

CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH  
KOLKATA

Original Application No. 1788/2010

Present :Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member  
Hon'ble Ms Jaya Das Gupta, Administrative Member

Shri Pravash Dutta,  
Son of Late G.D. Dutta,  
Working as Asstt. Welfare Officer,  
C&W Workshop, Liluah,  
Eastern Railway,  
Kolkata  
And residing at Flat No. G-1,  
Kailash Apartment, No. 23,  
Daw Temple Road,  
P.O. – Bally,  
District – Howrah  
West Bengal.

..... Applicant.

Versus

1. Union of India,  
Service through the General Manager,  
Eastern Railway,  
17, Netaji Subhas Road,  
Kolkata – 700 001.
2. The Railway Board,  
Service through the Secretary,  
Railway Board, Railway Bhawan,  
New Delhi – 110 001.
3. The General Manager,  
Eastern Railway,  
17, Netaji Subhas Road,  
Kolkata – 700 000.
4. The Chief Personnel Officer,  
Eastern Railway,  
17, Netaji Subhas Road,  
Kolkata – 700 001.
5. The Deputy Chief Personnel Officer  
(Gaz) Eastern Railway,  
17, Netaji Subhas Road,  
Kolkata – 700 001.

6. The Senior Deputy General Manager,  
Eastern Railway,  
17, Netaji Subhas Road,  
Kolkata – 700 001.

7. Shri Sadhan Roy,  
Ex Chief Vigilance Inspector(P),  
Office of the Chief Vigilance Officer,  
Eastern Railway,  
Kumar Palace, 30/A, R.K. Street,  
P.O. Uttarpara,  
Dist. – Hooghly.

..... Respondents.

For the petitioner : Mr P Bajpayee, Mr T.K.Biswas, Counsel

For the respondents : Mr P.B.Mukherjee, Counsel

Date of Hearing : 22-06-2016.

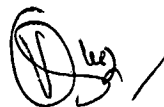
Date of Order : 27.06.2016

## O R D E R

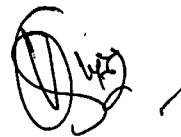
**JUSTICE VISHNU CHANDRA GUPTA, JM:**

The present applicant Shri Pravash Dutta filed this O.A challenging the rejection of his empanelment for the promotion against 30% quota of Limited Departmental Competitive Examination (for short LDCE) based on merit cum selection process.

2. The brief facts of the case are that present applicant while working as a Welfare Inspector Grade-II applied against an advertisement published for promotion under 30% quota for the post of Assistant Personnel Officer/Asstt. Welfare Officer (for short APO/AWO). The Rules prescribed for the post of Assistant Personnel Officer/Asstt. Welfare Officer/Asstt. Secretary, provide the panel formation process consists on normal selection basis to the extent of 70% against the



vacancies and 30% through LDCE. Consequently an advertisement has been made to fill up the quota of 30% by giving the cut off date as 01.01.1998 for ascertaining the eligibility to appear in the departmental examination. The applicant was not eligible for LDCE as on 01.01.1998. Hence he did not apply. Later on the basis of re-assessment of vacancies fresh process was started changing the cut off date from 01.01.1998 to 01.01.2000 by a modified notification dated 13.10.2000. As the applicant became eligible on 01.01.2000 he submitted his candidature and on completion of selection process declared successful. But before giving appointment to the selected person certain complaints were made and matter was referred to Vigilance Cell. It is stated in the application that an objection has been raised by the Vigilance department that if the applicant who was not eligible on 01.01.1998 if appointed on the basis of changed cut off date would become senior to the successful candidates for the next 70% quota. Consequently, a vigilance check was conducted wherein one Shri Sadhan Roy, CVI(P) (respondent No.7) was a Member of the Team of Enquiry. He was an interested person because he would be junior to the present applicant and he managed any how to get this selection process of 30% quota cancelled. This cancellation of selection was challenged by the applicant by filing O.A. before this Tribunal. The Tribunal vide order dated 21.07.2003 passed in O.A.1061/2002 set aside the order of cancellation of panel with certain directions as contained in para 21 of the judgment, which are being reproduced herein below :



"21. Considering all the aspects, we dispose of this OA with the following directions:

- i) The impugned cancellation order dated 13-9-02 i.e. Annexure A7 be hereby quashed and set aside.
- ii) The respondents are directed to publish the panel on the basis of written test and viva-voce test already held by excluding the two ineligible candidates who have qualified in the written test.
- iii) In respect of these two ineligible persons, the respondents may consider if necessary, in consultation with Rly Board, if they can be empanelled against left out vacancies against 30 % quota, with the clear stipulation that they will rank junior to the persons to be selected against 70% quota on the basis of cut off date of 1-1-2000.  
The above exercise should be completed within 3 months from the date of receipt of the order. No order as to costs."

