

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

**No. T.A. 350/00002/2012
T.A. 350/00007/2012**

Date of order: 27.03.2018

**Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

- 1. Bidhan Chandra Chowdhury,
Son of Swapan Kumar Chowdhury,
Resident of 2/17, Rana Pratap Road,
A-Zone, Durgapur -4.**
- 2. Santosh Tamang,
Son of Gopal Tamang,
Resident of 20/9, Secondary Rd.,
A-Zone, Durgapur – 4.**
- 3. Deb Antony,
Son of Patit Antony,
Resident of 9/34, Einstier Rd.,
E-Zone, Durgapur -5.**

.. Applicant

Vs.

- 1. Durgapur Steel Plant,
A Subsidiary unit of Steel Authority
Of India Limited, having its office
At Ispat Bhawan, P.O. Durgapur-3,
District – Burdwan.**
- 2. The Chairman,
Steel Authority of India Limited,
Having office at B-247,
Asian Games Village,
New Delhi – 49.**
- 3. The Managing Director,
Durgapur Steel Plant,
Having office at Ispat Bhawan,
P.O. Durgapur -3,
District – Burdwan.**
- 4. The Executive Director (Personnel),
Durgapur Steel Plant,
Having office at Ispat Bhawan,
P.O. Durgapur -3,**

District – Burdwan.

- 5. Senior Manager (Personnel)/ Recruitment,
Durgapur Steel Plant,
Having office at Ispat Bhawan,
P.O. Durgapur – 3,
Dist. – Burdwan.**

- 6. Steel Authority of India Limited (SAIL),
Through the Chairman,
Office at B-247,
Asian Games Village,
New Delhi – 110 049.**

.. Respondents

For the Applicant : Mr. S. Saha, Counsel

**For the Respondents : Mr. T.K. Banerjee, Counsel
Mr. A. Roy, Counsel**

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The two applications have been taken up together for disposal by a common order.

2. T.A. No. 7 of 2012 has been transferred to this Tribunal by the Hon'ble High Court, Kolkata by its order dated 7.2.2012 in WP. 9810 (W)/2010 when the Hon'ble High Court had directed as follows:-

“ This case has been listed at the instance of Mr. Ajay Debnath, learned Counsel appearing for the Petitioners with a prayer that the Writ Petition be transferred to the Central Administrative Tribunal, since the Steel Authority of India Limited (SAIL) has now been brought within the purview of the Administrative Tribunal’s Act by a Notification dated 31st March, 2010.

Mr. Soumya Ghosh, learned Counsel appearing for the Respondents, is present in Court.

Taking into consideration the aforementioned submission of Mr. Ajay Debnath this Court allows his prayer and directs the transfer of this Writ Petition, within a period of two weeks from today, to the Central Administrative Tribunal, Kolkata.”

3. The applicant had filed the petition No. 400 (W) of 2009 praying for relief in the form of production of results of written examination conducted by the

respondents dated 23.3.2008 for the post of Plant Attendant-cum-Junior Technician in connection with advertisement dated 4.12.2007 as well as for directing the respondents to show-cause as to why the respondents should not publish the marks of the petitioner/applicant obtained in the said examination.

The petitioner/applicant had also challenged the appointment of 56 additional candidates in the said post.

In T.A. No. 7/12, the applicant/petitioner had further challenged the advertisement for the post of Junior Technician/Operator dated 4.3.2010 as illegal and had prayed for cancellation/quashing/setting aside of the same.

4. The case, in brief, of the petitioners/applicants, as canvassed by their Ld. Counsel, is that an advertisement was published by the respondent authorities dated 16.10.2007 and, thereafter, an addendum to the same was issued dated 4.12.2007 for filling up 150 posts of Plant Attendant-cum-Junior Technician and the minimum qualification laid down therein was "School Final pass". The applicants, having applied against the said advertisement, appeared in the written exam held on 23.3.2008.

That, around 150 posts were declared as the number of vacancies in the advertisement dated 4.12.2007.

That, the selection procedure, as noted in the advertisement, was written test and interview of candidates who have qualified in the written test subject to candidates found medically fit.

That, on 15.5.2008, the respondents had published the list of successful candidates only but the result of all the candidates who had appeared in the written examination was not published by the respondents. That, on 17.6.2008, the roll numbers of candidates, who qualified for interview was published. The respondents neither published the marks of all those who had appeared in the written examination, nor categorically mentioned anywhere in the said advertisement, the marks that would serve as a bench mark to select candidates as successful in the written exam so as to qualify in the interview.

That, the petitioners made a large number of representations to the respondents for obtaining their marks in the written examination but there was no response from the respondent authorities.

That, the respondents thereafter issued appointment letters to those candidates, who, post interview, was found to be suitable in the medical test.

