional Office – Patna had no rational nexus to call for cancellation of the selection process.
- c). The statement that appropriate constitution of Interview Board was not found, as stated by the Regional Office at Patna, is unacceptable viewed from the point of the petitioners as employment seekers.

The applicants allege that the aspersions of lack of transparency and credibility in the recruitment drive by the Regional Office at Patna has nothing to do with them and cannot be reconciled with the fresh drive by the self-same office for recruitment.

The applicants have submitted that excepting one or two, they are working on contractual basis against the very same posts under the control of Regional Office at Patna and other States, for years, continuously after being selected each year through regular Selection Committees and serving the Institution without any blemish.

They have heavily relied upon the following ratios, which, according to them, unequivocally deprecate change in the rules of selection after the process is on:

- i. **Maharashtra State Road Transport Corporation & Ors. Vs. Rajendra Bhimrao Mandve & Ors., reported in 2002 SCC(L&S) 720, that**

"It has been repeatedly held by this Court that the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced."

- ii. **K. Manjusree Vs. State of Andhra Pradesh & Another, (2008) 1 SCC(L&S) 841**, that

"Introduction of the recruitment of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible".

- iii. **Tej Prakash Pathak & Ors. Vs. Rajasthan High Court and Ors, (2013) 4 SCC 540**, that

"No doubt it is a salutary principle not to permit the State or its instrumentalities to tinker with the "rules of the game" insofar as the prescription of eligibility criteria is concerned as was done in C.Channabasavaih vs. State of Mysore, etc. in order to avoid manipulation of the recruitment process and its results".

The applicants in both the O.As. would, thus, submit that the reliefs sought for in the Original Applications were justified both on the point of law as well as facts and would fervently pray that the reliefs be allowed.

3. The respondents have used written note, which is a reiteration of their reply. They have averred as under:

"Navodaya Vidyalaya Samiti, which is an autonomous organization of the Ministry of Human Resource Development, published an advertisement in the Employment News dated 24-30 March, 2012 for recruitment of Misc. Category of TGTs and Regional Language Teachers for Jawahar Navodaya Vidyalayas functional under administrative control of 08 Regional Offices, namely Bhopal, Chandigarh, Hyderabad, Jaipur, Lucknow, Patna, Pune & Shillong. 43 posts of Regional Language Teacher(Bengali) in Regional Office, Patna was included in the said advertisement and candidates were asked to submit their application to Deputy Commissioner, Navodaya Vidyalaya Samiti, Regional Office, Patna for that post.





Recruitment process for the post of Regional Language Teacher(Bengali) was carried out by Regional Office, Patna and for which written examination was held on 20.10.2013 at Kolkata and Interview was fixed twice. Proposed interview on the first occasion in the month of March, 2014 and on second occasion in the month of June 2014, was postponed due to administrative reasons and alleged irregularities in the recruitment process. Keeping in view the long pendency of recruitment process initiated by Regional Office, Patna for the post of Regional Language Teacher(Bengali), a committee of officers was constituted to review the entire recruitment process adopted by Regional Office, Patna for the said post and the said committee vide its minutes dated 10th January, 2017 gave recommendation for cancellation of the recruitment process for the posts of Regional Language Teacher(Bengali) for the reasons that (i) criteria prescribed for calling the candidates for interview in the ratio of 1:5 was not adhered to by the Regional Office, Patna (ii) Due diligence was not shown in dispatch and receipt of the result of the written examination by the Regional Office, Patna (iii) Also, appropriate constitution of Interview Board was not made by Regional Office, Patna as Deputy Commissioner and Assistant Commissioner(Admn) of the Regional Office were proposed as members in more than one Board at the same time same day which shows complete lack of transparency and, therefore, procedure followed in the recruitment drive could not be considered creditable and accordingly, decision was taken to cancel the recruitment process of Regional Language Teacher(Bengali) of Regional Office, Patna,



and that, the recruitment process of Regional Office, Patna for the post of TGT(Bengali) initiated vide advertisement dated 24-30 March, 2012 stood cancelled on the recommendation of the Committee constituted to review the recruitment process and the recruitment process of 2012 initiated by Regional Office, Patna and 2016 initiated at HQ Office are distinct and moreover, the essential education qualification is also different as qualifying CTET is one of the essential qualifications in the recruitment process 2016, which was not an essential qualification in recruitment process 2012 (T.G.T. Bengali) of Regional Office, Patna."

