



**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A.350/01892/2018
M.A. 350/00562/2020

Date of Order: 16.09.2024

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

Anurag Tripathi, ✓
Son of Sury Mandi Tripathi,
Aged about 39 years,
Working as Commercial Supervisor at
UTS console Head Quarter,
Residing at 317, G.T. Road Belurmath,
Howrah, 711202 (WP) Flat No. 303E,
Ashoka Vihar.

..... Applicant.

Versus

1. The Union of India,
Through General Manager,
South Eastern Railway,
Garden Reach Road,
Kolkata 700043.
2. The Chief Personnel Officer,
South Eastern Railway,
Garden Reach Road,
Kolkata 700 043.
3. The Chief Commercial Manager,
South Eastern Railway,
14, Strand Road,
Kolkata 700 001.
4. The Deputy Chief Commercial Manager(PS),
South Eastern Railway,
14, Strand Road,
Kolkata 700 001.

..... Respondents.

**For The Applicant(s) : Mr. A. Chakraborty, Counsel
Ms. P. Mondal, Counsel**

For The Respondent(s) : Mr. K. Sarkar, Counsel

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O R D E R

Per: Dr. Nandita Chatterjee, Administrative Member

The applicant has approached this Tribunal in the second stage litigation praying for the following relief:

"I) Office order no. SER/P-HQ/GAZ-CEN/260/1/ACM(30%)/18 dated 08.10.2018 and corrigendum dated 11.10.2018 issued by Dy. CPO (Gaz) on behalf of Principal Chief Personnel Officer/GRC cannot be sustained in the eye of law as the same was issued in violation of the order dated 25.09.2018 passed by the Hon'ble Tribunal in O.A. No. 1522 of 2017 and therefore, the same may be quashed.

II) The eligibility list of candidates for fresh selection test issued vide office order no. SER/P-HQ/GAZ-CON/260/1/ACM(30%)/18 dated 04.12.2018 is not valid as the eligibility list is prepared on the basis of notification dated 08.10.2018 and corrigendum dated 11.10.2018. Therefore, the eligibility list prepared on the basis of invalid notification may be quashed."



2. Heard Ld. Counsel for both sides, examined pleadings and documents on record.

3. The admitted facts in this matter are as follows:

That, a notification was issued by the respondent authorities for formation of a Group 'B' panel to the post of ACM/ACO through LDCE against 30% vacancies of Commercial Department. The applicant appeared in the written examination, was selected in the written test with highest marks and thereafter, appeared in the viva-voce, whose results could not be published on account of allegations of serious irregularities with respect to ACR/APARs of a particular candidate. As the applicant had qualified in the written examination, and, had also appeared in the viva-voce, he had legitimate expectations of his empanelment to the Group 'B' Panel of ACM/ACO. Being denied of such an opportunity on account of the cancellation of the selection process, the applicant filed an O.A. 350/1522/2017 challenging cancellation of the said selection process.

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This Tribunal disposed of the O.A. on 25.09.2018 with the following observations and directions:

"5. 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 SSC 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 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."

The respondent authorities had neither approached this Tribunal for review of its orders nor was it challenged at any judicial forum.

4. Analytically speaking, this Tribunal's directions were as follows:

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- (i) The respondent authorities should consider the case of the applicant if he is otherwise qualified for selection, if he is free from allegations, and, if he has qualified on merit as per Rules, his selection should be confirmed.
- (ii) The respondents were also given liberty to consider the case of other similarly placed candidates who are free from allegations, and, if they have qualified on merit as per Rules for selection.



The authorities, however, instead of allowing the applicant's selection, in accordance with law and as per merit, notified a fresh empanelment process on 08.10.2018 (at Annexure A-9 to the O.A followed by a further notification on 04.12.2018 (at Annexure A-9 to the O.A.) that published two separate eligibility lists for participation in the selection process. The name of the applicant was enlisted in Part A of such lists.

The applicant preferred a representation on 05.11.2018 (Annexure A10 to the O.A.) referring to the orders of the Tribunal and requesting the authorities not to proceed with the notification of 08.10.2018, read with Corrigendum dated 11.10.2018, and to honour the contents of this Tribunal's order. The respondent authorities, in reply to such representation, informed the applicant in the extracted order as follows:

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“ South Eastern Railway

No: DCPO(G)/CON/CC/CAT/771

Office of the
Principal Chief Personnel Officer
Garden Reach, Kolkata-43
Dated: 03.12.2018

Shri Anurag Tripathi,
CS/Uts/NKG,
South Eastern Railway,
14, Strand Road,
Kolkata – 700001.

