

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

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No. O.A. 350/00554/2021
M.A. 350/00202/2021

Date of order: 01.04.2021

Present : Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Narendra Narayan Talukdar,
Son of N.C. Talukdar,
Aged about 50 years,
Residing at Street No. 15,
Quarter No. ISA, Chittaranjan,
Burdwan, Pin - 713331, West Bengal.
2. Sanjay Ganguly,
Son of Sri B.R. Ganguly,
Aged about 49 years,
No. 11A, Quarter No. 6V, Chittaranjan,
Burdwan, Pin - 713331, West Bengal.

..... Applicants.

Versus

1. Union of India,
Service through the General Manager,
Chittaranjan Locomotive Works, Chittaranjan,
Burdwan, West Bengal, Pin - 713331.
2. The Chief Personnel Officer,
Chittaranjan Locomotive Works, Chittaranjan,
Burdwan, West Bengal, - 713331.
3. The Chief Mechanical Engineer/
Chittaranjan Locomotive Works, Chittaranjan,
Burwan, West Bengal - 713331.
4. The Senior Personnel Officer (W),
Chittaranjan Locomotive Works,
Burdwan, West Bengal - 713331.
5. The Principal Chief Personnel Officer,
Chittaranjan Locomotive Works, Chittaranjan,
Burdwan, West Bengal - 713331.

Ans

6. The Assistant Personnel Officer (Headquarter),
Chittaranjan Locomotive Works, Chittaranjan,
Burdwan, West Bengal - 713331.

..... Respondents.

For the Applicants : Mr. U. Roy, Counsel

For the Respondents : Mr. K. Sarkar, Counsel

ORDER (Oral)

Dr. Nandita Chatterjee, Administrative Member:

The applicants have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- "a) An order do issue directing the respondents to withdrew the impugned Notification dated 06.03.2021 under challenge forthwith.
- b) An order do issue directing the respondents to allow the applicants to appear in the written examination to be held on 27.03.2021, forthwith;
- c) An order do issue directing the respondents to consider the eligibility criteria of the applicants and to allow the applicants to appear in the written examination to be held on 27.3.2021 forthwith;
- d) Leave may be granted to file this application in common cause of action u/s 4(5)(a) CAT Procedure Act 1985."

An interim relief has also been sought for to the following effect:

" Pending hearing of the application, the applicants may be allowed to appear in the written examination to be held on 27.3.2021 subject to outcome of the disciplinary proceedings and other proceedings of the Hon'ble Court."

2. Ld. Counsel for the applicants would vociferously pray for such interim relief on the following grounds:-

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- (i) That, the authorities cannot debar the applicants from participating in the selection process.
- (ii) That, as the respondent authorities have not completed the disciplinary proceedings within the time granted by this Tribunal, the applicants cannot be made to suffer on account of the delay and latches of the respondents in finalizing the disciplinary proceedings.
- (iii) That, although the Tribunal had directed the authorities to conduct a denovo selection, the denovo selection had to be conducted from the list of 370 candidates who had appeared in the last selection examination conducted in the year 2010 and not an arbitrary list of 442 candidates.
- (iv) That, the applicants should have been allowed to appear in the selection process without prejudice to their rights and contentions in view of the pending litigations before the Hon'ble High Court of Calcutta and the appellate authority.
- (v) That, the notification dated 6.3.2021 is bad in law and should be withdrawn forthwith by allowing the applicants to appear in the written examination to be held on 27.3.2021.

Although the notified date of written examination in the annexed documents at A-3 to the O.A. reads as 27.3.2021, both Ld. Counsel would submit that the revised date of the written examination has been rescheduled to 3.4.2021.

- (vi) In response to those Tribunal's directions dated 25.3.2021 in the instant O.A. that order/rules/circulars which permit the applicants to sit for the examination despite currency of the penalty, Ld. Counsel for the

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applicant would bring forth para 16 on the General Principles For holding Inquiry, which states as follows:-

"Promotion during proceedings

16. Though, even during pendency of proceedings, case for promotion is considered by the DPC but their findings are kept in a sealed cover which is opened and given effect to only if, later on, the charged employee is exonerated of the charges.

But, if even penalty of censure is imposed on the charged employee, then the sealed cover is not to be acted upon and the case for promotion is considered by the next DPC in the normal course (Union of India v. A.N. Mohanan, C.A. No. 2020 of 2007 decided by Supreme Court on 18.4.2007).

(vii) Ld. Counsel would further aver that, as the prayer for review of the penalty orders is pending at the level of the Reviewing Authority, disciplinary proceedings are yet to be concluded, and, that, the Hon'ble High Court at Calcutta in *WPCT No. 131 of 2019* preferred by *Narendra Narayan Talukdar* (*applicant No. 1*) herein and ors. has observed as follows:-

" It is needless to mention that any step taken by the respondents pursuant to the notification dated 4th June, 2020 shall abide by the result of the writ petition."

