

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

O.A/350/00185/2019

Date of Order: 16.09.2021

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

Suvendu Chowdhury, son of Sankar Prasad Chowdhury, aged about 44 years, working as Commercial Supervisor under Senior Divisional Commercial Manager, South Eastern Railway, Kharagpur, residing at Z/1, 197 Andul Road, Post Office – D S Lane, Howrah 711109, West Bengal.

....Applicant

-Versus-

- (i) The Union of India, through General Manager, South Eastern Railway, Garden Reach Road, Kolkata – 700043.
- (ii) The Chief Personnel Officers, South Eastern Railway, Garden Reach Road, Kolkata – 700043.
- (iii) The Chief Commercial Manager, South Eastern Railway, 14, Strand Road, Kolkata – 700001.
- (iv) The Deputy Chief Commercial Manager (PS), South Eastern Railway, 14, Strand Road, Kolkata – 700001.

2. Respondents

For The Applicant(s): Mr. A. Chakraborty, Counsel

For The Respondent(s): Mr. K. Sarkar, Counsel [Hall 4, 4, Strand]

ORDER (ORAL)

Per: Dr. Nandita Chatterjee, Administrative Member

The applicant has approached this Tribunal praying for the following relief:

"a) Speaking Order no. DCPO/(G)/CON/CC/CAT/780 dated 23.01.2019, issued by the Principal Chief Personnel Officer cannot be sustained in the eye of law and therefore the same may be quashed.

b) An order do issue directing the respondents to publish the panel of candidates who are duly selected in the selection for promotion to the post as ACM/ACO and grant them promotion in the post of ACM/ACO at an early date.

c) An order do issue directing the respondent to confirm the promotion of the applicant in the post of ACM/ACO."

2. The applicant would rely on the orders of this Tribunal in O.A. 250/1522/2017 which was disposed of on 25.09.2018 with the following orders:

b) An order do issue directing the respondents to publish the panel of candidates who are duly selected in the selection for promotion to the post as ACM/ACO and grant them promotion in the post of ACM/ACO at an early date. Heard arguments for both sides, examined pleadings and documents on record wherefrom it transpires that the allegations on procedural irregularities relating to ACR/APAR relates to a candidate other than the applicant and that there are no allegations of wrongdoing against the applicant. Withholding/cancellation of the entire selection process on account of procedural irregularities with respect to one particular candidate is against the principle of fairness and justice as it adversely affects other candidates who stood a fair chance of qualifying in the said selection process. In *Charanjit Singh v. Harinder Sharma* (2002) 9 SCC 732 and in *Bimla Devi v. State of Himanchal Pradesh* 2010 (7) SCJ 918, the Hon'ble Apex Court had also held that selection of all the other candidates do not become vitiated in the event of illegal selection of certain candidates.

6. In *Union of India v. Rajesh, P.U. Puthuvalnikatha* (2003) 7 SCC 285, the Hon'ble Apex Court had held that a selection process need not be nullified in its entirety, if only some are found to be the beneficiaries of illegalities or irregularities committed by them. The selection of those which has not initiated any such ground cannot be denied any appointment on any justifiable basis.

6. Hence, with the consent of the parties, we hereby direct the competent respondent authority to consider the case of the applicant, if otherwise qualified for selection. The respondents, however, are at liberty to proceed against the candidate allegedly also *heb*

guilty of procedural irregularity and reserve certain posts subject to outcome of such inquiry/investigation against the allegedly delinquent candidate.

7. If the applicant and other similarly placed candidates are free from any allegations and if they qualify on merit and as per Rules, the competent respondent authorities may like to confirm their selection as per law within a period of 16 weeks from the date of receipt of a copy of this order.

8. With this, the O.A. is disposed of. No Costs."

In the final paragraph of such orders, this Tribunal had granted some relief to candidates similarly placed as the applicant. It was directed that the candidates who had appeared for the post of ACM/ACO Group 'B' through LDCE against 30% quota, if found qualified on merit as per rules, and, if free from allegations, could be considered by the respondent authorities so as to confirm their selection, as per law, without compelling them to participate in a fresh selection process.

3. Although the applicant had sought for such benefits on 10.01.2019 (Annexure A9 to the O.A.), his prayer was rejected by the respondent authorities vide their reply dated 23.01.2019 (Annexure A10 to the O.A.) which stated as follows:

"As per the directives of the Hon'ble Tribunal, this office is in receipt of your stated presentation under reference (i) above on 14.01.2019.

