

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

M.A. No. 152 of 1997.

(OA No. 1483 of 1996)

Present : HON'BLE DR. B.C. SARMA, ADMINISTRATIVE MEMBER.
HON'BLE MR. D. PURKAYASTHA, JUDICIAL MEMBER.

UNION OF INDIA & ORS. (SE Rly)

Vrs.

P.P. SAMADDAR & 3 Ors.

For applicants/
respondents : Mr. C.R. Bag, Counsel leading
Mr. P. Chatterjee, Counsel.

For respondents/
applicants : Mr. B.C. Sinha, Counsel.

Heard on : 7.11.97.

Ordered on : 7.11.97.

ORDER

B.C. Sarma, AM.

This matter has been listed today for hearing and passing of appropriate Orders in the M.A. 162 of 1997. This M.A. has been filed by the Union of India & Ors. with the prayer that the Interim Order passed by this Tribunal on 17.12.1996 be suitably modified so that they can fill up ^{/all} the vacant posts of APO/AWOs since if the said posts are not filled up immediately, ~~in that event~~, it will cause injury to the public services. The instant applicants contend that the selection was held as per rules and in support of their contention they have also cited various judgements at the bar.

2. Mr. C.R. Bag, ld. Counsel leading Mr. P. Chatterjee, ld. Counsel for the instant applicants submits that in the Interim

Contd...P/2.

Order opportunity was given to the 4 applicants to appear in the selection test held on 22.12.96 but they did not appear. Mr. Bag also submits that at best 4 vacancies may be kept vacant ^{unfilled} until the case is disposed of, in order to give some sort of protection to the applicants in the OA but ^{filling up of} all the vacancies should not be held up. ¹

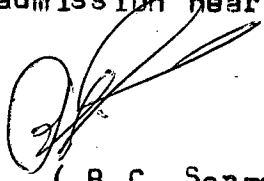
3. Mr. B.C. Sinha, Id. Counsel appearing for the ~~instant~~ respondents herein opposes the modification of the Interim Order on the ground that the applicants could not appear in the selection test which was held on 22nd Dec '96 since they did not get adequate time for preparation. In this connection, Mr. Sinha also invited our attention to the annexure at M-II of the M.A.

4. We have heard the submission of the Id. Counsel for both the parties and perused the records. We have also considered the facts and circumstances of the case. We find that the 4 applicants were very much aware that the selection test was going to be held at STC/Kharagpur on 22.12.96 and only after knowing that, they have obtained the Interim Order on 17.12.96. We also find that an opportunity was given to them to appear in the written test for selection in the post of APO/AWO (Gr- B) ^{/but} as submitted by Mr. Sinha, the instant respondents did not appear in the said written examination since the process was erroneous. However, we do not intend to deal with the submission made by Mr. Sinha in this M.A. to the effect that the entire selection process was ~~is~~ erroneous.

5. In view of the submission made by the instant applicants that the administrative interest may be hampered, we modify the Interim Order to the effect that the respondents are given liberty to fill up the vacancies but this action shall abide by the result of the ^{/original} application. We also direct the respondents to mention in

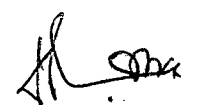
the appointment letter to be given to the selected candidates that their appointment is subject to the result of the Original Application and, obviously, such appointment shall be only on ad hoc basis.

6. The M.A. is accordingly disposed of without passing any Order as to costs. The O.A. be listed for admission hearing on 27.3.1997.


(B.C. Sarma)
Member (A)

Regarding granting of Injunction, I agree with the views made by my learned brother, Dr. Sarma. I also hold that in order to get an order of injunction or stay, the petitioner must prove the prima facie case, balance of convenience and inconvenience in his favour and irreparable loss and injury likely to be suffered if the prayer for injunction is ~~made~~ ^{refused}. It is a settled law that only a prima facie case does not entitle the applicant to have injunction unless it is proved by the applicant that he would suffer irreparable loss or injury, which cannot be compensated with money if the prayer for injunction is refused. Besides this, the applicant ^{or} also to show that the balance of convenience and inconvenience is in his favour. In the instant case, if the applicants succeed in this case, he will be entitled to get all consequential benefit of the order under challenge and, thereby, it cannot be said that he would suffer irreparable loss or injury if the prayer for injunction is refused.

2. In view of the above, I do not find any balance of convenience or inconvenience ^{in favour of the applicants} and, thereby, I do not find any merit in the application regarding grant of ad-interim order expecting the order passed by my learned brother.


(D. Purkayastha)
Member (J)