

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/01981/2015

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

ANANYA KR. KHAN

VS

UNION OF INDIA & ORS.

For the applicant : Mr.A.Chakraborty, counsel
Ms.P.Mondal, counsel

For the respondents : Mr.M.K.Bandyopadhyay, counsel

Heard on : 20.12.2016

Order on : 25.1.2017

O R D E RMs. Jaya Das Gupta, A.M.

The applicant Shri Ananya Kr. Khan has approached CAT under Section 19 of the Central Administrative Tribunals Act, 1985 seeking the following reliefs :

- a) Office order dated 1.8.2014 issued by Assistant Personnel Officer on behalf of workshop personnel officer, S.E.Rly., Kharagpur is bad in law and therefore the same may be quashed.
- b) An order do issue directing the respondents to prepare a fresh panel and grant promotion to the applicant in the post of JE II at an early date since he has come within the zone of consideration.

2. It is the case of the applicant that he is working as Technician I under Dy. CME, Kharagpur, S.E. Railway. A notification was issued on 19.6.08 calling for option from eligible serving literate staff possessing the requisite educational qualification to fill up the vacancies in the category of JE II in the Pay Band of Rs.9300-25,800 with Grade Pay of Rs.4200 against 25% quota from amongst rankers in Diesel Shop i.e. the post of JE was to be filled on promotion by way of selection. The written examination was conducted on 16.12.12. 5 candidates qualified in the written test - 3 Unreserved and 2 SC category. It is the contention of the applicant that the panel prepared for the

candidates who succeeded in the written test included the name of the applicant at Sl. No. 2. But inspite of such being the fact the applicant was not promoted to the post of JE II. He has furnished the details of panel which is as follows:

Srl.No.	Name	Community	Designation & ticket No.	Professional ability (50 marks) Marks obtained	Record of service sheet (30 marks) Marks obtained	Total marks (80)	Remarks
1.	Tapas Kr. Biswas	SC	Tech Gr.I 21213	41	21	62	Passed
2.	Ananya Kr. Khan	UR	Tech Gr.II 21/466	34.5	24	58.5	Passed
3.	Tapas Biswas	SC	Tech Gr.I 21174	36	22	58	Passed
4.	Anindya Choudhury	UR	Jr. Instructor	30	24	54	Passed

According to the applicant 2 Unreserved vacancies were to be filled up by Shri Tapas Kumar Biswas and Shri Ananya Kumar Khan, who secured 62 marks and 58 marks respectively. It is also his grievance that one SC vacancy was to be kept vacant as there was no other qualified SC candidates who made it to the panel. However, he came to know subsequently through other sources that the said above panel was cancelled because of certain irregularities. Against such cancellation of the panel where his name figures he has approached CAT for redressal of his grievances.

3. Per contra it is the contention of the Railway Authorities that against the concerned notification, based on the educational qualification, records of service and ACRs a panel was formed on overall merit basis as per S.E. Railway's Establishment Serial No. 132/09. However, on the basis of a complaint vigilance department of S.E. Railway enquired and found that certain irregularities have been detected and the said panel of selected candidates as recommended by the Selection Committee was not approved by the competent authority and it was found irregular as the panel was prepared in violation of Estt. Sl. No. 96/03. As per Estt. Sl. No. 96/03 "....SC/ST

candidates who are selected by applying the general standard and whose name in the select list/panel appear within the number of unreserved vacancies are to be treated as selected on their own merit.....". In view of such violation of extant rules of Estt. Sl. No. 96/03, cancellation of such irregular panel was proposed by the vigilance department of the S.E. Railway and the same was cancelled with the approval of General Manager, S.E. Railway. According to the respondent authorities the panel was rightly cancelled as it should have been actually formed based on the marks obtained in professional ability (written test) and records of service (educational qualification) and ACRs on overall merit basis and not on the basis of reservation as the selection was for filling up of the vacancies on promotion. Therefore the applicant in this case seeking the relief of quashing the cancellation order does not have any merit and the OA deserves to be dismissed.

4. Heard both sides and consulted the records.

5. The notification dated 29.6.08 is extracted below on the basis of which selection by way of promotion was conducted :

Dy.CME(D/W), EA to CWM/KGP

Sub : Selection of Intermediate Apprentice Mechanics /Diesel (Mech + Elect. Wing) against 25% quota from amongst rankers who possess the requisite educational qualification.