That, although about 150 posts were declared to be vacant during the time of the advertisement, only 139 candidates have been given appointment and 11 posts remained vacant at the time of filing of the application/petition.

That, thereafter, it was learnt by the petitioners/applicant that another set of 56 candidates were instructed to undergo medical tests despite their being no such declaration in the advertisement and the nature of the additional 56 posts to be so filled up remained unknown.

Admittedly, the petitioners/applicants were unsuccessful in the written test in 23.3.2008 but, as their marks were never published, the process adopted by the respondents, filling up of further 56 posts without notifying the same was against the principles of justice and equity and hence the T.A. No. 2/12 before the Tribunal has been filed by the petitioners/applicants.

5. Respondent Nos. 1, 3, 4 and 5, had initially raised the objection that Steel Authority of India Limited, the company in which the petitioners/applicants are seeking appointment, has not been made party respondent in T.A. No. 2 of 2012. As permitted by the Tribunal, M.A. No. 424 and 425 of 2012 arising from T.A. No. 2 of 2012 was filed in which the M.A. was allowed permitting impleadment of Steel Authority of India Limited through its Chairman as a respondent. M.A. No. 426 of 2012 was filed arising from T.A. No. 7 of 2012 in which such impleadment was allowed.

While arguing on behalf of respondents, their Ld. Counsel, had stated that on 4.12.2007, which was an addendum to an earlier advertisement dated 16.2.2007, the respondents had advertised for recruitment of Plant Attendant cum Junior Technician in S1 Grade on the following criteria:-

(i)	Number of Posts	-	around 150
(ii)	Age	-	Maximum 36 years
(iii)	Qualification	-	School Final
(iv)	Mode of selection	-	Written Test and interview

That, after holding discussions with the Joint Bargaining Counsel (JBC) of Trade Unions and signing agreements thereupon, the man power requirement for various units of Durgapur Steel Plant as well as for separate Service Units could only be finalised after issuance of advertisement on 4.12.2007. Further, because of increased demand for some of the products of DSP, it was planned to introduce additional shifts in the rolling mill area which also led to an additional requirement of man power. Further, about 196 non-executive staff superannuated and 19 number of death cases were also reported during the period from December, 2007 and April, 2008. According to respondents, all these factors led to 442 vacancies which could not be contemplated while publishing the second round of advertisement, admitting simultaneously that, as Durgapur Steel Plant was in the process of modernisation, rationalisation of man-power was also required in the interest of competitiveness.

That, taking into account such vacancies, the respondent authorities decided to recruit 200 numbers of candidates from the recruitment drive initiated in October/December, 2007.

That, as advertised, initially only 150 candidates were called according to their merit list in accordance with their categories and appointment letters were issued to the said 150 candidates. As only 139 had joined, the respondents again invited 56 candidates according to their position in the merit list for medical examination and out of such 56 candidates, one candidate was not found medically fit and hence 139 plus 55 i.e. 194 candidates were ultimately appointed in clear vacancies and anticipated vacancies as per their ranking in the merit list.

The respondents categorically denied any wrong doing in the markings in the written test and asserted that there was no obligation to publish the marks of

all candidates in the written examination or to indicate the qualification marks for selection of successful candidates for the stage of interview.

While responding to M.A. No. 425 of 2012, the respondents have admitted that the entire panel in respect of advertisement dated 4.12.2007 was not preserved for any future point of time for future reference or appointment once the offer of appointment was given to the selected candidates.

6. In T.A. No. 7 of 2012, the petitioner/applicants have challenged the advertisement dated 4.3.2010 stating that such advertisement is violative in relation to the post in question as the eligibility criteria of work experience of minimum 15 years is violative of equal opportunity to all citizens guaranteed by Article 16(1) of the Constitution and that the said process is an intention to absorb contract labourers in the company as there is no policy for regularisation of contractual workers by the respondents.

7. Per contra, the Ld. Counsel for the respondent Nos. 1, 3 and 5 have submitted that the advertisement dated 4.3.2010 was separate and distinct from the advertisement dated 16.10.2007 as the recruitment was only for skilled persons having work experience and not for fresh candidates with qualifications of School Final and above as required in the advertisement dated October/December, 2007 and that a total number of 1106 candidates had applied for the post and 496 candidates had thereafter been short-listed. After undergoing a skill test, 229 candidates had been selected for interview.

That, the authorities, as recruiting employer, have a right to decide on the criteria of eligibility of recruitment.

That, while the earlier advertisement was for the post of Plant Attendant cum Junior Technician, the advertisement dated 4.3.2010 was for the post of Junior Technician/Operator.

