

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA



Date of order: 21.01.2021

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

OA. 350/846/2017 Anjuara Khatum

OA. 350/847/2017 Asim Mandal

OA. 350/1544/2017 Jiyaul Malita

OA. 350/1545/2017 Prosanta Das

OA. 350/1555/2017 Asim Kumar Biswas

OA. 350/1556/2017 Prashanta Biswas

OA. 350/1562/2017 Haripada Das

-Vs-

RRC (E. Railway)



For the Applicant : Mr. I. N. Mitra, Counsel
Ms. T. Maity, Counsel

For the Respondents : Mr. A. K. Guha, Counsel
Mr. S. K. Das, Counsel

O R D E R (Oral)

Per Ms. Bidisha Banerjee, JM:

Heard all the ld. counsels.

2. Ld. counsel Mr. I. N. Mitra appearing for applicants in these batch cases would at the outset place the following:

(i) Para 16 of the Employment Notice No. 0112 dated 16.08.12 that stipulates as under:

"Selection will be based on MERIT only. First there will be Written Examination. Candidates to a limited extent, in order of merit, out of those who obtained the prescribed minimum pass marks in Written Examination will be called for Physical Efficiency Test (PET). Those who will qualify in the Physical Efficiency Test (PET) will have to go through the original document verification. Candidates who will found eligible after Physical Efficiency Test (PET) will be called for Medical Examination of relevant standard as shown against each category of post at Page-1 of this notification. There will be no interview."

(ii) Call letter for medical which states :

"13. Medical call letter is issued strictly as per merit in the ratio 1:1 of total notified vacancy only. Candidates not coming within the zone as per merit will not be issued medical call letter."

Placing the above, ld. counsel would contend that the entire selection comprised of a Written Test followed by Physical Efficiency Test (PET) of those candidates who qualified in the Written Test, then Verification of Original Documents of such candidates who succeeded in PET followed by Medical Examination of such no. of candidates equal to the no. of vacancies in 1:1 ratio.

3. Ld. counsel would further place para 10 of the order in OA. 1680/2015 pronounced on 06.10.2016, along with batch cases, that was referred to by the Division Bench while referring the matter to a Larger Bench. The paragraph reads as under:

"10. The schemes shows that the merit is prepared on the basis of written examination and all candidates who qualified in the PET are also not necessarily be called for medical examination because candidates are called in order of merit for medical examination. If the number is equal to the vacancies is fulfilled it would not be necessary to call for other candidates for medical test who have been qualified in the PET. The respondents, in this regard have categorically stated that candidates who obtained the prescribed marks in the written test are called for PET as per the merit in the ratio 1:3 of notified vacancies which is followed by documentary verification. The PET is of qualifying in nature and is followed by document verification and the candidates to a limited extent in the ratio 1:1 as per merit are sent for medical examination of relevant standard. It has been stated that they have not ever violated the order of the Tribunal. It has been stated that the applicants of the instant O.A have failed to come in the zone of consideration as per merit against EN No. 0112 and in this regard, the respondents have furnished a list showing the details of the candidates applied, appeared and got qualified which is extracted herein below for ready reference:

1.	Total vacancies advertised in Emp Notice No. 0112	5847
2.	Candidates appeared for written examination	5,87,448
3.	Candidates qualified in written examination	50,850
4.	As per Rules if vacancies notified are more than 1,500 candidates to be called for Physical Endurance Test (PET) 3 times the vacancies advertised (called for PET in order of marks obtained in written examination)	16,950
5.	Candidates qualified in PET	13,636
6.	Candidates sent for medical examination from among the candidates qualified in PET again on the basis of initial order of merit as per written examination	5938
7.	Duly qualified candidates against Emp Notice No . 0112 (Panel Finally published 26.09.2015 on the web site	5709
8.	The short fall of 138 (5847-5709) was to be filled up by PWD (Persons with Disabilities) as per Supreme Court Jt. (Present applicants are not PWDs)	

4. Since Srl. No. 1 to 7 of today's Larger Bench list all are analogous matter and this common order would govern all the matters, vis OA. 846/2017, OA, 847/2017, OA. 1544/2017, OA. 1545/2017, OA. 1555/2017, OA.1556/2017 and OA. 1562/2017.



Placing the above, ld. counsel would assertively submit that the shortfall of 138 as in Srl. No 8, had to be filled up by PWD candidates.

5. This Larger Bench was constituted in view of the reference made by a Division Bench of this Tribunal on 17.04.2018 in these batch cases starting with OA. 609/2017, disposed of vide order dated 16.10.2016. The order is quoted hereinbelow with supplied emphasis for clarity:

" O.A.350/609/2017

Heard ld. counsel for both sides.

We find that a representation has been preferred by the applicant on 07.03.2017(Annexure A/5) to the respondent authority concerned but no decision has been taken on the same though one year has elapsed.

ld. counsel for the respondents is directed to apprise this Tribunal regarding the outcome of the representation dated 07.03.2017(Annexure A/5) and furnish the

details by the next date. In case the representation is disposed of in the meantime, Id. counsel for the respondents may hand over a copy of the decision to Id. counsel for the applicant. List the matter on 20.04.2018.

A copy of this order be given to Id. counsel for both sides.

