



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A/350/1379/2013

Date of order: 9.4.2018

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

Sri Pramod Kumar Singh, son of Sri B. Singh, aged about 50 years, working for gain a Trained Graduate Teacher (TGT), DV Boys Hindi Medium School, Chittaranjan Locomotive Works, Chittaranjan, at residing at Railway Quarter, Street No. 23, Quarter No. 85A, Chittaranjan Locomotive Works, Chittaranjan, Dist - Burdwan, West Bengal, Pin : 713331.

--Applicant

-versus-

1. Union of India, through the General Manager,
Chittaranjan Locomotive Works,
Chittaranjan, District: Burdwan, West Bengal,
Pin - 713331.
2. The Secretary, Railway Board, Rail Bhavan,
New Delhi - 110001.
3. General Manager, Chittaranjan Locomotive Works,
Chittaranjan, District: Burdwan, West Bengal,
Pin - 713331.
4. The Secretary (Vigilance) Railway Board, Rail Bhavan
New Delhi- 110001.
5. Chief Personnel Officer, Chittaranjan Locomotive Works,
Chittaranjan, District: Burdwan, West Bengal,
Pin - 713331.
6. Chief Vigilance Officer, Chittaranjan Locomotive Works,
Chittaranjan, District: Burdwan, West Bengal,
Pin - 713331.
7. Shri Bilash Baitha, DV Girls Hindi Medium School,
Chittaranjan Locomotive Works,
Chittaranjan, Dist: Burdwan, Pin - 713301

--Respondents

For the Applicant(s) : Mr. S.K Datta, counsel
Mr. B. Chatterjee, counsel

For the Respondent (s): Mr. P.K Roy, counsel

ORDER

Per: Hon'ble Ms. Jaya Das Gupta, Member (A)

The applicant Shri Pramod Kumar Singh, who belong to SC Community has approached CAT under Section 19 of the AT, Act seeking the following reliefs:

- (a) " An order quashing and/or setting the decision as conveyed by the Vigilance, Railway Board by a letter dated 13.2.2012 and the observations made in support of such decision.
- (b) An order directing the respondents to set right the irregularities in the matter of assessment of answer script of the applicant and to review the entire selection for the post of Post Graduate Teacher or to cancel the entire selection including the panel and to hold a fresh selection for the post of PGT (Political Science) for which the applicant was one of the candidates.
- (c) An order directing the respondents to produce / cause production of all relevant records.
- (d) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper. "

2. We have heard both sides extensively.

3. It is the case of the applicant that he was holding the post of TGT (Trained Graduate Teacher) in a regular capacity. A notice was issued on 11.9.2007 by Chittaranjan Locomotive Works authority for filling up the vacancies, including the vacancy of PGT (Political Science) Hindi Medium. This vacancy was earmarked for SC Community. He had applied for that post and appeared for the written examination but he was not called for the viva-voce test. Through RTI application, he came to know that he scored 58% marks in the written test and according to him, as per the relevant rules in the matter, he should have been considered to get a call for the viva-voce test. Only the Private Respondent, Shri Bilash Baitha was called for the viva-voce Test. He mentioned that the relevant rules on the subject is that a candidate who scores 50 marks and above in the written examination in the case of SC candidates are eligible to be called for the viva-voce test. He alludes to a circular dated 14.4.03 which however has not been annexed on record.



Being aggrieved by the above fact, the applicant filed the O.A before the Tribunal through O.A 568/2009 where his prayer was that, he should be considered under relaxed standard for getting a call for the viva-voce test as he belongs to SC candidates. The said application was dismissed by the Hon'ble Tribunal on 28.8.2009.

It is the further allegation of the applicant that he came to know from a reliable source that there were irregularities in the assessment of the answer scripts of the candidates. He was supplied with the answer scripts and lodged a complaint which resulted in the matter being referred to the Vigilance of the Railway Board. As he has not still got any relief, which he thinks is due to him, he has approached CAT under the present O.A.

4. Per contra, the Railway authorities have submitted that the conduct of the examination, declaration of the results and appointment of the Private Respondent to the post of PGT (Political Science) Hindi Medium have all been carried out strictly as per Rules.

They have also submitted in their reply at Para - 5 that as per RBE No. 152/1999 and Circular No. 97 - E(SCT)I/25/24 dated 30.06.1999, marks of suitability for promotional test is 60% but when no SC/ST candidates has secured 60% marks, SC candidates securing 50% or above marks are held suitable. But in case any candidate secured 60% or more marks, no candidates securing less than 60% marks is to be considered, as the case is in the present O.A. The vacancy was for a single post and as the Private Respondent secured 70% marks, he was selected for the post of PGT (Pol. Science) Hindi Medium. Hence, the respondents have averred that there is no merits in the case and the case should be dismissed.