3. Ld. Counsel for the respondents, on the other hand, would question the maintainability of the Original Application before this Tribunal on the ground that as the matter is subjudiced at the level of the Hon'ble High Court at Calcutta, the applicants can only seek his relief from the Hon'ble High Court at Calcutta and not from this Tribunal.

4. Historically speaking, the applicant No. 1, N.N. Talukdar and the applicant No. 2, Shri S. Ganguly, were applicant Nos. 6 and 22 in O.A. No. 244 of 2015 (Partho Chatterjee & ors. v. Union of India & ors.). Applicant No. 2, Shri S. Ganguly, was also an applicant in O.A. No. 232 of 2016. This Tribunal had disposed of O.A. No. 1135 of 2011, O.A. No. 244 of 2015 read with M.A. No. 47 of 2015 and M.A. No. 152 of 2015 as well as O.A. No. 232 of 2016, O.A. No. 1432 of

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2014 and O.A. No. 1706 of 2015 and O.A. No. 1365 of 2015 vide a common order dated 8.11.2019 with the following orders:-

"16. Hence, to sum up,

- (i) O.A. No. 1135 of 2011 is disposed of as infructuous.
- (ii) O.A. No. 244 of 2015 is dismissed on merit with the rider that the respondents will not recover any pecuniary benefits as earned by the original applicants in O.A. no. 244 of 2015 and added applicants as per M.A. no. 47 of 2015 and M.A. no. 152 of 2015 in case they have actually rendered service as Junior Engineers (Mechanical) in the interregnum and also that these applicants will be given the benefit of age relaxation, if any so required, in the de novo selection process.
- (iii) O.A. No. 232 of 2016, O.A. No. 1432 of 2015, O.A. No. 1706 of 2015 and O.A. No. 1365 of 2015 are all disposed of with liberty to the respondent authorities to conclude the disciplinary proceedings within a period of six months from the date of receipt of a copy of this order, to be completed before conduct of the selection process, with the corollary that those absolved from the charges will be entitled to appear at the selection process."

Hence O.A. No. 244 of 2015 in which both the instant applicants were parties, was dismissed on merit with rider that the respondents would not recover any pecuniary benefits in case the applicants had actually rendered their service as Junior Engineer (Mechanical) in the interregnum and also that these applicants will be given the benefits of age relaxation, if any so required, in the de novo selection process with the corollary that only those absolved from charges would be entitled to appear at the selection process. The Tribunal hence, had categorically directed that, only if absolved of the charges, applicants/candidates would be eligible for participation in the selection process.

This Tribunal also granted the respondents liberty to continue their selection process as notified on 10.2.2015 upon cancellation of the selection process consequent to notification dated 1.9.2008.

Vide Annexure A-2 to the instant O.A., the respondent authorities have issued the following notification (emphasis supplied):-

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CLW/Chittaranjan

No. GMA/TTC/3/1 Pt. XIII(Mech)/Duplicate

Date 03.11.2020

PCPO/PCME/PCEE/PCOS/CEE(L&S)/CME(SF)/CME(Loco)/CME(Mfg.)/Dy
CME(SF)/Dy CME(Mfg.)/DY CME/(ELB)/Dy CME(Plant)/Dy CME(ELA)/Dy
CME(MPP)/Dy CME(ELF)/Dy CEE(TMM)/DyCPO(W)/
SPO(W/E)/PTTC/APO(W/M)/APO(SF)/AWO

Sub: Selection for formation of panel for filling up of the Posts of Apprentice mechanics Inter Stage (Mechanical).

Ref: This office Letter No. GMA/TTC/3/1/Pt XIII(Mech.)/Duplicate dated 04.06.2020.

In partial modification of this office earlier letter of even no dated 04-06-2020, the revised list of eligible candidates, giving due compliance to the order passed by Hon'ble CAT/Kolkata in O.A No. 350/00244 of 2015, M.A. 47/2015, M.A. 445/2015, M.A. 893/2017, M.A. 152/2015, O.A. 232 of 2016, O.A. 1365 of 2015, O.A. No. 1432 of 2015, and O.A. No. 1706 of 2015, is enclosed in ANNEXURE "A" (as per their present status). The list of ineligible candidates, who are subjected to punishment in DA case, are shown against Annexure 'B'. The eligible candidates may please be advised to keep themselves in readiness for the Written Examination. The date of written examination will be intimated in due course.

The content of this letter may please be got noted by the eligible & ineligible candidates under your control and the compliance report must be sent to this office on or before 16-11-2020.

DA Annexure A & B

Sd/-

Asstt. Personnel Officer (HQ)
For Principal Chief Personnel Officer"

This order was issued in compliance to the orders issued by this Tribunal in O.A. No. 350/00244 of 2015, M.A. 47/2015, M.A. 445/2015, M.A. 893/2017, M.A. 152/2015, O.A. 232 of 2016, O.A. 1365 of 2015, O.A. No. 1432 of 2015 and O.A. No. 1706 of 2015 respectively.

