

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 950 of 2012

Date of order: 12th October, 2018

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

Sri Dilip Prasad Singh,
Son of Late Suresh Prasad Singh,
Aged about 46 years,
Working as Operator cum Programmer,
(Auto Cad and Metalix, Software),
T.No. 15/371, under ELS – 15 Shop,
Chittaranjan Locomotive Works, Burdwan,
Residing at Street No. 97 Qtr. No. 15/D,
P.O. & P.S. – Chittaranjan, Dist. – Burdwan,
W.B., Pin – 713331.

.. Applicant

- VERSUS -

1. Union of India,
Service through the General Manager,
Chittaranjan Locomotive Works, Chittaranjan,
Burdwan – 713331.
2. The General Manager,
Chittaranjan Locomotive Works, Chittaranjan,
Burdwan, Pin – 713331.
3. The Chief Personnel Officer,
Chittaranjan Locomotive Works, Chittaranjan,
Burdwan – 713331.
4. The Chief Mechanical Engineer,
Chittaranjan Locomotive Works,
Chittaranjan, Burdwan – 713331.
5. The Sr. Personnel Officer (W/M),
Chittaranjan Locomotive Works,
Chittaranjan, Burdwan – 713331.
6. The Dy. Chief Vigilance Officer,
Chittaranjan Locomotive Works,
Chittaranjan, Burdwan – 713331.

.. Respondents

[Signature]

For the Applicant : Mr. S.K. Dutta, Counsel

For the Respondents : Mr. P.K. Roy, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

Being aggrieved by the cancellation of selection to the post of Operator-cum-Programmer (Auto Cad & Metallix Software), the applicant has sought the following relief in the instant Original Application:-

- (a) An order quashing and/or setting aside the impugned order dated 10.10.2012;
- (b) An order directing the respondents to continue the applicant as Operator cum Programmer (Auto Cad & Metallix Software) holding that the decision regarding reversion of the applicant is bad in law and cannot be sustained.
- (c) An order directing the respondents to grant all consequently benefits to the applicant treat me as continued in the post of Operator cum Programmer (Auto Cad & Metallix Software);
- (d) An order directing the respondents to produce/cause production of all relevant records.
- (e) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

2. Heard Ld. Counsel, perused pleadings and documents on record. Written notes of arguments have been filed by both Ld. Counsel.

3. The applicant's submissions are that he was working as Technician Gr. II Fitter in the Grade Pay of Rs. 2400/- in PB 5200-20200/-. The applicant was asked by his Shop Supervisor to undergo training in Programming and Operating CNC CAD-2006 – Metallix Software. Apart from the said training, the applicant was also accorded permission for studying Auto CAD by letter dated 13.6.2009. Apart from the certificate issued by the Manufacturing Company, the applicant was issued a certificate by the competent and concerned authority i.e. Deputy Chief Mechanical Engineer / ELF, CLW.

That, as per sanction of the competent authority i.e. the General Manager, two posts of Operator-cum-Programmer (Auto CAD & Metallix Software) were created vide authority vested with the General Manager as per Railway Board's letters dated 12.7.84 and 24.6.91 as mentioned in RBE No. 96/2012.

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That, applications were invited by notice dated 26.5.2010 to fill up the aforementioned posts and 15 serving employees applied in response to the same. The applicant having been found eligible, was advised to appear in the written test and, after qualifying in the written test the applicant was thereafter selected vide orders dated 7.12.2010. The applicant assumed his charges accordingly.

That, all on a sudden, without assigning any reason as per RBE No. 95 of 2002, the creation of posts and selection thereof was cancelled on 10.10.2012 and the applicant was repatriated to the post of Tech. Gr. II Fitter. According to the applicant such cancellation was totally arbitrary as the posts were created after due deliberation and the selection procedure was also settled after due deliberations with the approval of the competent authority and that, the, applicant should have been adjusted against a suitable equivalent post after declaring him surplus.

The grounds advanced by the applicant in his support are that the cancellation of creation of post and selection to the said post has been decided without any proper authority, without any notice, without assigning any specific reason and hence, is violative of RBE No. 95 of 2002.

4. Per contra, the arguments of the respondents are as follows:-

That, in the month of June, 2008, CNC Turret Punch Press Machines (TPP) were procured and installed in Shop-15 of CLW/Chittaranjan Administration. A proposal was thereafter mooted by the concerned Supervisor of the shop for creation of 02 (two) new posts in the scale of Senior Technician (MCM) in Pay Band Rs. 9300-34800/- + G.P. Rs. 4200/- for exclusive operation of CNC Programming with the help of Auto CAD & Metallix Software on the above machines. These machines were being operated by the personnel including the applicant and they were trained by the supplier of the machine.

