

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 401 of 2011

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das-Gupta, Administrative Member

AVIJIT PANDA

VS

UNION OF INDIA & ORS.

For the applicant : Mr.J.R.Das, counsel

For the respondents : Mr.S.Banerjee, counsel

Order on : 2.9.16

O R D E RMs. Bidisha Banerjee, J.M.

Ld. Counsels were heard and materials on records were perused.

2. On 20.7.16, since ld. Counsel for the applicant submitted that the applicant despite securing 6th position as per merit was not considered against a vacant post, we had directed the authorities to justify by producing the relevant rules or guidelines as to why the applicant would not be considered against the available vacancies as the first person in the merit list had not joined, the next two persons were found ineligible and the applicant was 6th in the merit list as against three available vacancies.

3. Today ld. Counsel for the respondents placed before us the relevant documents. It transpired that on 23.7.07 a medical examination was held for Sunil Kumar Mondal, Surojit Roy, Avijit Panda (the applicant) and Biplab Kumar Bose. Sunil Kumar Mondal was found 20% handicapped/deformed. Surojit Roy was found to be temporarily handicapped which could be corrected by surgery, Avijit Panda was found OK and Biplab Kumar Bose was found 30% handicapped and therefore ineligible. At this juncture ld. counsel for the applicant submitted that when the sole candidate Avijit Panda was found 'OK' in terms of disability there was no reason for the respondents to oust him from

the zone, as Shankar Prasad Mondal and Bijitendra Nath Roy who figured in first three positions were not eligible in terms of the medical examination report. It however, appeared that the applicant Avijit Panda who secured 6th position was found to have 70% disability and declared not suitable, while on 28.7.08 the first three candidates namely Hazari Pradhan, Sunil Kumar Mondal and Surojit Roy out of the merit list were declared suitable with 40% disability.

4. The respondents dispelling the claim of the applicant took us through the letter dated 22.3.16 of the Sr. DPO addressed to the Id. Counsel which is extracted verbatim hereinbelow for clarity :

"In compliance of the Hon'ble CAT/Calcutta's judgment dt. 4.3.16, the following information is given below for kind appraisal of Id. Members of Hon'ble CAT/CAL.

Name of 859 OH (Orthopaedically Handicapped) candidates were published in the Merit List who had appeared in the written examination on 6.5.07 for recruitment against Physically Handicapped Quota. Total vacancies against OHG Quota were 03 (three).

Out of 859 OH candidates, as per rule/guideline, name of 08 candidates were sorted @ 2.5 times of the declared vacancies according to the merit list prepared on the basis of marks obtained in the written examination. In the said list, merit position of Sri Abhijit Panda was at Sl. No. 6.

However, the basis for selection of 03 candidates under OHG quota is that, only 03 vacancies against the said quota have been notified for Howrah Divn, copy of which is enclosed (Annexure A). Apart from that the suitable 03 candidates who scored more marks out of the 08 shortlisted have only been empanelled based on their merit, copy of which is enclosed as (Annexure B).

The basis for publication of final select list is the merit position in the written test followed by document verification, based on the same final select list was published (copy enclosed Annexure C).

Though the applicant was found to be OK from the medical point of view but he didn't secure the merit which formed the basis for the selection.

Hence, you are requested to submit the above information before the Hon'ble Members of CAT/Calcutta for their kind appraisal. The next date of hearing is on 14.4.16."

5. Id. Counsel invited our attention to the merit list prepared by the Dy. Chief Personnel Officer (Recruitment) wherefrom it appeared that the applicant with Roll No. 2111127 secured a score of 68 and ranked 6th, in a drive for physically handicapped candidates against a quota for appointment against Group 'C' posts in the Railways. The applicant, who figured at Sl. No. 6, was called for verification. On the basis of screening of testimonials conducted on 13.7.07 Hazari Pradhan was only recommended for empanelment while Sunil

Kumar Mondal and Surojit Roy who had submitted 40% handicapped certificate were recommended for provisional empanelment subject to confirmation by Director of Health Services, Govt. of West Bengal. However, none of the candidates finally joined and there was no waiting list prepared.

Ld counsel further submitted that although the applicant qualified at the written test and was found medically fit he secured 6th position and hence he could not be considered for appointment.