4. We heard the Ld. Counsels, considered the rival contentions, delved into the ratios and authorities cited.

5. We discern the following:

1) 43 vacancies were notified vide Annexure-A/2 of 2012 for Patna region, that included the following:

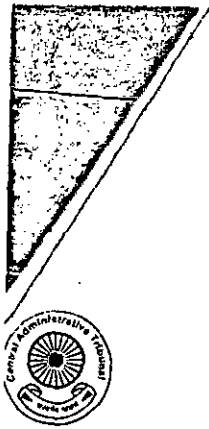
"i) W.Bengal/Bihar/Jharkhand in Patna Region.

ii) Chhattisgarh/MP in Bhopal Region.

iii) UP in Lucknow Region.

iv) Assam/Tripura in Shillong Region."

2) The essential qualifications for the posts, in question, and the mode of Selection that was prescribed vide Recruitment Notification of 2012 (Annexure-A/2) were as under:

PART-I

PAY SCALE : Rs. 9300-34800 (Grade Pay Rs. 4600)

UPPER AGE LIMIT : 35 YEARS (As on 31.01.2012)

QUALIFICATIONS:ART TEACHERESSENTIAL QUALIFICATIONS

Five years recognized Diploma in any discipline of fine arts as Drawing/Painting/Sculpture/Graphic Arts/Crafts after passing secondary school examination (Class X) or equivalent.

OR

Post Graduate Degree in Drawing and Painting, Fine Arts from a recognized University/Institution.

OR

Four Years Diploma in Fine Arts/Crafts from Vishwa Bharti Shanti Niketan.

OR

B.Ed. Degree/Diploma in Fine Arts from Regional College of Education.

Degree of Bachelor of Fine Arts (BFA) after class XII will be considered as equivalent to Five years Diploma in Fine Arts after class X).

DESIRABLE QUALIFICATIONS

B.Ed or equivalent teaching degree from recognized University.

Working knowledge of English and Hindi or other Regional Language (as per Regional Language option given in application form).

Experience of working in a residential school.

MUSIC TEACHERESSENTIAL QUALIFICATIONS

Five years study in Music institution recognized by the concerned State Govt. as equivalent to Graduate/Post Graduate degree.

OR

Bachelor's degree with Music from a recognized University and B.Ed.

OR

Secondary/Senior Secondary with any one of the following:

Sangeet Visharad examination of Gandharva Mahavidyalaya Mandal, Bombay or Bhatkhande

Sangeet Vidyapeeth, Lucknow or Indira Kala Sangeet Vishwa Vidyalaya, Khairagarh (MP) or

Sangeet Prabhakar examination of the Prayag Sangeet Samiti, Allahabad.

OR

Working Degree/Diploma awarded by Pracheen Kala Kendra, Chandigarh.

Sangeet Bhaskar with graduation in any discipline.

- (b) Sangeet Nritya Bhushan with graduation in any discipline
 (c) Sangeet Bhushan of Sangeet Nritya Visharad with Sr. Secondary/Intermediate/Part- I Examination of 3 years degree course.

DESIRABLE QUALIFICATIONS

- (i) Working knowledge of English and Hindi or other Regional Language.(as per Regional language option given in application form).
 (ii) Experience of working in a residential school.

PHYSICAL EDUCATION TEACHERS (MALE & FEMALE)

ESSENTIAL QUALIFICATIONS

Bachelor's degree in Physical Education from a recognized institution.

OR

D.P.Ed. awarded by a recognized University/Institution provided that the admission qualification for the diploma is at least a University's Degree.

DESIRABLE QUALIFICATIONS

- (i) Working knowledge of English and Hindi or other Regional Language.(as per Regional Language option given in application form).
 (ii) Experience of working in a residential school.

LIBRARIAN

ESSENTIAL QUALIFICATIONS

University's Degree in Library Science from a recognized institution.

OR

Graduation with one year Diploma in Library Science from a recognized Institution.

Working knowledge of English and Hindi or other Regional Language. (as per Regional Language option given in application form)

DESIRABLE QUALIFICATIONS

- (i) Experience of working in a residential school.
 (ii) Knowledge of Computer operations.