In terms of Rly. Bd's letter No. E(NG)-99/PM 7/17 dtd. 23.10.2006, circulated under CPO/GRC's Estt. Srl. No. 195/06. **25% of the vacancies of JE-II (Diesel) are to be filled up by Intermediate/App. Mech. Selected from amongst rankers who possess the requisite educational qualification.** With a view to implement the above mentioned orders for filling up of 04 (UR : 02, SC : 02) vacancies, application are invited from Supervisor, Sr. Tech, Tech-I, Tech-II & Tech - III of both the Mechanical & Electrical Wing of Diesel Shop KGPW fulfilling the qualifications and other conditions pertaining to the eligibility for selection as furnished below :

(A) Qualification and Eligibility :

(i) Must have passed Matriculation with ITI/Act Apprenticeship in the trades relevant to post of JE-II for absorption in which the selection is conducted or 10+2 in Science as an alternative qualification to ITI/Act Apprenticeship,. However, existing eligible staff in service as on 12.8.02 will be eligible to appear at

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the selection of Intermediate App. Mech. With pre-revised qualification for 02 consecutive selections held after 23.6.03.

(ii) Must have completed 03 years satisfactory services in the grade of Tech-III or above a on the date of notification. This period of 03 years should exclude training if any, undergone as Tr. Skilled Artisan.

(iii) Must have satisfactory service record with respect of application to work, attendance and general conduct.

(iv) Age below 45 years as on date of notification in terms of Estt. Srl. No. 153/06.

(v) Period of training 1 1/2 years.

(B) Trades of posts of JE-II to be filled up : Diesel

(C) Pay status, Privilege etc : During Training, the selected staff will enjoy the same pay, privilege & status of the category from which they are selected.

All eligible candidates are to appear at selection comprising of written test. This notice should be given wide publicity. **Eligible staff are required to submit their applications in the format given below** (Column 1-8) through their respective Branch Officers, the latter in turn should forward the same along with the particulars in that format against Column : 9-10 in a bunch addressed to WPO/KGP so as to reach WPO's office within 05 working days from the last date of receipt of applications, which is 30 days from the date of issue of the notification. Applications forwarded by any Unit received in this office, after the target date will not be entertained.

FORMAT

Name	Present Designation & T.No.	Community	Date of birth	Date of appointment & capacity
1	2	3	4	5

D/Promotion as Tech III	D/further promotion if any	Educational qualification	Whether undergoing any punishments	Remarks
6	7	8	9	10

Note: 1. Non furnishing of any item of particulars as asked for above in the application will disqualify candidate for the post.

2. Attested copies of age proof, educational/technical qualification and SC/ST certificates, if any, should invariably be submitted along with the application.

3. No action will be taken on advance copies of applications.

Encl : Nil

Assistant Personnel Officer (W)
For Workshop Personnel Officer/KGP."

SW

vacancies

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From the above stipulations it is clear that the vacancies in this category are to be filled up by promotion through selection.

6. The cancellation order of the panel prepared, dated 1.8.14 is also extracted below :

South Eastern Railway
Office of the
Workshop Personnel Officer,
Kharagpur Workshop

MEMORANDUM

No. SER/P-KGPW/Staff/IAM(Dsl.)/1984/2332

Dated 1.8.2014

Sub: **Cancellation of selection for promotion to the post of Intermediate Apprentice Mechanics/Diesel (Mechanical & Electrical Wings) against 25% Quota amongst rankers** who possess the requisite educational qualification in Diesel POH Shop No. 21, Kharagpur Workshop.

Ref: This office L. NO.1284/I.A.M.(Diesel)/3685 dated 19.6.08.

Selection for promotion to the post of Intermediate Apprentice Mechanics/Diesel (Mechanical & Electrical wings) against 25% quota amongst rankers who possess the requisite educational qualification in Diesel POH shop No. 21, Kharagpur Workshop is hereby "CANCELLED" due to some lapses found in the proceedings. The fresh notification will be issued in due course to conduct a fresh selection.

This has the approval of C.W.M. (Main)/KGPW.

(M.S.S.Rao)
Workshop Personnel Officer.

OS(O)(ESTD)
Pls display on Notice Board.

3.8.14
Dy.CME(O/W)."

7. The issue to be considered is whether principles of reservation should be brought in the process of promotion.

8. Ld. Counsel for the respondents has drawn our attention to the stipulations in Estt. Sl. No. 96/03 RBE 103/03 dated 22.7.03 which reads as under :

"Estt. Sl. No. 96/2003

RBE No. 103/2003

No. P/RP/SCT/NG/Poly

Dated 22.7.03

Reservation in promotion- Treatment of SC/ST candidates promoted on their own merit

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Ref : Railway Board's letter No.