The said proposal for creation of new posts of Operator-cum-Programmer (Auto Cad & Metallix Software) in Pay Band Rs. 9300-34800/- + G.P. Rs. 4200/-

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for Mechanical Department in the equivalent status & scale of Senior Technician (Artisan Post) was accepted and approved by the General Manager/CLW/Chittaranjan. Accordingly, upon surrender of matching posts, two posts of Operator-cum-Programmer (Auto Cad & Metallix Software) in Pay Band Rs. 9300-34800/- + G.P. Rs. 4200/- were created for the mechanical department declaring such post as Selection posts. The requisite educational and technical qualification to become eligible for the said new posts were prescribed as under:-

(a) Minimum educational qualification – Matriculate.

(b) Required eligibility:-

- (i) Should have good knowledge on Auto Cad & Metallix Software for CNC turret punch press machine.
- (ii) Should have minimum six months experience on multistation CNC machine.
- (iii) Post to be filled up from maximum three grades below by the eligible serving Railway employees from Mechanical Department only.

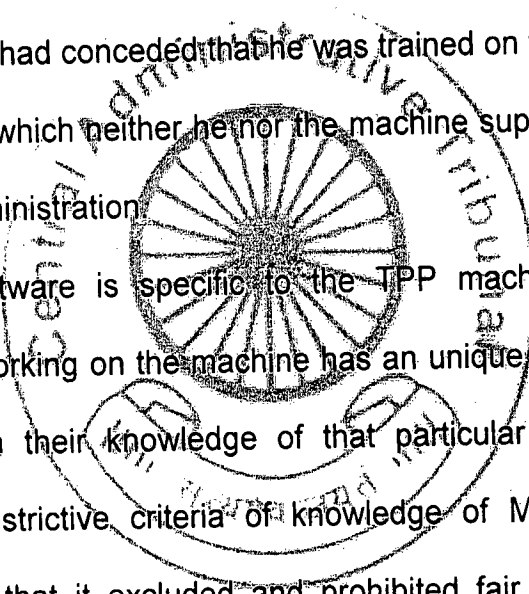

In response to the said notice, 16 nos. serving staff of CLW including the applicant, opted for the said post. Out of these 16 staff/optees, only the applicant was declared eligible as per the eligibility criteria and, accordingly, he was called for written examination held on 1.11.2010 and, as a result of the written examination followed by paper scrutiny based on last three years ACRs and SR, the applicant was declared suitable and promoted to the post of Operator-cum-Programmer (Auto Cad & Metallix Software) vide Dy. CPO (W)'s E.O. No. 853 dated 7.12.2010.

That, the matter came to be subsequently investigated by the Vigilance Department of CLW Administration whereby following irregularities were detected in creating the two new posts:-

- (a) CNC operated advanced machines installed in different shops of CLW were being operated by the serving staff trained by the machine suppliers without any creation of posts. Hence, creation of higher grade

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posts was not necessary when trained persons were available to operate the machine.

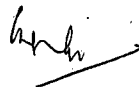
- (b) Post of MCM (apex grade in Artisan) is not a selection post although so declared in the notification.
- (c) Mode of filling of the new post from upto three grades below for a non-selection post was not justified as the operator post is a Technician post of artisan category which is filled up by promotion from immediate lower grade.
- (d) The applicant and another one Shri T.K. Mondal were trained as operators for the TPP machines by the machine supplier. The applicant had obtained a certificate of training Metallix Software from machine supplier and had conceded that he was trained on the machine installed at CLW, for which neither he nor the machine supplier were authorized by CLW administration.
- (e) Metallix Software is specific to the TPP machine and the trained person(s) working on the machine has an unique advantage compared to others in their knowledge of that particular software. Thus, the intensely restrictive criteria of knowledge of Metallix Software was irregular in that it excluded and prohibited fair competition. Training modules in Metallix Software not being part of the standard course, as such, relevant certifications are not recognized as issued by the competent authority.
- (f) Certificate of training issued by the AMC i.e. Machine Supplier in favour of the applicant is improper and,
- (g) The certificate of training obtained by the applicant from the AMC i.e. machine supplier is an unauthorized course of action to gain undue personal advantage and thus the official conduct of the candidates was unethical.
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After going through the findings and outcome of Vigilance investigation, the General Manager/CLW opined that:

- (i) The Board's regulations on designating selection posts have not been followed.
- (ii) For filling up any selection post, the criteria of inviting staff three grade below as eligible is irregular.
- (iii) The specific requirement of good knowledge on 'Metallix' software, not being a standard commercially available software but being a specific software developed only for the operation of CNC TPPs machine in question, the requirement is very restrictive confined only to employees trained in the software during commissioning of the machine. Resultantly, only one incumbent was found to be eligible and accordingly he was selected.

