

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 273 of 1997

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman

Hon'ble Mr. M.S. Mukherjee, Administrative Member

1. Shri Kironmoy Roy, s/o Late S.K.Roy, working as Clerk Grade-I in Eastern Rly. and residing at 34/J, Justice M.M.Bose Lane, Konnagar, Dist. Hooghly ;
2. Sri Biplob Chowdhury, s/o Shri G.Chowdhury, working as Clerk Grade-I in Eastern Railway and residing at 187, Telpukur Road, East Kodalia, P.O. New Barrackpore, Dist. 24-Parganas(North) ;
3. Sri Ajit Kumar Srivastava, s/o Late R.N. Lal, working as Clerk Grade-I in Eastern Railway and residing at 9/5/A, Munshiganj Road, P.O. Kidderpore, Calcutta-700 023

.... Applicants

-Vs-

1. Union of India, through the General Manager, Eastern Railway, Fairlie Place, 17, N.S. Road, Calcutta-1 ;
2. The Chief Personnel Officer, Eastern Railway, Fairlie Place, 17, N.S. Road, Calcutta-1 ;
3. Sr.Manager, Printing & Stationery, Eastern Railway, Fairlie Place, 17, Netaji Subhas Road, Calcutta-1 ;
4. Shri A.K.Sankhari, Clerk Grade-I, C/o.Asstt. Superintendent, Printing & Stationery, Eastern Railway, Howrah.

.... Respondents

For applicants : Mr. R.K. Dey, counsel
Mr. A.K. Roychowdhury, counsel
Mr. D.P. Bhattacharjee, counsel

For respondents : Mr. P.K. Arora, counsel

Heard on : 5.6.1997 - Order on : 22.7.1997

O R D E R

A.K. Chatterjee, VC

Barring unnecessary details, facts relevant for consideration of the present application are that one of the avenues

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of promotion for the post of Clerk Grade-I is to the post of Forms Inspector - Gr.III on the basis of a selection from among those Clerks Grade-I, who opts for such promotion. Two posts of Forms Inspector Grade-III fell vacant, of which one was in the SC category and the other for unreserved category. The authorities invited option from Clerk Grade-I and subsequently a notice was issued for a test in which Sri J.Chakraborty, an unreserved candidate and Sri D.Paul, ^{an} SC candidate, both of whom had given option, were advised to appear. Before, however, the test was held, Sri Chakraborty withdrew his option and thereafter another order was issued advising Sri A.K.Sankari, an SC candidate impleaded as respondent No.4 to appear in the test in addition to Sri D.Paul. Thus, the present three petitioners, all of whom belonging to unreserved category contend that after withdrawal of option by Sri Chakraborty, the authorities had committed gross irregularity by advising an SC candidate namely A.K.Sankhari to appear in the selection test with a view to fill up both the vacant posts of Forms Inspector - Gr.III by SC candidate, although one of the posts was meant for unreserved category. When the order advising Sri A.K. Sankhari to appear in the selection test came to the knowledge of the petitioners, they submitted their options, which, however, have been turned down. In such circumstances, the present application has been filed, inter alia, for a direction upon the respondents to accept the option already exercised by the petitioners and to fix a date for selection test on the ground that it would be arbitrary if even the unreserved vacancy is filled up by an SC candidate.

2. The official respondents in their counter have stated that after the option by Sri Chakraborty was withdrawn, no other candidate in the unreserved category having exercised option within the prescribed date, the authorities had called Sri A.K.Sankhari to

appear in such test as he was the next senior candidate, who has exercised option. It was also urged that the selection process having been initiated, it could not be held up or cancelled midway as there was no procedural irregularity. The private respondent Sri A.K.Sankhari had also filed a counter, though his counsel did not appear at the time of hearing. In his reply, it has been stated that even an SC candidate can be considered to fill up the general vacancy if he is otherwise qualified and in any case, the petitioner not having exercised any option within the prescribed date had no locus standi to make the present application. It was also stated that ultimately even Sri D.Paul, the other SC candidate, who was called for the selection test had also withdrawn the option and in such situation, this private respondent Sri A.K.Sankhari should be considered for promotion to the post of Forms Inspector - Gr.III in the reserved quota.

3. We have heard the Ld.Counsel for the petitioner as also the Ld.Counsel for the official respondents and perused the records before us.

4. There is no controversy about the material facts and the whole question is whether after the withdrawal of option by Sri Chakraborty, it was open to the official respondents to fill up the post in the unreserved category by considering the case of a candidate belonging to SC community on the ground that no other unreserved candidate had exercised option within the prescribed date. The official respondents contend that since a selection process was initiated, the same could not be cancelled as there was no procedural lapse and it was prudent to continue the same. This, however, cannot reflect the correct position because the main question is whether, ^{in the facts of this case,} considering the SC candidate for promotion to a post meant for unreserved candidate can be held to be free from procedural lapses. It may be borne in mind that Sri A.K.Sankhari ~~should~~ no doubt gave option and was seniormost among the optees next to Sri D.Paul after

withdrawal of option by Sri Chakraborty, but he ~~is no doubt~~ junior not only to the present petitioner but also to ~~some~~ other candidates in the unreserved category, who are not before us. It has also been stated in the application and not controverted in any of the replies that Sri Sankhari had got accelerated promotion to the post of Clerk-Gr.I, although this question is of no significance because even after such accelerated promotion, his position ^{is} to the seniority list is below the present petitioner. Now it has got to be decided whether the present petitioner, who did not give any option within the prescribed date but gave ~~an~~ option only after they came to know that Sri A.K.Sankhari was advised to appear in the selection test, should have been allowed to appear in such test. After careful consideration, we are disposed to the view that after withdrawal of option by Sri Chakraborty, fresh option from unreserved candidates should have been called specially because there is nothing on the record to show that ~~the~~ other SC candidates, who had exercised option were eligible even otherwise to fill up a post in the unreserved category. It, therefore, follows that the selection test proposed to be held without inviting option from eligible unreserved candidates after withdrawal of option by Sri Chakraborty was wholly irregular for it could not be said without inviting such option that no eligible unreserved candidate was available. It is true that the petitioner did not exercise option at first but this is easily explained by the fact that there being only one vacancy in the unreserved category for which their senior Sri Chakraborty had already given option, the petitioner could very well ^{assume} ~~subsist~~ that it ^{would} ~~might~~ be useless to exercise option for consideration for the same post. This was precisely the reason why they exercised option as soon as they came to know that another SC candidate i.e. to say Sri A.K.Sankhari was being advised to appear in the selection test after withdrawal of option by ^{Chakraborty} ~~Chakraborty~~.

5. It appears that when this application was filed on 12.3.97, an interim order was made staying the suitability test which was due to be held on 18.3.97. The interim order was initially made for a fortnight but it was extended from time to time and is subsisting till this date.

6. On the above premises, we direct the respondents, in particular the respondent No.3 to hold suitability test on such date as may be decided with due prior notice to all concerned, wherein the present petitioners should be allowed to appear for consideration for appointment to one post of Forms Inspector - Gr.III in the unreserved category.

7. The application is disposed of accordingly. No order is made as to costs.

Mukherjee
(M.S. Mukherjee
Member (A))

A.K. Chatterjee
A.K. Chatterjee
22.7.97
Vice-Chairman