5. The applicant participated in the selection procedure of the Chittaranjan Locomotive Works knowing fully well all the rules and regulations and he has approached various fora after being declared ineligible in such selection process. The Hon'ble Apex Court has repeatedly directed that after knowing the various

conditions of the selection process and having participated in such selection process, a candidate cannot vent out his grievances against such selection process after failure to be considered eligible in that selection process.

The final decision in O.A 568/2009 passed by CAT, Kolkata Bench on 28.08.09 is set out below:

**" CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

O.A No. 568 of 2009

Present: HON'BLE MR. K.V SACHINANDAN, VICE CHAIRMAN
HON'BLE MR. CHAMPAK CHATTERJI, MEMBER (A)

Shri Pramod Kumar Singh, aged about 46 years, Son of B. Singh, working for gain as TGT D.V (Boys) H.M. CLW/CRJ at present residing in Rly. Qrs. Street No. 23, Qr. No. 85 A (Amaldahi) CLW/CRJ, Burdwan.

-VERSUS-

1. Union of India, through the
General Manger, CLW/CRJ/Burdwan
2. The Chief Personnel Officer/CLW/CRJ,
Burdwan
3. Sri Bilas Baitha,
D.V Girls' Hindi Medium School
CLW/Chittaranjan/PIN 713331.

...Respondents

For the applicant: Mr. C. Sinha, counsel

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

Date of Order: 28.08.2009.

ORDER

Per Mr. Champak Chatterji, AM

The applicant is a TGT (Trained Graduate Teacher) with Chittaranjan Locomotive Works (CLW in short). He has challenged letter dated 22.10.08 of the respondents calling for viva voce test for PGT (Post Graduate Teacher) (Political Science) for which he was not called. He has also challenged office order dated 21.11.08 promoting the Private Respondent No. 3 as PGT (Political Science). Simultaneously he has impugned letter dated 17.11.2008 issued by SPO (Law) and the panel dated 19.11.2008 in the same transaction.

2. The facts of the case are as follows:



3. The applicant is a TGT in a substantive capacity. There was a notice dated 11.09.2007 issued by the respondents for filling up of vacancies at the PGT level in various subjects in the scale of Rs. 6500-10,500/-. Serving employees of the school department were eligible. The applicant was a candidate for the post of PGT (Political Science) for which there was one vacancy in the Hindi medium. The post was earmarked for the SC community to which the applicant belonged.

4. On 23.2.2008 three candidates all of them of the scheduled caste community were called to appear in the written test. The applicant has stated that he was the senior most in the feeder grade of TGT. He appeared in the written test on 8.9.2008. According to the applicant, he fared well in the written test. Later he found out through a RTI application that he had got 58% marks in the written test. The pass marks for SC candidates is 50% which would make them eligible to be called for the viva-voce test. Unfortunately, he was not called. Only one candidate viz. The Private Respondent No. 3 was called. Besides the applicant and the private respondent, there was another SC candidate viz. One Shri Devendra Kumar who had got 52% marks but who was also not called for the viva.

5. The case of the applicant is that the Private Respondent No. 3 was called for the viva-voce test and thereafter selected for the post of PGT (Political Science). In the written test the private respondent had got 74 % marks. Had he got 80% marks which is characterized as outstanding then he could have been selected straightaway for the post. However, since he had got less than 80% viz. 74 % he was not eligible for outright selection. Since the applicant had also got more than the qualifying marks viz. 58% he should also have been called for the viva-voce test and the panel for the post should have been prepared on the basis of the marks obtained in the written test plus viva-voce test. The respondent authorities had acted wrongly in calling only the private respondent for the viva-voce and then selected him for the post. The applicant had filed a representation to this effect on 25.10.2008 which was dismissed by a cryptic order of the respondents dated 17.11.2008.

6. In reply the respondents have stated that there was only one post of PGT (Political Science) which was to be filled by persons from the reserved community. The applicant was the senior most among the three applicants and participated in the

selection. He had appeared in the written test and had got more than 50 marks but less than 60 marks. For becoming suitable for viva a candidate was required to obtain at least 60% marks although for reserved community candidates, 50% marks was sufficient. This relaxed condition would be applicable however only if none from the reserved community had got more than 60 marks. If someone from the reserved community had got more than 60% in the written test then the relaxed provision of 50% would no longer be available. One Shri Bilash Baitha, Private Respondent No. 3 had obtained more than 60% in the written examination. Relaxed provisions were thus not available for the applicant although he had got more than 50% marks. As a result although he was junior to the applicant he was called for the viva-voce test and selected for the post.