Hence, doubting the bonafide and ethics of the selection process, the selection made against the applicant vide Dy. CPO (W)'s E.O. No. 853 dated 7.12.2010 was cancelled vide Dy. CPO (W)'s E.O. No. 707 dated 10.10.2012. The authority of Dy. CVO's letter No. 10/VO/8A/CLW/CON/38 dated 13.8.2012 as mentioned in cancellation order dated 10.10.2012 was to the effect that the recommendations of the Dy. CVO has been duly approved by the PHOD and General Manager on the relevant file on applying their minds on the records and findings of the vigilance investigation.

Ld. Counsel for the respondents have relied on *Dr. N.C. Singhal vs. U.O.I. AIR 1980 SCC 29* and *Avas Vikas Sansthan & anr. v. Avas Vikas Sansthan Engg. Association [(2006) 4 SCC 132]* in support of their claim that every sovereign government has an inherent power to abolish a civil post and that such abolition will not entail any right to reemployment or to hold the same post.



ISSUE

5. The core points of determination in this matter are:

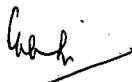
- (i) Whether the competent authority decided the cancellation of the post and the selection of Operator cum Programmer (Auto Cade & Mettalix Software);
- (ii) Whether sufficient reasons were adduced for the cancellation of such post and selection thereof;
- (iii) Is the applicant entitled to be adjusted on a suitable equivalent post on cancellation of the post to which he was selected.

FINDINGS

6.(i) Regarding the first issue, the respondents have clarified in their written notes of arguments that the proposal for creation of new posts of Operator-cum-Programmer (Auto Cad & Metallix Software) in Pay Band of Rs. 9300-34800/- + G.P. Rs. 4200/- for Mechanical Department in the equivalent status and scale of Sr. Technician (Artisan post) was accepted and approved by the General Manager, CLW, Chittaranjan and accordingly, two such posts were created for the Mechanical Department by declaration of such selection posts vide CPO's Office Order No. GMA/AU/228Pt. III dated 14.12.2009. The Vigilance Department of CLW had brought to the notice of the competent authority certain irregularities before the General Manager, CLW and other PHOD/CHOD recommending:

- (a) Cancellation of the entire selection process;
- (b) DAR action against concerned staff and officers.

The General Manager, CLW after having gone through the findings and outcome of vigilance investigation had opined (a) that the Board's regulations on designating the post as selection post equivalent to Sr. Technician (Artisan post) cannot be treated as a selection post. (b). For filling up the selection post, rules do not permit inclusion of any criteria for declaring as eligible staff who are three grades below. (c) As the eligibility criteria mandated good knowledge on Metallix Software which was developed for operation of CNCTPP machines, only one person could satisfy the eligibility criteria. Hence, the bonafides of the entire



selection process was called into question and, consequently, the General Manager, vide his order dated 11.9.2011, had agreed to the finding on irregularities of the said selection. Hence the creation of the post was cancelled by the competent authority namely, the General Manager himself.

The authority of Dy. CVO's letter No. 10/VO/8A/CLW/CON/38 dated 13.8.2012 was mentioned in the cancellation order dated 10.10.2012. This noting was to the effect that the recommendations of Dy. CVO had been duly approved by the PHOD and General Manager on applying their mind on records and findings.

As the said E.O. has been generated consequent upon approval of the General Manager, and the applicant has not made any averments to the contrary we find that the cancellation of the post and selection thereof had been issued with the approval of the General Manager and there are no infirmities in the said decision.

(ii) The applicant has cited the contents of RBE No. 95/2002 dated 3.7.2002, which states as follows:-

"We direct the office that a copy of this order shall be sent to the Chairman, Railway Board for considering the necessary action in the matter so that such arbitrary action may not be repeated in future. We suggest the Chairman, Railway Board that in such circumstances it may be made obligatory on the offices to disclose reasons in the order if cancellation of the selection is required."