(Through Dy. CCM(PS)/SER/Kolkata)
Sub: Formation of Gr. B panel of ACM/ACO through LDCE
against 30% vacancies – Commercial Department
Ref: Your representation dated 05.11.2018

*This office is in receipt of your representation dated 05.11.2018
on the aforementioned subject and the same has been examined.*

*Re-notifying the said selection afresh does not vitiate the
Hon'ble Tribunal's observations and directives in any manner. And
this office has taken a conscious decision in ensuring that only the
candidates who were declared eligible for appearing in the said LDCE
selection of 2015-17 period shall only be eligible for consideration this
time as well. And in view of certain corrective measures taken towards
dealing with the procedural irregularities, as stated above*****, and
in view of slew of allegations in which the said selection was mired,
conducting the selection de-novo with the identical group of applicants
declared eligible earlier, shall serve both the purposes of going ahead
with the said selection with all criteria intact as earlier and not
denying anybody, otherwise suitable, his/her due consideration. This
is completely in line with the Hon'ble Tribunal's directives.*

*The selection is on and being an applicant in the earlier
selection, you are also eligible to have your stake in it as per your
performance.*

5. During hearing, Ld. Counsel for the respondents would bring forth
before us two documents as follows:

(i) An extract of the minutes of the Committee comprising
the CPO, the CCM and the CE (mHM) in connection with the
proceedings of the viva-voce held on 08.09.2018 with respect to the
formation of Group 'B' panel of ACM/ACO through LDCE against 30%
vacancies. The relevant part of such notings, dated September 2017, is
instructed as below (emphasis supplied):

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".....However, there was one more complaint at P/233, that one of the candidates Shri Anurag Tripathi, CCC/NKG is the brother-in-law of Shri Rajiv Kr. Sharma, Dy. CCM(spl.). As per para 5.4 of Railway Master Circular 28 on Confidential Reports "...reporting authority should abstain from writing the ACR of Railway servant who is his close relative. The reviewing authority such case.....". Hence, as indicated at 'A' above this particular rule has been vitiated in 04 of his 05 APARs. In view of this, it would not be possible to evaluate Shri Tripathi's performance, especially since he had the highest marks in the written exam.

In view of all the complaints received which is manifesting in this case, the Committee recommends that the entire selection proceeding be cancelled and fresh selection be conducted de novo."

This revelation is surprising as because when the earlier O.A. 350/1522/2017 was being adjudicated by this Tribunal, the respondents had neither through their affidavit nor during their verbal submissions, had ever brought to the notice of this Tribunal that there were any allegations against the instant applicant Shri Anurag Tripathi. In fact, the Tribunal had recorded, in its orders dated 25.09.2018, as follows:

"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."

The respondents have not sought for a review of the Tribunal's order assailing the accuracy of such observations.

6. In continuation to the recommendations of the committee as noted prepage, and, as brought before this Tribunal during hearing by Ld. Counsel for the respondents, we find that a major penalty chargesheet was issued against the applicant culminating in the following penalty:

"With immediate effect the Present Basic Pay Rs. 66,000/- in Level-7 as per 7th CPC is reduced to Basic pay Rs. 62,200/- (02 stage below) in level 7 as per 7th CPC (GP-4600) for the period of 3 months with NCE and with further direction that on expiry of this period, this reduction will not have the effect of postponing the future increments of the pay and all your basic pay 66,000/- will be restored back after completion of punishment period."

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In the same order, however, the respondent authorities have clarified that the article 2 of the charges, namely, procedural irregularity of the applicant Shri Anurag Tripathi, with reference to APAR/ACR for the year 2015-16 was not proved. What was proved was that one Shri Rajiv Kumar Sharma, the then Dy. CCM(Spl.)/ACR/Kolkata is a close relative of the applicant and that the applicant had directly submitted his ACR/APAR to the said Rajiv Kr. Sharma to obtain undue benefit from him.



The respondents have not been able to substantiate that Shri Rajiv Kr. Sharma was in any way involved in the selection process for empanelment to the post of ACM/ACO. Further, as the charges against the applicant on his ACR/APAR were not proved, his grades remain unchanged.

7. The respondents have not brought forth any arguments that their selection process was contrary to their recruitment rules. The applicant had admittedly qualified (upon securing highest marks) in the written examination. Also, the aspersions cast on him for committing irregularities in his ACR/APARs, which led to non-finalization of his results in the viva-voce, also came to a naught. Hence, we are of the considered opinion that the respondent authorities had no objective grounds to deny the applicant's empanelment to the post of ACM/ACO, subject to his qualifying on inter se merit.

8. On 17.07.2019, this Tribunal had issued, by way of interim relief, an order, that *"the respondents are granted liberty to proceed with the filling up of posts of ACM/ACO Gr. 'B' through LDCE against 30% vacancies – Commercial Department as notified on 08.10.2018. One post, however, should not be filled up*

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until final disposal of the allegations made against the applicant in O.A. No. 1522 of 2017 and O.A. 1892 of 2019 and without leave of this Tribunal."

This Tribunal hereby grants leave to the respondents to fill up such post with the disposal of this O.A.

We further direct that the applicant shall not be subjected to any further written examination or viva-voce and his selection will be duly confirmed in accordance with the marks earlier obtained by him (admittedly, the highest) in the written examination and viva voce, and in terms of recruitment rules, as well as his inter se merit position, while finalizing the empanelment of Group 'B' panel of the post of ACM/ACO.



9. With these directions, this O.A. is disposed of. No costs.

M.A. bearing no. 350/00562/2020 praying for vacation of the interim order is disposed of accordingly.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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