3. This order was challenged in WPCT No.990 of 2003 by the present applicant but WPCT was dismissed with certain observations.

The relevant portion of the judgment is reproduced herein below :

"During the pendency of the writ petition an order was passed by the General Manager of the Eastern Railway which was communicated by a letter dated 11 December, 2003. It appears that the direction No. (iii) as referred to hereinabove was being complied with by the said authority. It appears that the General Manager while considering the same followed instructions of the Railway Board dated 18 June, 1985 but did not hold any consultation with the Railway Board as was directed by the Tribunal. Mr. Chatterjee appearing for the respondents argued that following instructions of the Railway Board is equivalent to consultation with the Railway Board. This we are unable to accept. When the Tribunal directed the authority to take a decision in consultation with the Railway Board, we are of opinion, the General Manager ought to have taken the decision after consultation with the Railway Board. We take note of the fact that Mr. Maitra, learned senior counsel appearing for the petitioners stated clearly that the petitioners are not claiming any seniority over the candidates in the 70% quota as was desired by the learned Tribunal. Therefore, direction contained in the Clause (iii) of the paragraph 21 of the impugned judgement requires to be strictly complied with and we direct the General Manager to take a decision in consultation with the Railway



Board within two months from the date of communication of the order and such decision will be communicated to the petitioners immediately thereafter.

The writ petition is disposed of with the above directions."

4. On perusal of the order of the Hon'ble High Court reveals that the order passed in pursuance of clause 3 of the order of the Tribunal, by General Manager, Eastern Railway without consultation of Railway Board and on the basis of pre existing instructions of 18.06.1985 was set aside and further direction was issued that the direction contained in clause 3 of para 21 of the impugned judgment of CAT requires to be strictly complied with by General Manager by taking decision in consultation with the Railway Board within 2 months. In pursuance thereof a speaking order has been passed on 15.09.2004 which is extracted herein below :

"No.CPO/SC/CC/P.D.

Kolkata, the 15 Sept. '04

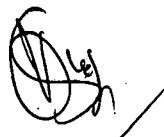
### SPEAKING ORDER

Shri Pravash Dutta,  
SLWI/School Section,  
C.P.O.'s Office,  
Eastern Railway,  
Kolkata.

M.A. Khan,  
Instructor (Personnel),  
Principal/ZTC,  
Bhuli,  
Dhanbad.

" Sub: WPCT No.990 of 2003 in High Court/Calcutta -  
(arising out of OA 1061/2002 in CAT/Calcutta) Pravash  
Dutta & another -vs- U.O.I. & Others.

Hon'ble CAT/Calcutta vide its order dated 21.7.03 in OA  
No. 1061/2002 & MA No. 124/2003 has, inter alia, made the  
following observation in para 21(iii):-



"21(iii) In respect of these two ineligible persons, the respondents may consider if necessary, in consultation with Rly. Board, if they can be empanelled against left out vacancies against 30% quota, with the clear stipulation that they will rank junior to the persons to be selected against 70% quota on the basis of cut off date of 01.1.2000."

Accordingly, speaking order was passed vide No.CPO/SC/CC/PD dated 11.12.03. Against this, a petition was filed by you in the High Court/Calcutta. The Hon'ble High Court/Calcutta in its order dated 29.06.04 in WPCT No.990/03 directed the General Manager to take a decision in consultation with the Railway Board within two months from the date of communication of the order.


In compliance with the Hon'ble High Court's aforesaid order, I have consulted Railway Board and pass the following order:

1. For filling up of 06 vacancies against 30% quota, the eligibility prescribed is five years non-fortuitous service in scale Rs. 1400-2300/- (RF)/Rs.5000-8000/- (RSRP) as on 01.1.98.
2. Subsequently, the cut off date was extended to 01.1.2000. As a result of extension of this date of eligibility from 01.1.98 to 01.1.2000, you offered your candidature and you were allowed to appear in the examination held on 23.6.01 & 24.6.01. You ultimately qualified in the written examination. However, due to extension of eligibility from 01.1.98 to 01.1.2000, which was not in accordance with existing rules, the whole process of selection was cancelled, against which an application was filed in the Hon'ble CAT/Calcutta as also in the Hon'ble High Court/Calcutta.
3. In the light of extant instructions of the Railway Board, vide their letter No.E(GP)79/2/101 dated 18.6.1985, it is stated that there is no provision for change in the date of eligibility. As such, extending the date of eligibility from 01.1.98 to 01.1.2000 was not correct, as a result your candidature becomes invalid.