REGIONAL LANGUAGE TEACHERS

QUALIFICATIONS:

ESSENTIAL QUALIFICATIONS

- (i) Concerned Regional Language as an elective subject at Degree level.
 (ii) B.Ed. or equivalent qualification from recognized University.
 (iii) Competence to teach through English & Hindi/concerned Regional Language as the case may be.

XXX

XXX

XXX

PART III

MODE OF SELECTION

1. The candidate will have to appear in a Written Examination for the recruitment to the above mentioned posts.

XXX

XXX

XXX

4. The Written test will consist of paper for both Misc. category of teachers and Regional Language Teachers as under:

MISC. CATEGORIES OF TEACHERS AND REGIONAL LANGUAGE TEACHERS		
Paper	Subject	Marks/ Duration
Paper-I General Paper	COMMON PAPER FOR ALL POSTS OF MISC. CATEGORIES AND REGIONAL LANGUAGE TEACHERS. Objective type multiple choice questions on General English/Hindi, General Awareness, General Intelligence & Reasoning, Numerical Ability and Teaching Aptitude.	60 Marks/ 1 hrs.
Paper-II (Subject Paper)	Descriptive Questions in concerned subject. The medium of examination will be English/Hindi for TGT (Art/Music/Librarian/PET). For Regional Language Teachers, the subject paper will be in the concerned Regional Language for which the candidate has applied. Difficulty level will be of Graduation level.	80 Marks/ 2 hrs.

The decision of the Samiti about the mode of selection to the above posts and eligibility conditions of the applicants for interview shall be final and binding. No correspondence will be entertained in this regard.

SCHEDULE FOR WRITTEN EXAMINATION

Schedule of examination will be intimated with the Admit Card and the same will also be notified on website of concerned Regional Office.

XXX

XXX

XXX

10. Any dispute with regard to this recruitment will be subject to the court having its jurisdiction in Delhi only."

- 3) Vide Office Order dated 10.02.2014, 62 candidates were shortlisted and the applicants figured therein. The result of the written examination for the post of Art Teacher, TGT (Bangla), Librarian, Music Teacher, PET (Male) & PET (Female) held on 20.10.2013 was made available for information to all concerned and interview for the above posts was likely to be held in the last week of March, 2014.
- 4) On 20.02.2014, it was notified that "the result of the written examination for qualifying for interview to the post of Art Teacher, TGT (Bangla), Librarian, Music Teacher, PET (Female) & PET (Male) held on 20.10.2013 has been published and made available on the website of Navodaya Vidyalaya Samiti, Regional Office, Patna vide letter No. 6844

dated 10.02.2014. The interview for the above post is scheduled to be held as follows:



S. No	Post	Date of Interview	Interview time	Interview to be held as per the Serial number of the result of qualifying examination published on 10.02.2014	Venue of Interview
xxx		xxx		xxx	
04	TGT (Bangla)	03.04.2014 04.04.2014	10AM to 05PM 10AM to 05PM	S.No. 1 to 31 S.No. 31 to 62	Navodaya Vidyalaya Samiti, Regional Office, Boring Road, Opposite-A.N. College, Patna-800013 (Bihar)
xxx		xxx		xxx"	

Applicants received call letters.

5) The interview was rescheduled as under:

"No. F 4-3/P&E/NVS(PTR)/2013-14/7961

dated 13.03.2014

NOTICE

The code of conduct for General Election 2014 has come into force with immediate effect. Hence, the interview for Misc. Teachers which was fixed earlier vide this office letter of even number dated 20.02.2014 is hereby re-scheduled as follows:

S. No	Post	Date of Interview	Interview time	Interview to be held as per the Serial number of the result of qualifying examination published on 10.02.2014	Venue of Interview
01	TGT (Bangla)	22.05.2014 23.05.2014	10AM to 05PM 10AM to 05PM	S.No. 1 to 31 S.No. 31 to 62	Navodaya Vidyalaya Samiti, Regional Office, Boring Road, Opposite-A.N. College, Patna-800013 (Bihar)
xxx		xxx		xxx"	

6) Further notice dated 13.05.2014 (Annexure-A/ 6) was issued stating that

"The interviews to the post of TGT (Bangla), PET (Male) & PET (Female) scheduled to be held on the date and venue mentioned below have

been postponed. The fresh dates and venue will be communicated separately very soon.