7. The respondents referred in this connection to Railway Board's letter dated 30.6.99 which is reproduced below:

" Sub: Determination of status of SC/STs who get promoted without relaxation.

Kindly call for the instruction circulated vide Board's letter of even number dated 2.9.1998, vide which the earlier instructions contained in Board's letter No. 89-E(SCT)-1/25/4 dated 2.6.89 were reiterated. Accordingly, the candidates belonging to SC/ST community, who have been selected on their own merit along with the candidate belonging to other community, will not be adjusted against the quota reserved for SCs and STs.

2. The scope of the instructions contained in Board's letter dated 2.9.1998 has been misunderstood by some of the Railway's/Production Units because in the subject to work 'promotion' has been used, alongwith the word "Recruitment". It is clarified that the instructions issued vide Board's letter of even number dated 2.9.1998 are applicable only to the recruitment categories. As far as promotional categories are concerned, the earlier instructions as detailed below continue to be applicable:-

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(i) The clarification issued vide item (i) of Railway Board's letter No. 83-E(SCT)42/1 dated 14.4.1983 is as under:-

<p>Whether a junior SC/ST employee who qualified in the selection of non-safety categories as per general standard laid down i.e obtains 60% marks will be preferred to senior SC/ST candidate who passes with marks of relaxed standard i.e 50% for placement against reserved vacancy and whether this action will not amount to supersession of SC/ST employee?</p>	<p>"The concession in qualifying marks is granted to fill up the reserved vacancies only. This has already been clarified vide item 2 of Board's letter No. E(SCT) 68 CM/10 dated 23.10.1969. It is, however, further clarified that by applying the general standard for qualifying in a selection and empanelment, the Selection Committee should first draw a list of candidates who can be empanelled. This list should be checked up to see whether this contains the required number of candidates belonging to SC and ST as per the 40-point roster. In case of deficiency the same should be made good by including the other reserved candidates who pass by applying relaxed standards.</p>
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In this connection, it is mentioned that reserved points/posts are now determined in terms of instructions contained in letter No. 95-E(SCT)-I/49/5(2) dated 21.8.97 i.e on the basis of post-based roster which have to be followed.

(ii) The above instructions have been further reiterated vide para 4 of Railway Board's letter No. 90-E(SCT)-I/25/3 dated 21.9.90 which lays down as under:-

" In view of this position it has been decided that in promotions to posts classified as selection posts, those SC/ST candidates who qualify in promotional tests in general standards should be empanelled first and only the deficiency in the reserved quotas should be made good by such candidates as have qualified with relaxed norms i.e excluding marks of seniority in the 'aggregate'.

(The above instructions still hold good.)

3. Thus it is obvious that those SCs/STs who have qualified without relaxation will be taken against the reserved posts of promotional category but there may be a situation where some of the SCs/STs may be getting a place against non-reserved posts in the suitability

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test/selection/LDCE/GDCE etc. These SCs/STs will continue to be excluded while determining the present representation of SCs/STs in a particular cadre and posts vacated by them will be filled up as per the extant instructions."

8. In short the case of the respondents is that three persons at the TGT level who belonged to SC community had applied for selection to the post of PGT. In the written test the private respondent was the only person who had secured more than 60% marks in the written test. The others viz. the applicant and one Shri Devendra Kumar had got 58% and 52% respectively. This was less than 60% and, therefore, the applicant and Shri Devendra were not called for the viva-voce. The provision of relaxed percentage of 50% was not applicable as none met the criteria of 60% marks. Since the Private respondent No. 3 had met the threshold marks of 60% and other had not, only the private respondent was called for and selected. There was, therefore, no question of injustice.

9. Heard counsel for the applicant and the respondents.

10. We have given this matter our careful consideration.

11. We have gone through the pleadings as also the performance sheet for suitability test for the post of PGT (Political Science) dated 11.11.2008. It is seen that the private respondent alone had met the threshold marks of 60% in the written test, had been called for the viva and had been found suitable for the post. He has secured more than 60% marks in the written test and was thus alone called for the viva-voce. He had also qualified in the viva-voce. In all, he had secured 80.5 out of the total of 100 marks.

