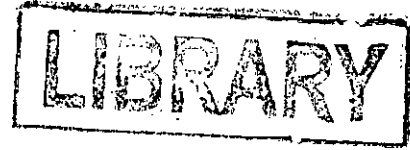


CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



No. O.A. 351/00473/2019

Date of order : 7.1.2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sudeep Banerjee,
Son of K.R. Banerjee,
Residing at Dairy Farm,
Fisheries Colony,
P.O. Junglighat,
Port Blair,
Pin No. 744 103.

... Applicant

- V E R S U S -

1. Union of India,
Service through the Secretary,
Ministry of Human Resource Development,
Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi - 110 001;
2. The Secretary,
Education,
Andaman & Nicobar Administration,
Port Blair - 744 101.
3. The Lt. Governor,
Andaman & Nicobar Administration,
Port Blair - 744 101.
4. The Director of Education,
Andaman & Nicobar Administration,
Port Blair - 744 101.
5. Ruma Mondal,
Daughter of Rabi Mondal,
Port Blair,
Andaman & Nicobar Administration,
Port Blair - 744 101.
6. Sharmistha Paul,
Wife of Shankar Paul,
Port Blair,



Andaman & Nicobar Islands,
Pin - 744 101.

7. Manik Mondal,
Son of Manaranjan Mondal,
Port Blair,
Andaman & Nicobar Islands,
Pin - 744 101.

8. Ananya Mukherjee,
Daughter of Anay Kumar Mukherjee,
R.G.T. Road,
Port Blair,
A&N Islands,
Pin - 744 101.

... Respondents

For the Applicant : Mr. B.K. Das, Counsel

For the Respondents : Mr. R. Halder, Counsel

ORDER (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 in second stage litigation praying for the following relief:-

"(i) The impugned provisional merit list for the post of Craft Instructor (Music Vocal/Instrumental) issued on 27.4.2018 by the respondent No. 4 herein be declared illegal and hence set aside, in view of the submission made by the Respondent Nos. 1 & 2 by way of Compliance Affidavit as Annexure - 8 above.

(ii) The respondents concerned may be directed to consider the applicant for selection for the post of Craft Instructor (Music Vocal/Instrumental) considering the marks obtained by the applicant in the Education and Profession Certificate.

(iii) The respondents concerned may be directed to dispose of the representation of the applicant dated 1.3.2019 as Annexure A-9 herein at the earliest;

(iv) The cost of the application;

(v) Pass such other Order/Orders as the Hon'ble Tribunal may deem fit and proper."

2. Heard both Id. Counsel, examined documents on record. The matter is taken up for disposal at the admission stage.

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3. The submissions of the applicant, as articulated through his Ld. Counsel is that the applicant had appeared in a selection test for the post of Craft Instructor. Although he had obtained better marks in the written test than that of the private respondents, he was not included in the provisional merit list. The applicant, thereafter, approached this Tribunal in O.A. No. 351/00744/2018 which was disposed of by the Tribunal with the following directions:-

"if the applicant's grievance is found to be genuine, then expeditious steps may be taken by the concerned respondent No. 1 within a further period of four weeks from the date of such consideration to include the name of the applicant in the Provisional Merit List. However, if in the meantime, the said representation stated to have been preferred on 23.5.2018 has already been disposed of then the result thereof be communicated to the applicant within a period of 2 weeks from the date of receipt of a copy of this order."

4. The respondents, thereafter, issued a speaking order dated 12.10.2018 in which it was conveyed that the applicant, was not found admissible on merit as he could not qualify in the trade test, and, hence, his candidature could not be considered. Being aggrieved, the applicant has, approached this Tribunal praying for the aforementioned relief.

5. Ld. Counsel for the applicant would vociferously agitate that, when the applicant had responded to the notification dated 20.4.2015 it was not intimated that the candidates have to obtain 50% marks in the trade test (10 out of 20) in order to be considered as qualified in such trade test. Accordingly, the fact that the applicant's candidature was rejected on the ground that he obtained only 9.32 out of 20 and, hence, was not declared as qualified, was contrary to legal principles as the rules of the game cannot be changed, once the selection process had been notified.

The applicant has advanced the following grounds in support of his claim:

- (a) That, no selection could be made on the basis of cut off marks in the trade test in violation of ratio upheld in judicial pronouncements.

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(b) That, educational documents were required to be verified prior to selection.

(c) That, extant rules and regulations were to be observed regarding written test, trade test and other tests, if any.

(d) Although the applicant had represented on 1.3.2019 against the illegality of artificial introduction of cut off marks in the trade test (a criteria introduced subsequent to the selection notification), his representation was not considered by the respondent authorities.

6. Ld. Counsel for the respondents, however, would furnish, in compliance to directions of this Tribunal, the orders of the competent authority, namely, the Lt. Governor dated 15.4.2015 in which a conscious decision had been taken that candidates must obtain 50% marks to qualify in the skill/trade test. As the applicant had admittedly responded to a notification dated 20.4.2015 which is subsequent to the approval of the competent authority, the allegation made that the norms of selection process were amended or changed mid-way after initiation of the selection process does not hold good.

7. In ***State of Orissa v. Bhikari Charan Khuntia, (2003) 10 SCC 144*** it was held that the policy decision of the Government regarding recruitment is not amenable to judicial review unless the same is arbitrary and in ***Official Liquidator v. Dayanand, (2008) 10 SCC 1***, the Hon'ble Apex Court ruled that decision of the Government to abolish, reduce posts or on recruitment cannot be challenged unless it is shown that the decision is mala fide. In ***Sonia v. Oriental Insurance Co. Ltd. (2007) 10 SCC 627***, it was further held that candidates would be governed by the rules prevailing on the date on which applications are invited.

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In the instant matter, the competent authority had approved the cut off marks for qualifying in trade test on 15.4.2015. The notification was issued thereafter. Hence, the administrative decisions settled prior to notification of the selection process would be applicable to all those who would apply in response to subsequent notifications.

Further, the Hon'ble Apex Court in **Banarasidas v. State of UP, AIR 1956 SC 520** and in **Commissioner, Corpn. Of Madras v. Madras Corpn. Teachers' Mandram, 1997 (2) SLR 468 (SC)**, observed that it is well settled that it is open to the appointing authority to lay down requisite qualifications for recruitment to Government Service as this pertains to the domain of policy.

In **Surinder Singh v. UOI, (2007) 11 SCC 599**, the Hon'ble Apex Court specially clarified that the essential qualifications are laid down to prescribe a cut off level whereas preferential qualification is to assess better mental capacity, ability and maturity. In a situation, therefore, where a candidate A secured more percentage in preferential qualification and lesser percentage in essential qualification as compared to another candidate R, then A should be selected.

In the instant matter, the applicant, had, according to his claim, obtained more marks in written exam which is the initial criteria in the selection process. When he participated in the next qualifying stage of skill/trade, he however obtained lesser percentage of marks as compared to the selected candidates. Hence, following the ratio in **Surinder Singh (supra)** the applicant cannot claim success as compared to the selected candidates.

This Tribunal is also bound by the ratio of the Hon'ble Apex Court in **Basic Education Board U.P. v. Upendra Rai, (2008) 3 SCC 432**, wherein it has been held that change in eligibility conditions/educational

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qualifications for the purpose of recruitment is a policy decision which cannot be interfered with by the courts. Hence, we refrain from any intervention with the policy decision of the authorities in fixing a cut off mark for qualifying in the trade test and would consider the present application as devoid of merits.

8. The O.A. is accordingly dismissed. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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