S. No	Post	Date of Interview	Interview time	Interview to be held as per the Serial number of the result of qualifying examination published on	Venue of Interview
01	TGT (Bangla)	22.05.2014 23.05.2014	10AM to 05PM 10AM to 05PM	S.No. 1 to 31 S.No. 31 to 62	Navodaya Vidyalaya Samiti, Regional Office, Boring Road, Opposite-A.N. College, Patna-800013 (Bihar)
XXX		XXX		XXX"	

6. Long after initiation of the recruitment process, the DoPT, vide its OM dated 29.12.2015 notified discontinuation of interview at junior level posts in the advertisement for further vacancies, which reads as under:

No. 39020/01/2013-Estt (B)-Part
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

North Block, New Delhi.
Dated the 29th December, 2015

OFFICE MEMORANDUM

Subject:- Discontinuation of Interview at Junior Level Posts in the Government of India- recommendation of Committee of Secretaries.

The undersigned is directed to refer to this Department's D.O. of even number dated 04.09.2015 and subsequent OM's dated 09th October, 2015, 09th November, 2015 on the above subject seeking detailed information on the progress made/action taken in the matter.

2. It is informed that Secretary (Personnel) had convened meetings on 14th December, 2015 and 17th December, 2015 to review the progress of implementation of the "No Interview Requirement Proposal" and to get the updated status on the decision/progress made by the various Ministries/Departments. Keeping in view the queries raised by the representative of various Ministries/Departments the following is once again clarified:-

- The decision to discontinue interview for recruitments is for all Group 'C', Group 'D' (which are now reclassified as Group 'C') Posts and for non-gazetted posts of Group 'B' Category and all such equivalent posts.
- The "No Interview Requirement" proposal has to be implemented for all the junior level posts in Government of India Ministries/Departments/attached Office/Subordinate Office/Autonomous Bodies/Public Sector Undertakings.
- Instructions issued by the Department of Public Enterprises on 14th December, 2015 vide OM No. DPE-GM to all Administrative Ministries concerned with CPSES under them with advice to dispense with the practice of interview (copy enclosed).
- The timelines set regarding completing the process of the discontinuation of interview by 31.12.2015 has to be adhered to strictly. From 01st January, 2016 there will be no recruitment with interview at the junior level posts as mentioned at 2(a) above in Government of India Ministries/Departments/attached Office/Subordinate Office/Autonomous Bodies/Public Sector Undertakings. All the advertisement for future vacancies will be without the interview as part of the recruitment process.

(e) The interviews will be done away even in cases where in the past the selections used to be made purely on the basis of performance in the interview. The Ministries/Departments/Organizations' will consider revising the scheme for selection for such cases.

(f) It is also clarified that as Skill Test or Physical Test is different from Interview, and they may continue. However, these tests will only be of qualifying nature. Assessment will not be done on the basis of marks for such tests.

(g) In case of specific posts where the Ministry/Departments wants to continue undertaking Interview as a process of recruitment, a detailed proposal seeking exemption will have to be sent to the DoPT with the approval of the Minister/Minister In-Charge.

3. All the Central Ministries/Departments are therefore requested to ensure that necessary action in respect of their Ministry/Department/Organizations are completed within the stipulated time. A consolidated report with the details of the decision taken/progress made in this regard should also be furnished to this Department at the earliest and not later than 7th January, 2016. Report so to be furnished with the approval of the Minister/Minister In-Charge shall include the details of the name and number of posts where the interview is discontinued and posts for which the exemption has been sought within the purview of the administrative Ministries/Departments.

4. A soft copy of the consolidated information may also be sent to this Department at swimta.singh@nic.in

(Manisha Bhatnagar)

Under Secretary to the Government of India
Tel. No. 23093175

7. In O.A. 1659 of 2016, by an order dated 07.12.2016 in M.A. 567 of 2016, the following directions were issued by this Tribunal:

"M.A.No. 350/00567/2016:

xxx

xxx

xxx

O.A.No. 350/01659/2016:

xxx

xxx

xxx

2.we are of the view that no process of selection will continue with reference to subsequent advertisement till the next date of listing.

3. The respondents are granted 4 weeks time to file reply. List this matter before Registrar's Court for completion of pleadings who will after completion of the same place the matter on board.