In view of the above, I have decided that you cannot be considered for empanelment against the said Group 'B' selection of APD/AWD/AS against 30% quota.

(Shyam Kumar)  
General Manager"

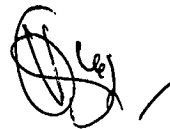
5. Aggrieved by the aforesaid order the present O.A has been filed.



6. Reply has been filed by the respondents, wherein it has been contended that the order of the Hon'ble High Court has been strictly complied with and the order in question was passed with active consultation with the Railway Board as contained in the order itself.

7. Some other aspects have been narrated in the application by the applicant that against 70% quota the applicant was subsequently found successful and posted on the promoted post. Therefore, that point is not at all relevant for deciding the present case.

8. The order of the Railway authorities rejecting the candidature of applicant by impugned order dated 15.09.2004 has been assailed on the ground that there is actually no consultation with Railway Board. Mere mentioning of the fact in the order that order is being passed with the consultation of the Railway Board does not amount to actual consultation in absence of any record or correspondence to prove the same. It was also contended that the High Court has categorically directed to comply the direction No.3 in letter and spirit after consultation of the Railway Board. The condition No.3 is very important as evident from the judgment. Perusal of the condition reveals that though the applicant and M.A.Khan who have been declared successful but found to be ineligible and whose candidature was rejected by cancelling the entire process, in such circumstances the General Manager, Eastern Railway was directed to be considered for empanelment of the applicant and M.A.Khan for the left out vacancies against 30% quota. In case if they are found entitled to be promoted




they would remained junior to the persons selected against 70% quota on the basis of cut off date of 01.01.2000.

9. The learned counsel for the applicant emphasised that the need of consultation was not a mere formality in the given circumstances. The relevant recruitment rules that cut off date cannot be changed was already in existence and has been noticed by the Court and after considering the instructions of Railway Board dated 16.08.1985 direction No.3 was issued which was affirmed by Hon'ble High Court. Therefore, it was necessary to make an active consultation with the Railway Board in the light of direction No.3 and the order should not have been passed merely on the basis of the existing rule of not changing the cut off date as passed on earlier occasion, which has been set aside by the Hon'ble High Court.

10. On the contrary, the learned counsel for the respondents pointed out that firstly in view of the direction contained it was not at all necessary to consult the Railway Board because the Court has given a discretion to the authority respondents, Railway Board may consider if necessary, if there is deficiency found technically on the ground of consultation, the same cannot be taken note of it. He further submits that when an authority has categorically stated that Railway Board has been consulted, there was no occasion to disbelief the contention of the General Manager.

11. So the only question which has to be considered in this *lis* is whether the impugned order passed after the consultation of the Railway Board or not ?





12. We have considered the submission of the respondents but we found that the plea for consulting with the Railway Board was optional on the part of the respondents is absolute not tenable. It was incumbent upon the respondents to pass an order with the consultation of the Railway Board because comma (,) has been used before word 'Railway Board' in the direction contained in the order. As the direction contained was extra ordinary and is virtually to consider the case of applicant and M.A.Khan against the existing Board orders, therefore, it was incumbent upon the respondents to consult the Railway Board and Railway Board has to consider the peculiar circumstances of the case in the light of the direction issued by this Tribunal and High Court. Therefore, we are not inclined to accept the argument of the respondents that consultation of the Railway Board was optional on the part of the respondents and such contention raised by the respondents is liable to be rejected.

So far as the second contention of the respondents is concerned, that when the order contains that Railway Board has been consulted, there is no occasion to doubt the correctness of the statement has to be scrutinised in the fact and circumstances of this case.

13. In this regard the learned counsel for the applicant would submit that mere mentioning the fact that order was passed in consultation with the Railway Board would not suffice the purpose behind the direction No.3. The active consultation is the answer and that too, was in the light of the order of the Hon'ble High Court.



