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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH**

O.A/350/1380/2013

Date of order: 14.3.2018

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

Smt. Ursula Sushma Soreng, wife of Amit Kumar Toppo, aged about 46 years, working as Primary Teacher, D.B.V (Aml) CLW, Chittaranja, West Bengal, residing at Quarter No. 12 B, Street No. 1A, Chittaranjan Locomotive Works (CLW), Chittaranjan, District : Burdwan, 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 H.S Kunkal, TGT (Arts),  
EM/BM, CLW, 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

14.3.2018

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

The applicant has approached CAT under Section 19 of the Administrative Tribunals Act seeking the following reliefs:

- a) An order directing the respondents to act in accordance with law and to set right the irregularities committed in the selection for promotion/appointment to the post of TGT (Arts) in the year 2009 as well as 2011 and directing the respondents to review the entire selections and to reassess the answer scripts of the applicant in a proper manner.
- b) An order directing the respondents to review the selection after allowing the applicant to appear in the viva voce test in the selection of 2009 and to prepare a result afresh of the said selection after recalling the result of the said selection and all consequential effects of the same so far as the post of TGT (Arts) reserved for ST is concerned.
- c) An order directing the respondents to review the subsequent selection also by setting right the irregularities including the irregularities in the assessment of the answer scripts of the applicant of the written test held in 201 for appointment to the post of TGT (Arts).
- d) An order directing the respondents to produce all relevant records including the report of the Vigilance and the advice of the Railway Board, Railway Ministry regarding the report of irregularities in the selection of 2009 and the action taken against the erring officials and all other relevant records.
- e) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper.

2. Heard both sides in extenso. The case of the applicant is that while she was working as Primary Teacher (Arts) in DVP under Chittaranjan Locomotive Works, she had applied against the circular issued on 28.02.2008 for filling up the post of Trained Graduate Teacher (in short TGT) including TGT (Arts). She is a candidate belonging to Scheduled Tribes Community. She was allowed to participate in the written test for selection to the post of TGT (Arts) vide letter dated 20.06.2008. However,

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in the year 2009, she came to know from a Memo dated 29.02.2009 that seven candidates have been called for the purpose of appearing in the viva-voce test as having qualified in the written test. Shri H.S Kunkal, an ST candidate also qualified for being called to the viva-voce test. The said Shri H.S Kunkal was appointed to officiate as TGT (Arts) vide order dated 13.04.2009.

In order to address her grievance for not being called for the interview she made an RTI application from where she came to know that she secured 47 out of 100 i.e 47% in the written exam.

It is the contention of the applicant that she was not called for the viva-voce test for relaxed standard although she got 47 % in the written examination whereas according to or as per Railway Board Circular a reserved category candidate belonging to SC/ST is entitled to be considered for viva-voce if he or she gets a minimum of 33% in the written test. The applicant also got to examine her answer sheet in the written examination under RTI Act.

The respondent authorities again issued a circular for filling up of further vacancies of TGT (Arts) on 06.09.2011. The applicant also participated in the said selection held in 2011 but she was not declared qualified in the written examination. Nine other candidates qualified in the written test which she came to know through a Memo dated 13.12.2011. She also got to see her answer sheet in the written examination for the said written test of 2011. Having been found unsuccessful to be called for interview on the basis of her marks in the written examination, she has filed the present application.

3. Per contra, it is the contention of the respondent authorities that both the selection procedure held in the year 2008 and 2011 were done

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as per Rules and she was not found eligible to appear for the viva-voce test as she failed to obtain minimum 50% marks in the written test for being eligible to be called for the interview. As per the authorities, in fact as per RBE No. 152/1999 and Circular No. 97 - E (SCT)I/25/24 dated 30.06.1999, minimum marks to be obtained in written test to be eligible for promotion is 60%, but when no SC/ST candidates has secured 60% marks, ST candidates securing 50% or above are held suitable. But in case any candidate secured 60% or more marks, no candidate securing less than 60% marks are to be considered. In the instant case, the vacancy was for a single post and as the private respondent secured 50% marks he was called for viva voce and selected for the said post. The applicant secured 47% of marks, as such, she did not qualify in the written test. So there is no scope for calling her for viva voce. Accordingly, there is no irregularities or illegalities in selection of the private respondent to the said post as alleged by the applicant.

