

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/857/2010

Jabalpur, this Wednesday, the 23rd day of January, 2019

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Smt. Divya Khare, aged about 31 years, W/o Shri Umang Khare,
R/o 1586A, LIC Colony, Jainagar, Yadav Colony, Jabalpur
482009. **-Applicant**

(By Advocate – Shri Manoj Sharma)

V e r s u s

1. Union of India, Ministry of Railway through its General
Manager, West Central Railway, Indira Market, Jabalpur – 482001.

2. General Manager, West Central Railway, Indira Market,
Jabalpur – 482001.

3. Chief Personnel Officer, General Manager's Office, West
Central Railway, Indira Market, Jabalpur – 482001.

4. Smt. Aparajita Banerjee, W/o Shri Abhijit Banerjee, R/o House
No.57, New Shobhapur Colony, P.O. Vehicle Factory, Jabalpur –
482009.

5. Ku. Supriya Bose, Assistant Professor of Music Government
Mankunwar Bai, Arts & Commerce College, Jabalpur (M.P.) –
482001 **- Respondents**

**(By Advocate – Shri A.S. Raizada for respondents Nos.1 to 3,
Smt. Shobha Menon, Sr. Advocate, assisted by Shri Rahul
Choubey for respondent No.4 and Shri Rahul Singh Rajput,
proxy counsel of Shri Brahmaddutt Singh for respondent No.5)**

(Date of reserving order : 20.09.2018)

ORDER

By Ramesh Singh Thakur, JM.

The applicant is aggrieved by the fact that she has not been given appointment to the post of Junior Clerk-cum-Typist under cultural quota and her representation in this regard has been rejected vide Annexure A-1 order dated 06.07.2010.

2. She has, therefore, sought for the following reliefs:

“8. RELIEF SOUGHT

In view of the facts and circumstances as mentioned above, the Hon’ble Tribunal may graciously be pleased to grant following reliefs-

- (i) Summon the entire relevant records from the respondents pertaining to the selection on the post of Junior Clerk cum Typist under Cultural quota.
- (ii) Summon and Set aside the order granting appointment on the post of Junior Clerk cum Typist under Cultural Quota to respondent No. 4 Smt. Aparajita Banerjee.
- (iii) Direct the respondents to appoint the applicant in place of respondent No.4 on the post of Junior Clerk cum Typist, W.C.R Jabalpur.
- (iv) In the alternative direct the respondents to consider the applicant’s candidature as against the second post under cultural quota, which is lying vacant at W.C.R.
- (v) Any other order/orders, which this Hon’ble Court deems, fit proper.
- (vi) Cost of the petition may also kindly be awarded.”

3. The brief facts of the case, as stated in the Original Application, are that the respondents issued a notification dated

24.09.2008 (Annexure A-2) for recruitment of two posts of Junior Clerk-cum-Typist in the pay scale of Rs.3050-4590 under cultural quota. In pursuance to the said notification, the applicant applied for the said post and appeared in the written examination conducted on 17.01.2009 and secured 30.5 marks out of 50 in the written test, whereas respondent No.4 had secured 26.5 marks only out of 50. Thereafter, the applicant along with respondent No.4 and others candidates, was called to face interview and assessment of practical demonstration and testimonial on 26.02.2009.

4. The main ground of challenging the selection process is that the respondents have given undue favour to respondent No.4, as despite scoring more marks by the applicant in the written examination than respondent No.4, she was not selected for the aforesaid post. Further, in the later part of selection, the respondent No.4 secured 28.5 marks out of 35 for practical performance, whereas the applicant was only awarded 20.5 marks. Similarly, under the head of testimonial, six marks were awarded to the private respondent No.4, whereas only two marks were given to the applicant due to favoritism to respondent No.4. The applicant submits that the entire selection for the post under cultural quota was conducted in consonance with RBE circular 117/2000. Para

(ix) of the circular provides that the Recruitment Committee shall consist of three members to be nominated by the General Manager, which will include one SAG officer from personnel department, second SAG officer from any other department and an outside member of appropriate standing in the relevant field or a faculty member of any recognised University, Cultural Institution or a representation from Doordarshan/AIR etc. as the third member. The respondent No.5 was the third representative member (cultural) in the selection process. The contention of the applicant is that there was a close relationship between the respondent No.4 and 5. Therefore, due to favoritism to respondent No.4, the respondent No.5 awarded more marks to respondent No.4 under the head of personal performance/skill and testimonial.

5. The respondents Nos.1 to 3 have filed their reply. It has been submitted that five candidates appeared in the selection process including the applicant and private respondent No.4. The Committee found respondent No.4 as eligible and suitable than others on the basis of examination result and certificates produced by her and, therefore, she was selected for the post of Junior Clerk-cum-Typist under Cultural Quota. It has been further submitted that respondent No.4 had scored more marks in second spell of

selection and total in aggregate, as out of five candidates, respondent No.4 was having national level certificate, whereas no certificate of national level performance was enclosed by the applicant. Further, the marks for written test, personal performance test and for certificates – testimonial prizes etc., were determined as per the Railway Board's circular duly adopted by the Selection Committee and the decision was a collective one taken by the committee and not alone by the respondent No.5.