4. The interim order passed earlier is, accordingly, modified."

8. While this matter was subjudice, without seeking leave of this Court, vide notice dated 04.04.2017 the respondents notified cancellation order vide the following:

"NOTICE

This is for information to all concerned candidates who had participated in the selection process for recruitment to the post of Misc. category of teachers (Art, Librarian, PET (Female), PET (Male),

Music & III Language (Bangla) through centralized advertisement in the Employment News dated 24-30 March, 2012 and subsequent corrigendum advertised in the Employment News dated 28 April-04 May, 2012 that the selection process stood vitiated due to administrative reasons. The examination fees collected with application forms will be refunded to the concerned candidates in due course.



-Sd-

Deputy Commissioner"

9. Section 19(4) of Administrative Tribunals Act enjoins as under:

"Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules."

Therefore, the cancellation of selection vide Notice dt. 4.4.2017 while O.A. 1659/2016 was pending, having violated the aforesaid section, was bad in law.

10. Respondents have disclosed the following reasons for cancellation of selection but no documents in support thereof have been placed on record:

- (i) Criteria prescribed for calling the candidates for interview in the ratio of 1:5 was not adhered to by the Regional Office, Patna.
- (ii) Due diligence was not shown in dispatch and receipt of the result of the written examination by the Regional Office, Patna.
- (iii) Appropriate constitution of Interview Board was not found made by Regional Office, Patna as Deputy Commissioner and Assistant Commissioner (Admn) of the Regional Office were proposed as members in more than one Board at the same time and same day, which shows complete lack of transparency and, therefore, procedure followed in the recruitment drive could not be considered

creditable. The recruitment process of 2012 initiated by Regional Office, Patna and 2016 initiated at HQ Office are distinct and moreover, the essential education qualification is also different as qualifying CTET is one of the essential qualifications in the recruitment process 2016, which was not an essential qualification in recruitment process 2012 (T.G.T. Bengali) of Regional Office, Patna.

11. The issue before us is two fold:

(i) Whether the cancellation of selection on the ground as mentioned in the cancellation notice or the reply, was *per se* justified.

(ii) Whether cancellation vide order dt. 4.4.2017, while 07.12.2016 order was in force, was proper.

12. We note the following decision:

(i) *E.Co.Rly. & Anr. Vs. Mahadev Appa Rao & Ors.*, reported in (2010) 7 SCC 678, in which, in a matter where *"a departmental examination was conducted for filling up posts of Chief Typist, Twelve candidates appeared in the test and results were declared after about three weeks. Some of unsuccessful candidates represented that defective typewriting machines were made available to them and therefore they were placed at a disadvantaged position vis-à-vis successful candidates. Typewriting test was cancelled and in its place a fresh test was ordered to be conducted. However, before doing so the matter was not properly investigated as to whether there was any need to hold a fresh test"*,

the Hon'ble Apex Court framed the issue as to *"whether it was permissible to the authorities to cancel the test without giving proper justification for it in the official records. The Administrative Tribunal held that cancellation of the test was*

justified. The High Court set aside the Tribunal's order and held that selection should be made according to the selection test previously held".



The Hon'ble Apex Court held that "while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter. The least which the candidates who were otherwise eligible for appointment and who had appeared in the examination that constituted a step-in-aid of a possible appointment in their favour, were entitled to is to ensure that the selection process was not allowed to be scuttled for malafide reasons or in an arbitrary manner".

13. We further note that the selection process was initiated in 2012 under erstwhile Recruitment Rules. CTET was not the prescribed criteria as per 2012 notification. Rules prescribing CTET as essential qualification was probably introduced subsequently. Hence, the respondents could not subsequently change the essential conditions prescribed in the notification of 2012 (or the rules of selection) to the prejudice of the applicants.

There was no complaint whatsoever from any corners, in regard to the conduct of the written test. As such, the written test result ought to have been proceeded with. The entire gamut of the problem lay with the interview process,

which was a curable one. A fresh interview in accordance with rules could have been ordered.



14. Having noticed that the defects, as pointed out supra, could be cured by holding a fresh interview in terms of the notification of 2012 if the situation so warranted, we are of the firm opinion that the decision to cancel the entire selection process was not a bonafide one. Further, cancellation of selection process ignoring the Interim Order that was still in force, was also illegal.

15. Accordingly, we quash the cancellation notice dated 04.04.2017 and dispose of the O.A. of with direction to proceed with the written test result/shortlist published on 10.02.2014 and hold interview in accordance with law, if the same practice is still prevalent. The entire process be completed as expeditiously as possible, and preferably by 6 months. No costs.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

RK