Such facts is made more clear by Annexure A-14 to the O.A, which the applicant has herself attached in her application. Annexure A-14 is set out below:

GOVERNMENT OF INDIA  
MINISTRY OF RAILWAYS  
(RAILWAY BOARD)

No. 2012-E(SCT)II/2/2

Rail Bhavan, New Delhi-110001 dated 05.06.2012

The Chairman,  
National Commission for Scheduled Tribes,  
6<sup>th</sup> Floor, 'B' Wing, Lok Nayak Bhawan,  
Khan Market,  
New Delhi-110003

Sub: Case of Smt. U.S Soreng, Primary Teacher, DBV/SPE/No.1/HM, CLW, Chittaranjan regarding her promotion as TGT.

Sir,

I am directed to refer to Commission's letters No. USS/4/2012/MRLY/SEPROM/RU-I dated 14.02.2012 and No. AKT/6/2012/MRLY1/SEPROM/RU-I dated 28.02.2012 and to state

that Smt. Soreng, Primary Teacher, CLW/Chittaramjan had appeared in the TGT(Arts) examination which was held vide Notification No. GMA/School/G/72(VII) (TGT) dated 28.02.2008. As per the reservation roster in TGT (Arts), only one vacancy was notified against ST quota. Further, vide letter No. GMA/School/G/72(VII) (TGT) dated 20.06.2008, a list of candidates was published by CLW, as per which three ST candidates were found eligible for appearing in the said written examination.

In the written examination Shri H.S Kunkal (ST candidate) who secured 50 marks was categorized as selected under the relaxed standard. As such, he was called to appear for viva-voice test, since there was only one post under ST quota. The other two ST candidates, Smt. U.S Soreng and Smt. Carnella Kandulna secured 47 marks and 31 marks respectively i.e less 50% and were not categorized as selected under relaxed standard. Therefore, both the ST candidates Smt. Soreng and Kandulna were not called for viva-voice.

As per rules when the suitable number of candidates are found eligible under the category of 'relaxed standard', in terms of the vacancy notified, then the candidate passed under the category of 'Best among the failed candidate', are not being called for viva-voice. The said action has also been upheld by Hon'ble CAT/Kolkata, vide order dated 28.08.2009 passed in the matter of O.A No. 568 of 2009. It is worth to mention here that against the notified 01 ST vacancy, only the ST candidate Shri H.S Kunkal was selected, who passed under the relaxed standard, category, therefore, Smt. U.S Soreng, who passed under the 'Best among the failed candidate' category was not called for viva-voice, as there was only one vacancy in the above said notification.

Yours faithfully:

(D. Venkateshwar Rao)  
Director Estt. (Res.) "

4. The order of CAT Calcutta in O.A 568/2009 referred to above passed on 28.08.2009 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.

ORDERPer 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)-I/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:-

(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 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'.

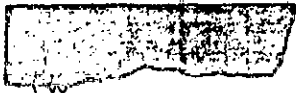
It is clear that in the instant case the Private respondent No. 3 an SC candidate has qualified as per general criteria and, therefore, the case of the applicant for selection according to the relaxed norms was not, therefore, necessary as there was only one post to fill. The O.A., therefore, lacks merits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


Member(A)

Vice-Chairman "

Thus this Court has already, on this issue given a final order and we cannot hold any other view.

5. In the above context, we find that there is no merit in this case and the case deserves to be dismissed and the O.A is accordingly dismissed. No costs.

  
(Jaya Das Gupta)  
Member (A)

  
(Bidisha Banerjee)  
Member (J)