

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



O.A. NO. 350/186/2018

Dated : 20.02.2018

Coram : Hon'ble Mrs. Manjula Das, Judicial Member

PANKAJ KUMAR SINGH
-VS-
UNION OF INDIA & ORS.

For the applicant : Mr. S.K. Datta, counsel
Mr. B. Chatterjee, Counsel
For the respondents : Mr. S. Banerjee, counsel
Ms. C. Mukherjee, counsel

O R D E R (Oral)

By this O.A. the applicant prays for quashing/setting aside the impugned notice dated 09.02.2018(Annexure A/19) whereby the Limited Departmental Competitive Examination for promotion to the post of Assistant Financial Advisor(Gr.B) against 30% vacancies was cancelled by the department on the ground of procedural irregularities and vitiation in the selection process.

2. Mr. S.K. Datta, Id. counsel appearing on behalf of the applicant submitted that in pursuance of an advertisement dated 19.11.2015 for promotion to the post of Assistant Financial Advisor(Gr.B) in the pay band of Rs. 9300-34800(with G.P. of Rs.5400/-) under the Limited Departmental Competitive Examination quota, the applicant made application for being promoted to the said post. It was further submitted by the Id. counsel that a written test was conducted for promotion to the said post and the applicant appeared in the written test in

respect of Paper-I and Paper-II on 08.02.2016 and 09.02.2016 respectively. However, subsequently the examination in respect of Paper-I was cancelled vide notice dated 07.09.2016(Annexure A/5) stating that due to technical reasons the written examination for Paper-I which was held on 08.02.2016 was cancelled and the date of re-examination, venue and timings would be notified in due course. Thereafter, the date for re-examination of Paper-I was fixed on 09.11.2016. However, the said date was also cancelled by refixing the date of examination of Paper-I on 16.11.2016 vide notice dated 02.11.2016(Annexure A/7).

3. It was submitted by the ld. counsel for the applicant that being aggrieved the applicant approached this Tribunal vide O.A.No.350/1825/2016 which was disposed of by this Tribunal vide order dated 02.01.2017 by giving liberty to the applicant to make a representation to the authorities within one week and the competent respondent authority was directed to dispose of the same within a period of one month thereafter. The applicant thereafter chose to participate in the examination held on 16.11.2018 and decided not to file any representation as per order of this Tribunal dated 02.01.2017 passed in O.A.No.350/1825/2016. However, as no result was published, the applicant filed representation to the authority concerned stating his grievances therein; but no reply was given to his representation. Being aggrieved the applicant again approached this Tribunal by filing O.A.No.350/1738/2017 which was disposed of vide order dated 18.12.2017 by directing the Respondent No.1 to consider and dispose of the representation of the applicant dated 31.03.2017 as per rules/instructions governing the field within a period of three months from the date of receipt of the said order. It was further ordered that no coercive action shall be taken by the respondents till disposal of the representation of the applicant.



"9. Accordingly, the Respondent No.1, i.e. the General Manager, Chittaranjan Locomotive Works, Chittaranjan is directed to consider and dispose of the representation of the applicant dated 31.03.2017(Annexure A/11) as per rules/instructions governing the field within a period of three months from the date of receipt of a copy of this order. Needless to mention that the respondent authority shall keep in mind the Ministry of Railway's Circular dated 21.04.2017(Annexure A/12), the Master Circular No.68 on Instructions Governing the promotion from Group 'C' to Group 'B' and Annexure A/17 i.e. Para 105 (ii)regarding duties of the CVOS on the Railways, as discussed in the foregoing paragraphs, while deciding the representation of the applicant. The decision so arrived at shall be communicated to the applicant forthwith. No coercive action shall be taken by the respondents till disposal of the representation of the applicant."

4. Mr. S.K. Datta, Id. counsel for the applicant submits that without disposing of the representation of the applicant the department vide notice dated 09.02.2018 (Annexure A/19) cancelled both the examinations of Paper-I and Paper-II by taking the plea that there were procedural irregularities and vitiation in the selection process. According to the Id. counsel the cancellation order dated 09.02.2018(Annexure A/19) is a cryptic one as no specific reasons have been disclosed in the said impugned order. The Id. counsel further submitted that though there is an order passed by this Tribunal to the effect that no coercive action shall be taken by the respondents till disposal of the representation of the applicant, the department by violating the court order cancelled the examination, as such, the order of cancellation dated 09.02.2018 is bad in law and cannot be sustained.

5. Issue notice to the respondents by making returnable within 4 weeks. Rejoinder, if any be filed by the applicant within 2 weeks thereafter.