That, the age limit of 50 years have been fixed taking into account 15 years of working experience in relevant skilled areas and that the question of regularisation of Contract Labourers does not arise at all and that the

advertisement dated 4.3.2010 was issued to avoid any alleged technicalities in the matter of alleged regularisation of contract labourers.

ISSUES

8. The issues arising from the two instant T.A.s may be summarised as follows:-

- (i) Whether procedural justice in the matter of selection required that results of the written test dated 23.3.2008 ought to have been disclosed to all the candidates and particularly to the petitioner/applicants, who had made enormous representations in this matter.
- (ii) Whether the respondents are justified in filling up more than that of the number of posts notified in the advertisement.
- (iii) Whether the advertisement dated 4.3.2010 published by the respondent authorities is violative of Article 16(1) of the Constitution of India and Article 14 of the Constitution of India.

FINDINGS

9.(a) Admittedly, the marks of the written test have never been disclosed to the petitioners/applicants. Not only so, the same was never furnished before this Court by the respondents. The respondents have admitted in their reply to M.A. No. 425 of 2017 as follows:-

“..... The respondents state that after the offer of Appointments were given to all the 194 candidates and after the offer of Appointments were accepted by them, the said merit list was not preserved for any future point of time for future reference or appointment. It is to be stated once again and reiterated that no panel as wrongfully alleged in the said application under reference was prepared and therefore the question of these respondents providing any alleged non existing panel does not and cannot arise at all.”

This Court has expressed its displeasure on such non-preservation of records while deciding on M.A. No. 425 of 2012 as follows:-

“6. On consideration, we are of the view that furnishing of list to enable the TA applicants to implead affected persons and the claim against them being barred by limitation are two distinct issues. It is not appreciated that when Writ Petitions were filed in 2009 how it is being now stated that merit list is not available and no explanation has been made in this regard as to why the respondents did not deem it fit to preserve such a material

document, which would be necessary particularly when the case was under challenge and pending consideration."

In this context, we refer to the advertisement dated 16.10.2017 read with addendum dated 4.12.2007 wherein the selection procedure categorically states, "written tests and interview of candidates qualified in the written test. Appointment will be subject to candidates found medically fit."

Hence, it is obvious that the touchstone to qualify for the interview is the candidate's success in written test and such success in written test cannot be left open ended to be decided by parameters that go beyond laid down criteria. It is an undisputed fact that no such criteria were recorded in the advertisement dated 16.10.2007 read with 4.12.2007.

In the context of disclosures on relation of answer papers the Hon'ble Supreme Court in **Kerala Public Service Commission & ors. v. State Information Commission & anr.** reported in **(2016) 3 SCC 417** dated 4.2.2016 has directed as follows:-

"In the present case the request of the information seeker about the information of his answer sheets and details of the interview marks can be and should be provided to him. It is not something which a public authority keeps it under a fiduciary capacity. Even disclosing the marks and the answer sheets to the candidates will ensure that the candidates have been given marks according to their performance in the exam. This practice will ensure a fair play in this competitive environment, where candidate puts his time in preparing for the competitive exam."

In **Poonam Rani v. State of Haryana (2012) 6 SCC 596** it has been held as under:-

"18. The affidavit filed by the Secretary of the Commission before this Court clearly shows that within a few days of declaration of the result of the selection, the officers of the Commission destroyed the answer sheets of the written examination held in June, 2008. This was done in blatant violation of the resolution dated 1.10.1994, in terms of which the answer sheets could be destroyed after three months from the date of declaration of the result of the selection. The statement contained in Para 12 of the application dated 14.3.2012 filed on behalf of the Commission is reflective of the casualness with which the officers of the Commission have treated the issue of destruction of the most important record i.e. the answer sheets of the candidates which constituted foundation of the final selection."

Likewise, the respondent authorities were aware that a WP had been filed as early as in 2009, challenging the recruitment process of 2008 and hence the

admission of the respondents that the records were not preserved after finalisation of appointment of 194 candidates is blatant disregard of the principles of transparency calling for judicial intervention in this regard. In the written notes of arguments, the respondents have furnished a list of 622 general candidates who have appeared in selection for the post of Plant Attendant-cum-Junior Technician in response to advertisement dated 4.12.2007 in the general category. Barring Srl. No. 597 to 622, who have been absent in the said examination, the name of the petitioners/applicants do not appear even in the list of failed candidates. Hence, as there is no documentary evidence to prove the incidence of failure of the petitioners/applicants, their position in the merit list is "not beyond reasonable doubt". Such admission also does not establish/convince us 'beyond a reasonable doubt' that the petitioners/applicants had fared below the 56 candidates who had been appointed by travelling downwards the merit list. The respondents have failed to prove by virtue of their submission that marks of the petitioners/applicants in the written exam were lower in merit than those of the 56 candidates in the extended list of appointees.