14. The Hon'ble Apex Court had an occasion to consider the word "consultation" and need of consultation in ***Nirothi Lal Gupta & Ors. Vs. Union of India & Ors., reported in 1983 Supp (1) SCC 730***. This judgment was passed in the light of formations of service rules which requires that if there is a need of the amendment in rules, the consultation of the Central Government would be necessary. How the consultation shall be established, the Apex Court after considering several judgments came to the conclusion as contained in para 26 of the judgment, which is extracted herein below :

"26. The result of the above discussion leads to the following conclusions:

- (1) Consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and points involved to evolve a correct or at least satisfactory solution. There should be meeting of minds between the proposer and the persons to be consulted on the subject of consultation. There must be definite facts which constitute the foundation and source for final decision. The object of the consultation is to render consultation meaningful to serve the intended purpose. Prior consultation in that behalf is mandatory.
- (2) When the offending action affects fundamental rights or to effectuate built-in insulation, as fair procedure, consultation is mandatory and non-consultation renders the action ultra vires or invalid or void.
- (3) When the opinion or advice binds the proposer, consultation is mandatory and its infraction renders the action or order illegal.
- (4) When the opinion or advice or view does not bind the person or authority, any action or decision taken contrary to the advice is not illegal, nor becomes void.
- (5) When the object of the consultation is only to apprise of the proposed action and when the opinion or advice is not binding on the authorities or person and is not bound to be accepted, the prior consultation is only directory. The authority proposing to take action should make known the general scheme or outlines of the actions proposed to be



taken be put to notice of the authority or the persons to be consulted; have the views or objections, take them into consideration, and thereafter, the authority or person would be entitled or has/have authority to pass appropriate orders or take decision thereon. In such circumstances it amounts to an action "after consultation".

- (6) No hard and fast rule could be laid, no useful purpose would be served by formulating words or definitions nor would it be appropriate to lay down the manner in which consultation must take place. It is for the Court to determine in each case in the light of its facts and circumstances whether the action is "after consultation"; "was in fact consulted" or was it a "sufficient consultation".
- (7) Whether any action is legislative in character, the consultation envisages like one under Section 3(1) of the Act, that the Central Government is to intimate to the State Governments concerned of the proposed action in general outlines and on receiving the objections or suggestions, the Central Government or Legislature is free to evolve its policy decision, make appropriate legislation with necessary additions or modification or omit the proposed one in draft bill or rules. The revised draft bill or rules, amendments or additions in the altered or modified form need not again be communicated to all the concerned State Governments nor have prior fresh consultation. Rules or Regulations being legislative in character, would tacitly receive the approval of the State Governments through the people's representative when laid on the floor of each House of Parliament. The Act or the Rule made at the final shape is not rendered void or ultra vires or invalid for non-consultation."

The law propounded by the Apex Court clearly demonstrate that in each case the Court has to determine in the facts and circumstances of the case, where any consultation has actually taken place or not. The consultation is not a mere formality. It is a meeting of minds. Meeting of two minds means exchange of views and active participation in the process of consultation either sitting on face to face or through correspondence. Here in this case neither any correspondence has been brought on record in between the respondents and the Railway

Board nor it has been contented that on face to face discussion has been made by the Railway authorities with the Board. No date, time and place has been given of the consultation, if taken place orally. In absence thereof, it cannot be inferred that Railway Board has been consulted in terms of direction No.3. There is no averment in the order that Railway Board has taken any decision not to give relaxation of the circular or not to change the cut off date, rather the authorities decided the matter solely on the basis of earlier instruction of 1985 of the Railway Board as earlier done in the order set aside by the Hon'ble High Court. Therefore, we are of the firm view that in this case what to say active consultation actually no consultation has been taken place and has not been established by producing any evidence in this regard. Nothing has been brought on record to prove that actual consultation was taken place with the Railway Board. Therefore, we allow this application but with certain directions.

The reliefs sought in the application though not be allowed in toto but the application is disposed of with the following directions :-

- (i) Respondent authorities will make active consultation with the Railway Board by making the correspondence in writing to the Railway Board seeking their advice and suggestion in the light of the direction No.3. After receiving the direction/suggestion or advice of the Railway Board in writing in response to the letter/correspondence made by the respondents, the matter shall be disposed of and if the respondent authorities found that the applicant is entitled to



be empanelled against the vacancies as directed in condition No.III of order of CAT passed in O.A.No.1061/2002, he may be empanelled, and posted on an appropriate post in terms of the direction contained in the order of the Tribunal passed (supra). This exercise shall be completed positively within a period of 6 months from the date of communication of the order both to the Railway Board as well as to the respondents.

The O.A is finally disposed of accordingly. There shall be no order as to costs.

(Jaya Das Gupta )  
Administrative Member

(Justice V.C.Gupta)  
Judicial Member

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