6. Id. counsel for the applicant Mr. S.K. Datta humbly prays for an interim order for stay of operation of the impugned order of cancellation dated 09.02.2018. To substantiate his case the Id. counsel relied upon the following decisions:-



(i) **East Coast Railway and Another vs. Mahadev Appa Rao and Others with K. Surekha vs. Mahadev Appa Rao and Others** reported in (2010)2 SCC(L&S) 483 &(2010)7 Supreme Court Cases 678;

(ii) **The Railway Board Guidelines in pursuance of compliance of the order passed by C.A.T., Allahabad Bench in O.A.No.359/2001.**

Id. counsel for the applicant Mr. S.K. Datta submits that the acts of omission on the part of Chittaranjan Locomotive Works(C.L.W) in not publishing the result of the written examination as well as in not completing the selection process within the period as per the instructions of the Railway Board and cancelling the selection is neither bonafide nor lawful. According to him, the cancellation of selection is totally arbitrary and in clear violation of Article 14 of the Constitution of India and the order dated 08.12.2017 passed by this Tribunal in O.A.No.350/1738/2017. He further submitted that there was no cogent reason for cancelling the selection, and such selection is tainted with malice. The Id. counsel forcefully submitted that the respondent authorities without disclosing any reason for cancellation cancelled the examination that too not in conformity with the guidelines of the Master Circular 68 in regard to "Instructions Governing Promotion from Group 'C' to Group 'B'" wherein there was a clear instruction for completion of selection process within 4 months.

7. On the other hand, Mr. A.K. Banerjee, Id. counsel appearing on behalf of the respondents vehemently objected for granting any interim order and submitted that no coercive action has been taken against the applicant and the entire selection process was cancelled due to procedural irregularities and vitiation and such reasons have been mentioned in the impugned order of cancellation dated 09.02.2018(Annexure A/19). He further submitted that the



authorities had no other alternative but to cancel the entire selection process. To establish his arguments the ld. counsel relied on the following decisions:-

- (i) The decision of C.A.T., Principal Bench, New Delhi reported in 2014 SCC Online CAT-1355 [O.A.No.1925/2013 with O.A.No.3602/2013, O.A.No.1165/2013 and O.A.No.3816/2013];
- (ii) The decision of Hon'ble Supreme Court reported in (2010)6 Supreme Court Cases-614(Chairman, All India Railway Recruitment Board and Another vs. K. Shyam Kumar and Others);
- (iii) The decision of the Hon'ble Apex Court in the case of Union Territory of Chandigarh vs. Dilbag Singh (1993)1 SCC 154 : 1993 SCC(L&S) 144: (1993)23 ATC 431.

8. I have heard both the counsel, perused the pleadings and materials placed before me as well as the decisions relied upon by the ld. counsel for both the parties.

9. Vide Employment Notice dated 19.11.2015 the department invited applications for filling up the posts of Assistant Financial Advisor (Gr.B) in pay scale of Rs.9300-34800(with G.P. of Rs.5400/-) under Limited Departmental Competitive Examination quota against 30% of vacancies. The applicant applied before the authority for the said post. It appears that the applicant appeared in the written examination in two papers i.e.. Paper-I and Paper-II on 08.02.2016 and 09.02.2016 respectively. However, the department vide notice dated 07.09.2016(Annexure A/5) cancelled the Paper-I which was held on 08.02.2016 on the ground that there were some technical reasons and informed that the date of re-examination, venue and timings would be notified in due course. The Department thereafter fixed the re-examination of Paper-I on 09.11.2016. Again the said date was cancelled by refixing the date of examination of Paper-I on 16.11.2016 vide notice dated 02.11.2016(Annexure A/7). being aggrieved the applicant approached this Tribunal vide O.A.No.350/1825/2016 which was

disposed of by this Tribunal vide order dated 02.01.2017 by giving liberty to the applicant to make a representation to the authorities within one week and the competent respondent authority was directed to dispose of the same within a period of one month thereafter.

10. As the applicant chose to participate in the examination held on 16.11.2018, he decided not to file any representation as per order of this Tribunal. However no result was published and no reply was given to his representation by the authorities concerned. Being aggrieved the applicant again approached this Tribunal vide O.A.No.350/1738/2017 which was disposed of vide order dated 18.12.2017.

11. The main plank of the argument advanced by Id. counsel for the applicant is based on the following points:-

- (i) The impugned order is a cryptic one and without disclosing the reasons in detail the respondent authorities cancelled the written examination for promotion to the post of Assistant Financial Advisor (Gr.B) in pay scale of Rs.9300-34800 (with G.P. of Rs.5400/-) under Limited Departmental Competitive Examination quota against 30% of vacancies;
- (ii) The department never followed the Master Circular of Railways as well as the stipulated period for completing the process of selection within 4 months;
- (iii) The respondent authorities without complying with the order passed by this Tribunal on 18.12.2017 in O.A.No.350/1738/2017 issued the impugned notice dated 09.02.2018 without disposing of the representation of the applicant. Hence, the impugned order dated 09.02.2018 is bad in law and cannot be sustained.