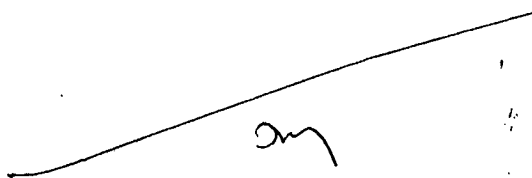
12. We, therefore, do not find any irregularity on the part of the respondents keeping in view the Railway Board's circular dated 30.6.99. The circular contains the following except which is again quoted for emphasis below:

" In view of this position it has been decided that in promotions to posts classified as selection posts, those SC/ST candidates who qualify in promotional tests in general standards should be empanelled first and only the deficiency in the reserved quotas should be made good by such candidates as have qualified with relaxed norms i.e excluding marks of seniority in the 'aggregate'.

It is clear that in the instant case the Private respondent No. 3 an SC candidate has qualified as per general criteria and, therefore, the case of the applicant for selection according to the relaxed norms was not, therefore, necessary as there was only one post to fill. The O.A., therefore, lacks merits and is, therefore, dismissed. There will be no order as to costs.

Member(A)

Vice-Chairman "



6. We have also dismissed a case in O.A 1380/2013, **Smt. Ursula Sushma Soreng -Versus- CLW** on 14.03.2018, where the applicant is similarly situated as the applicant in the present case and that O.A i.e 350/1380/2013 was also dismissed having no merit.

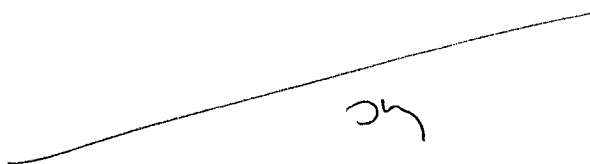
7. The reliefs sought for in O.A 568/2009 which was dismissed by this Tribunal on 28.08.2009 are as follows:

"(a) To set aside and quash the impugned letter dated 22.10.2008, panel dated 19.11.08 and Office Order dated 21.11.08 and letter dated 17.11.08.

(b) To direct the respondents to hold fresh viva-voce test calling your applicant for the said test and thereafter issued necessary orders publishing the panel to grant all consequential benefits.

(c) Any other order/orders as the Hon'ble Tribunal deems fit."

From the above it appears that the applicant sought that the letter calling for the viva-voce test, the panel dated 19.11.08 which gives the list of selected candidates including the name of Shri Bilas Baitha the Private Respondent, the order dated 21.11.08 i.e posting on promotion of the private respondent, Shri Bilas Baitha TGT (Arts), as PGT (Political Science) in the scale of pay Rs. 6500-10,500/- in DV(Girls)HM against the existing vacancy and the letter dated 17.11.08 when his representation was rejected should all be quashed. We also observe that in the present O.A also, though the reliefs are differently worded, they lead to the same conclusion i.e for reviewing the entire selection for the post of PGT/ to cancel the entire selection including the panel and to hold a fresh selection for the post of PGT (Political Science). Therefore it is clearly apparent in order to avoid the consideration of the present O.A on the principle ^{of res} res-judicata, the applicant has approached CAT seeking the same reliefs. Therefore, the applicant has not approached CAT with clean hands.



8. The applicant has alleged that a Vigilance case was started because of the alleged irregularities in assessment of the written papers. However, it appears from Annexure 13 to the O.A that though a Vigilance enquiry was started in the matter, it was closed in consultation with the Railway Board. The communication dated 25.03.13 is set out below:

CHITTARANJAN LOCOMOTIVE WORKS
CHITTARANJAN

No. RTI Cell/2011/114
Sri Pramod Kumar Singh
St. No. 23, Qrs. No. 85/A
P. O. Chittaranjan,
Distt.:Burdwan
Pin-713331

Dated : 25-03-2013

Sub.: Information under the RTI Act 2005.

Ref. : Dy. Registrar/CIC/NDLS's letter no.CIC/AD/C/2012/000731

dated:

08.03.2013.

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Vide letter under reference above, Dy. Registrar/CIC/NDLS has directed to supply copies of documents as sought in your RTI application dated : 28.03.2011.

Information/documents as supplied by Dy. CVO vide letter no. 13/VO/10/CLW/CON/RTI dated: 23.3.2013 is furnished below.

The complaint dated: 03.03.2010 has been investigated by Vigilance and no irregularities found. The complaint has been closed in consultation with board vide their letter No.2011/V4/CLW/PNL/09 dated 13.02.2012.

The copy of Vigilance report with notings and Board's advice on the complaint dated 03.03.2010, in none (09) pages is enclosed herewith.

D. A. : Nine (09)

(B. N. Soren)
Dy. CPO(W) & CPIO "

9. Therefore on the facts of the case above, we find there is no merit in the case and the O.A should be dismissed. The O.A is accordingly dismissed. No costs.

(Jaya Das Gupta)
Member (A)

(Bidisha Banerjee)
Member (J)

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