- 1) 97-E(SCT)I/25/24 dated 30.6.99
(Estt.Srl.No. 216/99) and
- 2) 99-E(SCT)I/25/13 dated 07.08.2002
(Estt. Srl. No. 97/2002).

Railway Board's letter No. 99-E(SCT)I/25/13 dated 20.6.2003 (RBE No. 103/03) is as under :

Some of the Zonal Railways have raised doubts regarding Para-(i) of the above quoted letter and sought a categorical clarification as to how the SC/ST candidate appointed by promotion on their own merit and not owing to reservation or relaxation of qualification is to be adjusted in the post based roster.

In this context, it is clarified that in selection posts, SC/ST candidates who are selected by applying the general standard and whose names in the select list/ panel appear within the number of unreserved vacancies are to be treated as selected on their own merit. For example, suppose there are a total of 10 vacancies for which a panel/ select list is to be prepared. Out of them, six vacancies are unreserved and four are reserved for SCs/STs. First six candidates in the select list/ panel who have been selected by applying the general standard will be adjusted against unreserved vacancies irrespective of the fact whether they or some of them belong to SC or ST category. SC/ST candidates selected for remaining four reserved vacancies, whether selected on general standard or by giving relaxation/concessions as per existing instructions on the subject, shall be adjusted against reserved vacancies. Similarly, in case of non-selection promotions, SC/ST candidates who are senior enough to be within the number of unreserved vacancies and are included in the panel/ selection list without getting any relaxation/concession will be treated as own merit candidates.

The clarifications issued vide Board's letter No. 97-E(SCT)I/25/24 dated 30.06.1999 are superseded by Board's letter of even number dated 07.08.2002. The principles laid down vide Board's letter of even number dated 07.08.2002 should be made applicable in all the promotions held after its issue.

This disposes of S.C. Railway's reference No. P(RES)171/Policy/Vo.X dated 20.02.2003."

9. In *M.Nagaraja -vs- Union of India & Ors. [2006] 8 SCC 212* the validity of amended Article 16(4-A) and (4-B) was upheld. It was further held that these amended Articles enables the State to provide the reservation in promotion. But at the same time it was further ruled that State is not bound to provide such reservation and if State intends to provide reservation in promotion then the State has to consider compelling circumstances for providing reservation with regard to the exigencies of

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the backwardness of the class and inadequacy of the representation of the class in public employment in addition to comply with Article 335 and unless such exercise is undertaken by the State, discretion with regard to Article 216 (4-A) and (4-B) cannot be implemented. After relying upon that judgment the Apex Court in *M. Nagaraj case* (supra) the Hon'ble Supreme Court in case of *Suresh Chand Gautam -vs- State of Uttar Pradesh & Ors.* [(2016) 2 SCC (L&S) 291] and also in *S. Panneer Selvam & Ors. -vs- State of Tamil Nadu & Ors.* [(2015) 10 SCC 292] categorically rules that merely because validity of Article 16 (4-A) and (4-B) has been upheld by Apex Court, it does not mean that State is authorised to follow the reservation policy in regard to promotion which does not follow the mandate with regard to collection of data and taking a decision. It has also been ruled that it would be wrong to say that consequential seniority for SC/ST candidates before amendment could not be disturbed being the effect of amendment would be prospective in nature. Hence any law contrary to the verdict and mandate in *M. Nagaraj* case would be void and as such the rule in existence prior to the date of amendment with regard to reservation in promotion cannot be allowed to prevail. In this regard the Hon'ble Court also relied upon the decision of the Apex Court in case of *U.P. Power Corporation Ltd. -vs- Rajesh Kumar* [(2012) 7 SCC 1], wherein the provisions contained in Rule 8(a) of U.P. Rules of 1991 as inserted by Rule of 2007 were declared ultra vires and unconstitutional. In view of the above legal proposition it cannot be said that regulations, circulars, instructions, guidelines issued with regard to application of reservation in promotion cannot be allowed to prevail and if any exercise has been done after adhering to the policy of reservation in preparing the panel such panel cannot be allowed to sustain.

10. In view of the above directions of the Hon'ble Apex Court we feel the Railway Authorities have correctly decided to cancel the panel which was formed on the basis of reservation in promotion. Therefore we do not find any merit in the case and relief as asked for by the applicant cannot be agreed to as

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C.W.L.

per the existing law in force. Hence the case lacks merit and deserves to be dismissed.

11. The OA is dismissed. No order as to costs.

(JAYA DAS GUPTA)
MEMBER (A)

(JUSTICE VISHNU CHANDRA GUPTA)
MEMBER (J)

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