According to the ld. counsel for the applicant, if the above points raised by him are not considered by this Tribunal, the matter will be infructuous and the applicant will be seriously prejudiced. The C.A.T, Allahabad Bench in its order dated 21.03.2002 in O.A.No.359/2001 had inter alia observed as follows:-

"We direct the office that a copy of this order shall be sent to the Chairman, Railway Board for considering the necessary action in the matter, so that such arbitrary action may not be repeated in future. We suggest the Chairman, Railway Board that in such circumstances it may be obligatory on the officers to disclose the reasons of the order if the cancellation of the selection is required."

12. In compliance with the observation of C.A.T., Allahabad Bench the Railway Board in RBE.No.95/2002 dated 03.07.2002 issued guidelines as hereunder:-

"The Board desire that the directions of CAT, Allahabad Bench may be noted for guidance in future."

The Hon'ble Supreme Court in case of **East Coast Railway and Another vs. Mahadev Apparao and Others with K. Surekha vs. Mahadev Appa Rao and Others(supra)** held as under:-

"Though a candidate who has passed an examination or whose name appears in the select list does not have an indefeasible right to be appointed, yet appointment cannot be denied arbitrarily, nor can selection test be cancelled without giving proper justification."

13. In case of **Union Territory of Chandigarh vs. Dilbag Singh(supra)**, the Hon'ble Apex Court held as follows :-

"8.....there can arise no need to any Administration to afford an opportunity of hearing to the members of the Selection Board before cancelling a dubious select list of candidates for appointment to civil posts, prepared by it."

14. I find that in sub clause 3.1 of Clause 3 of the Master Circular 68 of Government of India, Ministry of Railways (Railway Board) provides as hereunder:-



“3. Frequency of holding Selection/Limited Departmental Competitive Examination

3.1 “.....The entire process of selection from assessment of vacancies to publishing the panel should be completed, as far as possible, within a period of 4 months.”

15. In the present case, it is noted that the advertisement for selection to the post of Assistant Financial Advisor (Gr.B) in pay scale of Rs.9300-34800 (with G.P. of Rs.5400/-) under Limited Departmental Competitive Examination quota against 30% of vacancies was made on 19.11.2015. However, no prompt steps have been taken by the respondent authorities to complete the process, rather, they repeatedly cancelled the examination on the plea that there were procedural irregularities and vitiation. I have further noted that this Tribunal while disposing of the O.A. vide order dated 18.12.2017 in O.A.No.350/1738/2017 directed the respondent authorities to dispose of the representation of the applicant dated 31.03.2017 as per rules and regulations governing the field within a period of three months from the date of receipt of a copy of that order. It was further ordered that till disposal of the representation of the applicant no coercive action shall be taken by the respondents. However, without disposing of the representation of the applicant, action has been taken by the respondent authorities by cancelling the examination of both the papers. Hence, it is vividly clear that the respondent authorities while issuing the notice of cancellation dated 09.02.2018 did not follow the directions given by this Tribunal vide order dated 08.12.2017 in O.A.No.350/1738/2017.

16. In the present case the main argument is based on the points of non-disclosure of result and cancellation of the entire selection without disclosing proper reasons. No counter decision has been cited by the respondents to the issue raised herein by the applicant.

17. While disposing of the OA. No. 350/1738/2017 on 18.12.2017, the Tribunal passed the following order:-

"9. Accordingly, the Respondent No.1, i.e. the General Manager, Chittaranjan Locomotive Works, Chittaranjan is directed to consider and dispose of the representation of the applicant dated 31.03.2017(Annexure A/11) as per rules/instructions governing the field within a period of three months from the date of receipt of a copy of this order. Needless to mention that the respondent authority shall keep in mind the Ministry of Railway's Circular dated 21.04.2017(Annexure A/12), the Master Circular No.68 on Instructions Governing the promotion from Group 'C' to Group 'B' and Annexure A/17 i.e. Para 105 (ii)regarding duties of the CVOS on the Railways, as discussed in the foregoing paragraphs, while deciding the representation of the applicant. The decision so arrived at shall be communicated to the applicant forthwith. No coercive action shall be taken by the respondents till disposal of the representation of the applicant."

18. I noted that despite there is a clear direction by this court for disposal of the representation of the applicant within a time frame as well as not to take any coercive action, the respondent authority issued an impugned notice dated 09.02.2018(Annexure/19) by cancelling the examination consisting both the papers by which the applicant is prejudiced and moreso the impugned notice appears to be in wilful disobedience of the order of this court.

Apparently, there is no such disclosure of reasons in the impugned order dated 09.02.2018 and the order is not properly justified. Therefore, I am of the opinion that if no interim order is granted, the applicant will be prejudiced and may suffer irreparable loss and injury. Moreover, the impugned order dated 09.02.2018 *prima facie* appears to be a cryptic one. The balance of convenience is in favour of the applicant.

Accordingly, the operation of the impugned order dated 09.02.2018(Annexure A-19) shall remain stayed till the next date. Liberty is

granted to the respondent authorities to file M.A. for
vacation/modification/variation/cancellation of the interim order.


List on 27.04.2018.


(Manjula Das)
Judicial Member

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