As held by the Hon'ble Apex Court in Poonam Rani (supra), as the record of selection has been destroyed in the case of the entire panel, including that of the petitioners/applicants, it is difficult for the Court to consider and decide on the petitioner/applicants' plea that lack of such disclosure and lack of bench marking of success against disclosure was against procedural justice.

Hence, to give any relief to the petitioners/applicants, the only course would be to direct the respondents to consider their case at par with the extended list of the 56 candidates as the respondents have just nothing to prove on record that the petitioners/applicants had ranked in merit below the extended list of 56 candidates.

The respondent authorities should appoint the petitioners/applicants as in the case of 56 candidates who were appointed to fill up additional vacancies. If the post of Plant Attendant-cum-Junior Technician is no longer existing with the

respondents, they may be accommodated against equivalent posts for which the recruitment criteria remains similar.

(b) Coming to the issue as to whether the respondents were justified in filling up a greater number of vacancies than notified in the advertisement dated 4.12.2007, contrary views have been held by the Hon'ble Apex Court in **State of UP v. Raj Kumar Sharma (2006) 3 SCC 330**, in **U.O.I. v. Iswar Singh Khatri (1992) SCC (L&S) 999** and **(2012) 5 SCC 559 Arup Das v. State of Assam & ors.** wherein it has been held as follows:-

“17. It is well established that an authority cannot make any selection/appointment beyond the number of posts advertised, even if there were a large number of posts available than those advertised. The principle behind the said decision is that if that was allowed to be done, such action would be entirely arbitrary and violative of Articles 14 and 16 of the Constitution, since other candidates who had chosen not to apply for the vacant posts which were being sought to be filled, could have also applied if they had known that the other vacancies would also be under consideration for being filled up.”

We are, however inclined to be guided in this matter by **(1996) 4 SCC 319 Prem Singh v. Haryana State Electricity Board & ors.** wherein the Hon'ble Apex Court has held as follows:-

“25. From the above discussion of the case-law it becomes clear that the selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. If the requisition and advertisement are for a certain number of posts only the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case.”

Coming to the facts and circumstances of the instant case, the respondents have tried to justify filling up of excess vacancies on the ground of economic buoyancy, Trade Union Agreements, deaths and superannuation in their Organization leading to a conscious policy decision to fill up more posts than advertised.

As the interest of the petitioners/applicants will not be prejudiced if such 56 appoints are allowed to continue, given our decision on issue (a) above we refrain from interfering in this context. We also rely on the ratio in **Union of India v. Rajesh P.U. Puthuvalnikatha (2003) 7 SCC 285** it has been held:

“ The selection of those which is not vitiated on any such grounds cannot be denied any appointment on any justifiable basis.”

(c) We next come to the issue of challenge to the advertisement dated 4.3.2010 as violative of Article 16(1) as well as Article 14 of the Constitution of India. It is a settled principle of law that the recruitment policy and deciding on criteria for selection is the prerogative of the executive as held in **B. Nageswara Rao v. Govt. of AP (2006) 5 SCR 624** and that in the matters involving the process of recruitment and selection, injunction may be issued in rarest of rare cases and that wide latitude in relation to mode of selection do not necessarily render the process illegal. as held in **Kiran Gupta v. State of UP (2000) 7 SCC 19.**

10. Hence, we are of the considered view that the non-disclosure of marks as well as the bench-marking for qualification for the process of interview has been severely prejudicial to the petitioners/applicants and is also a vitiated process given the fact that the respondent authorities have not been able to furnish any records to prove their case regarding the position of the petitioners/applicants in the merit list vis-à-vis 56 candidates in the written exam which they admittedly have destroyed despite the pendency of the subjudiced matter.

Hence, the respondent authorities will, within 16 weeks from the date of receipt of the order, offer appointments in the post of Plant Attendant-cum-Junior Technician or equivalent post to the petitioners/applicants with suitable age relaxation, if any, required in this regard. It is stated here that benefits arising from such appointment will be prospective in nature and the petitioners/applicants will be at the bottom of the seniority list of posts offered to them with reference to their year of appointment. It is also made abundantly clear

that this order will not serve as a precedent to other unsuccessful candidates/non-appointed candidates who have not been parties to the Writ Petition since transferred.

We do not intervene in the matter of extending appointment to 56 extended list candidates while relying upon the ratio in Prem Singh (Supra).

We also refrain from passing any orders on granting any injunction or otherwise to the advertisement dated 4.3.2010 on the basis of ratio as held in the matter of Kiran Gupta (supra).

11. T.A. 2 of 2012 succeeds; T.A. 7 of 2012 is disposed of with above observations.

12. Parties will bear their respective costs.

(Dr. Nandita Chatterjee)
Administrative Member

SP

(Manjula Das)
Judicial Member