O.A.350/476/2017

Wrongly listed. It appears from the record that the matter has already been disposed of by a Division Bench of this Tribunal vide order dated 15.05.2017. Accordingly the matter is delisted from today's list.

O.A.350/846/2017, O.A.350/847/2017, O.A.350/1544/2017,
O.A.350/1545/2017, O.A.350/1555/2017, O.A.350/1556/2017,
O.A.350/1562/2017

Heard Id. counsel for both sides.

We find that on 06.10.2016 an order has been passed by the Division Bench of this Tribunal consisting of Hon'ble Mr. V.C. Gupta, Judicial Member and Hon'ble Ms. Jaya Das Gupta, Administrative Member on this issue, operative portion of which reads as under:-

"15. There is no grievance of the applicants that the medical test was done by the respondents not in accordance with the merit position secured by the candidates in the written test nor they named any candidates who although secured less mark in the written test in comparison to the applicants was called for the medical test ignoring the merit. In such a view of the matter we are of the view that the orders passed by this Tribunal has not been violated by the respondents rather the orders have been strictly complied with by the Respondents. It is also clear that the final panel was also published before filing the OAs. Hence, if we direct the Respondents to get the medical test of the applicants done this will be a futile exercise because they did not have secured such mark in the written test so as to be accommodated within the vacancies notified and filled up by the Respondents. Therefore, their medical examination not at all necessary and once the direction has been complied with by the Respondents by preparing the final merit list in terms of the process of recruitment by following the Rule, we do not find any illegality in publishing the final list.

16. All the OAs, MAs and CPC sans merit and are accordingly dismissed. No costs."

In view of this, we are of the considered view that the Registry should send this matter to the Principal Bench for direction for constitution of a special Bench/larger Bench to decide the issue because sitting in a Division Bench we cannot tinkle with the order passed by another Division Bench of this Tribunal. Accordingly all these matters are delisted from today's cause list.

O.A.No.350/945/2017, O.A.350/946/2017, O.A.350/947/2017,
O.A.350/948/2017, O.A.350/949/2017, O.A.350/950/2017, O.A.350/954/2017,
O.A.350/955/2017, O.A.350/956/2017, O.A.350/958/2017, O.A.350/959/2017,
O.A.350/987/2017, O.A.350/1001/2017,
O.A.350/1019/2017, O.A.350/1020/2017, O.A.350/1021/2017

Heard Id. counsel for the applicants and the respondents. On consent of both sides, list all these matters as "Top" on 24.04.2018."



5. Normally, a bench of coordinate jurisdiction cannot set at naught the decision of another bench of coordinate jurisdiction and it is then that a matter is referred to a Larger Bench. In various pronouncements of Hon'ble Apex Court, an order passed by a bench of lower strength has been criticized if a contrary decision of a Larger Bench on the same issue exists.

6. It has been held that pursuit of the law, however, glamorous it is, has its own limitation on the Bench in a multi Judge Court, the judges are bound by precedents and procedure. They would use their discretion only when there is no declared principle to be found, no rule and no authority. The judicial decorum and legal propriety demand that where a learned single judge of a Division Bench does not agree with the decision of a Bench of coordinate jurisdiction, the matter shall be referred to Larger Bench. It is a subversion of judicial process not to follow this procedure.



7. Hon'ble Apex Court in *Vijay Laxmi Sadho v. Jagdish*, 2000(1) AIR SCW 223, observed as under:

"As the learned single Judge was not in agreement with the view expressed in Devilal's case, it would have been proper, to maintain Judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed".

8. It is trite, axiomatic and settled law that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate creating confusion. It is not proper to

sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs.

9. In the case at hand the referring Division Bench that was considering the matter did not seem to have come across or was confronting any decision which any of the members of the Division Bench was not in agreement with. No conflicting opinion of two decisions of two coordinate benches seem to have been placed before the Division Bench that was considering these OAs.

10. The Railways would be bound by their own rules and instructions unless such rules etc. ran contrary to any settled law. If the Railway rules or instructions governing a selection process speak of selection wholly on merit, or of medical examination of only such candidates, who qualify in written and PET, in 1:1 ratio, it has to be scrupulously followed. It was no ones case before the referring Division Bench that the Railways had acted contrary to their own rules or instructions which violation was affirmed by the Tribunal in its order dated 06.10.2016. What the earlier Division Bench on 06.10.2016 had recorded was that the applicants in some of the OAs, could not qualify in the Written Test and as such they had not acquired eligibility for medical test, and that the Railways had not violated any order of the Tribunal. There is no ambiguity or ambivalence in the order that needs to be clarified.

11. Even all the Id. counsels would agree in tandem that there was no occasion for the Division Bench to have referred the matter to a Larger Bench.

12. As such, a reference to a Larger Bench that too without framing an issue is incomprehensible and therefore, unwarranted. It appeared to be a futile exercise.

13. Having observed as above, this Larger Bench feels it appropriate to direct listing of these OAs before a Division Bench for a detailed hearing on the issue.



14. Accordingly, it is directed that the matters be listed before a Division Bench, appropriately after giving due notice to the parties, on 25.02.2021 at 1:00 p.m.

15. Parties are given liberty to exchange their affidavit in the meantime.

(*Tarun Shridhar*)
Member (A)

(*Nandita Chatterjee*)
Member (A)

(*Bidisha Banerjee*)
Member (J)

pd