In Annexure 'B' of such notification, the respondent authorities had listed certain candidates, who, having subjected to punishment in the DA case were debarred from participation in the selection process as directed by this Tribunal.

5. During hearing on grant of interim relief, Ld. Counsel for the applicant would furnish two orders of the Hon'ble High Court at Calcutta in WPCT No.

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131 of 2019 which applicant No. 1 and others had approached the higher forum challenging the orders of this Tribunal dated 8.11.2019 (supra). The Hon'ble High Court at Calcutta decided against grant of any interim relief vide its orders dated 13.12.2019.

Applicant No. 1 and others thereafter approached the Hon'ble High Court at Calcutta in CAN No. 3280 of 2020 and CAN. 3281 of 2020 arising out of WPCT No. 131 of 2019, in which, while adjudicating the same, the Hon'ble High Court observed as follows:-

“ Mr. Ajay Debnath has accordingly submitted that there should be a limited stay of the said notification till the writ petition is heard on merits.

We are unable to accept such submission made on behalf of the applicants. The order of the Co-ordinate Bench does not stay the order passed by CAT, Kolkata Bench. As a fall out of the said decision and refusal to pass any interim order by the Co-ordinate Bench, the Railway authorities were permitted to proceed with the matter and had accordingly taken steps in that regard. There has been no change of circumstances on the basis of which the order passed by the Co-ordinate Bench needs to be revisited or the merits of the order under challenge of CAT requires examination. The order of the Co-ordinate Bench has taken care of to protect the interest of the writ petitioners.

It is needless to mention that any step taken by the respondent pursuant to the notification dated 4th June, 2020 shall abide by the result of the writ petition.”

6. Upon perusal of documents, and, upon hearing the contentions of both Ld. Counsel, the following transpires:-

(i) As submitted by Ld. Counsel for the applicants during hearing, the applicants had preferred a Review petition to the Reviewing Authority, which, remains pending, and, according to the applicants, such pendency renders the disciplinary proceedings inconclusive. To the contrary, in *Yoginath D. Bagde vs. State of Maharashtra*, (1997) 7 SCC 739, Hon'ble Apex Court has held that disciplinary proceedings comes to an end only when the

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Disciplinary authority, on consideration of the reports, either exonerates or imposes punishment on the delinquent.

- (ii) The applicants have approached the Hon'ble High Court at Calcutta in WPCT No. 131 of 2019 challenging the Tribunal's orders that directed conclusion of the proceedings. Despite such challenge to the disciplinary proceedings, per se, the applicants simultaneously approached the higher/reviewing authority for obtaining relief against the penalty orders. Surprisingly, during the pendency of such processes at the Hon'ble High Court and with the Reviewing authority, the applicants have simultaneously approached this Tribunal to overrule its own orders in allowing penalized candidates to participate in the selection process.

The applicants cannot indulge in forum shopping in trying to nullify the disciplinary proceedings, per se, in WPCT 131 of 2019 and also in approaching the Reviewing Authority in acknowledgement of the process undertaken by the disciplinary authority. Paradoxically, the applicants have also approached this Tribunal, suppressing at the outset that the Tribunal's orders were under challenge in WPCT No. 131 of 2019.

- (iii) This Tribunal had ordered that candidates/applicants found guilty in disciplinary proceedings would be debarred from the selection process. Hence, the same Tribunal cannot sit in appeal over its own orders to relax its directions to allow those, not absolved of charges in departmental proceedings, to participate in the selection process.

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(iv) In the instant O.A., the applicants have prayed for withdrawal of the notification dated 6.3.2021 which notified the date of the written examination. Hence, their complete volte face in praying for permission to participate in the very said examination pronounced by a notification they would seek to challenge is self contradictory. Further, granting the applicants permission to appear in the examination would be tantamount to granting them the final relief.

(v) Finally, once the Hon'ble High Court at Calcutta had taken cognizance of the challenge to this Tribunal's orders, and, had directed that any step taken by the respondents pursuant to notification dated 4.6.2020 shall abide by the result of the Writ Petition, consequent notifications dated 3.11.2020 at Annexure A-2 to the O.A. and that dated 6.3.2021 (impugned herein at Annexure A-3 to the O.A.) would all be subject to adjudication by Hon'ble High Court at Calcutta.

7. This Tribunal, having ordered that all those penalized in the disciplinary proceedings would not be allowed to appear in the selection process, cannot overrule its own decision and allow any such participation in the selection process proposed to be conducted by the respondent authorities.

Hence, as this Tribunal cannot sit in appeal over its own orders, the prayer for interim relief cannot be considered by this Tribunal. The applicants may seek relief in the appropriate forum.

List the O.A. on 13.4.2021.



(Dr. Nandita Chatterjee)
Administrative Member

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