As directed by the Hon'ble Tribunal, the undersigned, working as the Principal Chief Personnel Officer and being the Respondent No. 2 of the present OA, has gone through your representation vis-à-vis the circumstances pertaining to the said selection and provides the following:

- (i) There is no ambivalence that you were a candidate for selection (30% LDCE Quota) for the post of ACM (Gr. B), the Notification of which was published on 27.10.2016. Based on your performance in the written examination, you were called for the viva voce test for assessing your suitability.
- (ii) Subsequently, however, the said selection was cancelled in entirety vide this office communication dated 12.09.2017 owing to irregularities that had a bearing on

As directed
by the P.C.P.O.

*As per the said order, the required relief in
accordance with the*



the final selection, which were discovered at the time of viva voce. Therefore, due to administrative irregularities, it was decided to scrap the selection proceedings with the approval of the Competent Authority.

(iii) This was indeed a conscious decision taken unanimously by all the Selection Committee members and this was purely an administrative decision not intended to deny anybody his/her due right for fair consideration in the selection process.

(iv) The selection has only been cancelled while in intermediary stage and not after the final panel was published. The administration reserves all rights for the sake of propriety and transparency in all its selections and more so for gazetted posts. Scrapping a selection midway, before finality, for irrefutable irregularities, confers no right to the candidate to be aggrieved against for he/she had merely passed the written examination. Getting shortlisted in the written examination is no guarantee for the final empanelment, whatsoever.

(v) Following the cancellation, the administration has immediately and prudently followed up with a fresh Notification, replicating the terms and conditions for the cancelled selection while keeping the earlier zone of consideration unperturbed. Therefore, the same group of candidates will have their stakes in the same selection being held afresh. This is no arbitrary action on the part of this office and the legitimate and admissible concerns of all candidates have not been tinkered with in any manner.

Your representation therefore lacks substance and is devoid of any merit for consideration. As already has been explained above, no right can be entertained for one's candidature in a selection exercise which was marred with irregularities and subsequently cancelled midway.

Aggrieved with such rejection, the applicant approached this

Tribunal praying for the aforementioned relief.

4. Perusal of this Tribunal's order in O.A. 350/1522/2017 leads to the following inferences:

(i) That, this Tribunal had referred to such candidates who were similarly placed as the applicant in the O.A. 350/1522/2017, namely Shri Anurag Tripathi, and, who had qualified on merit, as per rules, in the same selection process and against whom there were no specific

allegations in indulging in misconduct or in committing irregularities during the selection process.

(ii) This Tribunal had thereafter directed that the selection of such similarly placed candidates could be confirmed by the respondent authorities, as per inter se merit and in terms of extant recruitment rules, without compelling them to appear in a fresh selection process.

The applicant is aggrieved that despite such orders from the Tribunal, he was asked to participate in the fresh selection process by a notification dated 08.10.2018 and 04.12.2018 and his participation was called for in Part-A of the said eligibility list (Annexure A8 to the O.A.).

5. The respondent authorities have never contended that there are any allegations against the applicant or that he was even involved in irregularities in the selection process. It is an admitted fact that this applicant qualified in the written examination. It is also not disputed that he had appeared in the viva-voce whose results were not finalized on account of alleged irregularity on the part of another candidate.

We are, hence, of the considered opinion, that there are no objective grounds on which the respondents can deny him empanelment to the post of ACM/ACO, subject to his qualifying on inter se merit.

6. Accordingly, we hereby direct the respondent authorities to consider the performance of this applicant in the earlier written examination as well as in the viva-voce and thereafter to proceed to decide on the applicant's selection, in accordance with law, in terms of the recruitment rules, and, strictly in accordance with merit. The applicant should not be compelled to participate in a fresh selection process.

hph

process while finalizing the empanelment of Group 'B' panel of the post of ACM/ACO.

This Tribunal hereby also grants liberty to the respondents to fill up one post of ACM/ACO (Group 'B') that had been directed to be kept vacant vide interim orders dated 17.07.2019 in M.A. 343 of 2019 arising out of O.A. 185 of 2019 (Suvendu Chowdhury v. UOI & Ors. (S.E. Railway).

7. With these directions, the O.A. stands disposed of. No costs.

M.As. bearing no. 350/864/2019 and 350/343/2019 praying for further orders, M.A. bearing no. 350/452/2020 praying for early hearing, M.A. no. 350/563/2020 praying for vacation of interim relief and M.A. no. 350/177/2020 praying for amendment are disposed of accordingly.


(Nandita Chatterjee)

Member (A)


(Bidisha Banerjee)

Member (J)

UJ


(Member (J))


(Member (A))