6. Ld. Counsel would further place the decision of this Bench in OA 479/11 wherein against the same recruitment drive of 2006 vide notification 1/2006/PHP(ER), this Tribunal having found that no waiting list was prepared for recruitment selection of HH candidates for appointment as Commercial Clerk/TTE as per the Employment Notice, held that "the applicant could not make any claim for appointment on the plea that he was next in merit to the selected candidates one of whom did not take up the offer of appointment". Order was passed on 2.7.13.

7. However, ld. Counsel for the applicant cited a decision rendered by this Tribunal in OA 1132/12 and OA 724/13 along with OA 695/13, heard and disposed of analogously on 17.11.15, in regard to the same recruitment drive this Tribunal having found that no waiting list was prepared, opined that it is settled proposition of law that "if an empanelled candidate fails to join the post that cannot be taken as a fresh vacancy but it should be taken as unfilled vacancy". The Bench observed and issued the following direction as under :

"We are at a loss to understand as to why the Railway administration failed to take into account the vacancies which were available as per their replies to RTI applications. We would like to again refer to para 7.5 of RBE No. 121/05 where it is clearly mentioned that before empanelment there should be medical examination and all those candidates who passed the written test and PET should be subjected to medical examination also. While saying so we would like to disambiguate the ambiguity if any that ex debito justitiae all those who are coming within the zone of consideration should be listed according to their merits and depending upon the vacancies, the candidates from the panel should be chosen and offer of appointment should be given. IN these cases to the risk of repetition and pleonasm, we would like to point out that even though eligible candidates were there, the Railway administration failed to give them offer of employment. As such it is just and proper to issue the following direction :

The Railway administration shall see that applicants who actually passed the written test as well as the PET and coming within the zone of consideration de hors the new and additional conditions subsequently imposed, are empanelled after subjecting them to medical examination and depending upon the vacancies they should be given offer of appointment as per law. This process has to be completed within a period of 4 months from the date of receipt of a copy of this order."

In the present case we noticed that the applicant secured 6th position as per merit. The first, second and third candidates of the merit list were not eligible being medically found not fit, as already enumerated hereinabove. Therefore there was no occasion for the respondents to empanel them. Any panel prepared before subjecting the selected candidates to medical examination would be bad. The three unfilled vacancies should invariably go to the first three empanelled candidates found medically fit.

8. The records of the present case exemplify and depict the following position :

Sl.No.	Roll No.	Name	Father's name
1	2110851	HAZARI PRADHAN	NARA SINGH PRADHAN
2	2110890	SUNIL KUMAR MONDAL	SANKAR PRASAD MONDAL
3	2111527	SUROJIT ROY	BIJITENDRA NATH ROY
4	2110549	SANGITA BANERJEE	BHOLA NATH BANERJEE
5	2110173	NABENDU BISWAS	LT. AMAR CHAND BISWAS
6	2111127	ABHIJIT PANDA	TARAPADA PANDA
7	2110409	BIPLOB KUMAR BOSE	LT. NIRMAL KUMAR BOSE
8	2111604	GAUTAM BHATTACHARJEE	PRCVAT BHATTACHARJEE

After the medical examination was held the following position emerged :

Sl. No.	Roll No.	Name	Certificate of handicap	Remarks
1	2110851	HAZARI PRADHAN	Submitted handicap certificate checked 40% &	Recommended for empanelment
2	2110890	SUNIL KUMAR MONDAL	Submitted handicap certificate 40%	The committee noticed only 20% handicap after physical verification of the candidate. Recommended for provisional empanelment subject to confirmation of 40% permanent handicap by Director, Health Services, Govt. of West Bengal.

3	2111527	SUROJIT ROY	Submitted handicap certificate	40%	The committee noticed after physical verification of the candidate that the deformity is temporary and can be corrected surgically. Recommended for provisional empanelment subject to confirmation of 40% permanent handicap by Director, Health Services, Govt. of West Bengal.
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9. Another medical examination report of 13.7.07 demonstrates that the next two candidates namely at Sr. No. 4 & 5 were found OK.

10. In such view of the matter the respondents are directed to prepare the final panel of the examination on the basis of medical examination of the merit list candidates and grant posting orders accordingly.

11. The entire exercise be completed by three months from the date of communication of this order.

12. The OA is accordingly disposed of. No order is passed as to costs.

(JAYA DAS GUPTA)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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