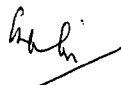
The said RBE states that reasons are to be disclosed in any order cancelling selection to prevent arbitrariness in decision making.

The respondents in their written notes of arguments have enlisted the reasons for cancellation as follows:-

(a) CNC operated advanced machines installed in different shops of CLW were being operated by the serving staff trained by the machine suppliers without any creation of posts. Hence, creation of higher grade posts was not necessary when trained persons were available to operate the machine.

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- (b) Post of MCM (apex grade in Artisan) is not a selection post although so declared in the notification.
- (c) Mode of filling of the new post from upto three grades below for a non-selection post was not justified as the operator post is a Technician post of artisan category which is filled up by promotion from immediate lower grade.
- (d) The applicant and another one Shri T.K. Mondal were trained as operators for the TPP machines by the machine supplier. The applicant had obtained a certificate of training Metallix Software from machine supplier and had conceded that he was trained on the machine installed at CLW, for which neither he nor the machine supplier were so authorized by CLW administration.
- (e) Metallix Software is specific to the TPP machine and the trained person(s) working on the machine have a unique advantage compared to others in the knowledge of that particular software. Thus, the intensely restrictive criteria of knowledge of Metallix Software is irregular as it excluded and prohibited fair competition. Training modules in Metallix Software not being part of the standard course, such certifications are not recognized as that issued by the competent authority.
- (f) Certificate of training issued by the AMC i.e. Machine Supplier in favour of the applicant is improper and,
- (g) The certificate of training obtained by the applicant from the AMC i.e. machine supplier is an unauthorized course of action to gain undue personal advantage and thus the official conduct of the selected was unethical. After going through the findings and outcome of Vigilance investigation, the General Manager/CLW opined:



(i) The Board's regulations on designating selection posts have not been followed.

(ii) For filling up any selection post, the criteria of inviting staff three grade below as eligible is irregular.

(iv) The specific requirement of good knowledge on 'Metallix' software, not being a standard commercially available software but being a specific software developed only for the operation of CNC TPP machine in question, the requirement is very restrictive confined only to employees trained in the software during commissioning of the machine. Resultantly, only one incumbent was found to be eligible and accordingly he was selected.

Hence, we are of the view that sufficient reasons prompted the General Manager to cancel the two posts so created and the selection process thereof.

It has been alleged that the respondents have committed a procedural flaw in disregarding RBE No. 95 of 2002 in not disclosing the reasons in the cancellation order dated 10.10.2012. Such reasons have been well recorded in their reply to the O.A. which the applicant had the opportunity to rebut in his rejoinder.

(iii) In **Union Territory of Chandigarh v. Dilbagh Singh, 1993 (1) SLR 451** the Hon'ble Apex Court had pointed out that selectees cannot legitimately demand a hearing before such cancellation because they have no right to be appointed merely by reason of their selection.

In **Food Corporation of India v. Om Prakash Sharma, (1998) 7 SCC 676** and in **Shakuntala Sharma v. High Court of Himachal Pradesh, JT 1994 (2) SC 411** the Hon'ble Apex Court had held that a rule which prescribes arbitrary qualifications for promotion to higher post has been held to be ultra vires under Article 14 of the Constitution as it treats unequals as equals and it gives unwarranted advantage to incumbents in the lower posts over the incumbents of the higher post.

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In this case, it has been established that confining the eligibility criteria to specialisation in Metallic Software gave distinct edge to the applicant because he was the only incumbent, who was trained in the said software while operating the machine. This specific software was provided by the firm which had reportedly installed the said machine. Prescribing such an exclusive eligibility criteria is against norms of equality because it discriminates among those candidates who were equally eligible but for their command over the specific software. The other candidates were prevented from being selected as they had no access to the specific software. In this context, we cannot conclude that the cancellation was arbitrary or a discriminatory against the applicant, who had actually benefitted from an aberration in the system leading to an unjust selection process that failed to provide equal opportunity to all the eligible candidates. Hence the applicant's contention that he should be adjusted in an equivalent post is not justified as his selection resulted out of a discriminatory process severely tilted in his favour.

7. Accordingly, we are of the considered view, that the selection process which was clouded with arbitrariness and discrimination, has rightly been set aside. We are also of the conclusive view that the decision was indeed taken by the competent authority i.e. the General Manager. We also hold that the applicant's claim for readjustment to an equivalent post is not supported by facts or law.

8. The Original Application is therefore dismissed. There will be no order on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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