6. In regard to applicant's allegation of relationship between respondent No.4 and 5, it has been submitted by the respondents Nos.1 to 3 that consent was given by respondent No.5 in favour of respondent No.4 way back in the year 2006 to guide and prosecute her Ph.D. degree from R.D.V.V. Jabalpur. The private respondent No.5, Assistant Professor, was the third member of the Committee, who was from the field of Music and having good reputation in the education field and her integrity was beyond the doubt. So, there was no relationship between the private respondents Nos.4 and 5 with each other particularly on 25.02.2009, i.e. the date of practical performance test. Further, marks obtained by the applicant and private respondent No.4 are also not variably considerable more, thus, favouritism cannot be attributed at all. It has also been

submitted that the University has its own process in registering the student for research courses and whenever an application is received with name of one or several Guide to whom scholar wishes as his/her Guide then University asks from proposed Guide to give his/her willingness. Therefore, mere giving willingness does not establish any relation, more so as 'close relationship', as alleged by the applicant.

7. The respondent No.4 has filed her reply. It has been submitted that she submitted her application form for registration of Ph.D candidate on 18.01.2006. The interview for the said post was held on 25.02.2009, when she was not even enrolled with the respondent No.5. It was only on 02.07.2009 (Annexure R-4-1), i.e. after five months, she got enrolled as Ph.D. Thus, there was no question of nexus between her and respondent No.5. She has further submitted that it is settled principle of law that if a candidate takes a calculated chance and appear before the interview/selection committee, result of which is not palatable to him/her, cannot turn around and say that the process of interview/assessment was unfair or selection committee was not constituted properly. As such, the applicant has waived her right to

challenge the constitution of the selection committee on the ground of alleged biasness.

8. Learned counsel for respondent No.4 has placed reliance on a decision of Hon'ble High Court of Madras in the case of **V. Kasi Rao vs. The University of Madras and Ors.**, (1998) 1 MLJ 572, wherein the Hon'ble High Court has held that where there is an allegation of bias in respect of a member of an administrative Board or body, there should be reasonable ground for believing that he/she was likely to have been biased. The learned counsel also cited the judgment of Hon'ble Apex Court in the matters of **Dalpat Abasaheb Solunke and others vs. Dr. B.S. Mahajan and others**, (1990) 1 SCC 305. Para 12 of the judgment reads as under:

“12.It is needless to emphasis that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc.....”

9. The respondent No.5 has also filed her reply separately. It has been submitted that she was a part of the selection committee as a subject expert and keeping in view the prescribed requirements

and qualifications for the post, she had adjudged for the most meritorious candidate, without taking into account or being influenced by any extraneous considerations. It has also been submitted that both the applicant and respondent No.4 were having the same degree of relationship with her as both were her students while pursuing their Post Graduation degree in the college. The consent to supervise the research work of respondent No.4 was given by her way back on 06.01.2006 and the RDC meeting had not taken place till the date of impugned selections, i.e. 25.02.2009. Thus, there was no question of having close relationship between her and respondent No.4.

10. Learned counsel for respondent No.5 has also placed reliance on the judgment of Hon'ble Apex Court in the case of **Charanjit Singh and others vs. Harinder Sharma and others**, AIR 2002 SC 2397.

11. The applicant has filed rejoinder to the reply filed by respondents Nos.1 to 3 and reiterated her earlier stand taken in the O.A. It has been submitted by the applicant that the respondent No.5 has given consent for respondent No.4 to become guide for Ph.D on 06.01.2006. This fact itself proves that respondent No.5 had an intention to favour respondent No.4 and case of 'reasonable

likelihood of bias is clearly made out by the applicant. It has also been submitted that after giving consent to become guide on 06.01.2006, on 16.02.2009, letter from Rani Durgawati University was issued fixing the RDC meeting for 03.03.2009. In between 19.02.2009 undertaking is given by the respondent No.5 to Railway Administration that none of the candidate is enrolled under her and objections were taken by one advocate regarding the constitution of the committee and fairness of respondent No.5. It has been mentioned in the rejoinder by the applicant that the respondents have taken shelter of definition of close relative. So, the entire selection process was conducted in an unfair manner and the Railway Authorities have facilitated respondent No.4 just to extend undue favouritism to respondent No.4.

12. The applicant has also filed rejoinder to the reply filed by respondent No.4. It has been submitted that she secured more marks in the written examination. However, private respondent No.4 marched over her by awarding her more marks in practical skill and under the head of testimonial/certificate. The respondent No.5, in the capacity of an outside member of the selection committee, having expertise in the field of music, has extended undue favouritism to the respondent No.4.

13. The applicant has also filed rejoinder to the reply filed by respondent No.5. It has been submitted by the applicant that the nomination of the respondent No.5 as outside member was as per the mandate of Railway Board circular No.117/2000. The respondent No.5 was nominated as an expert member from outside agency just to adjudge the suitability of the candidate in practical performance in the relevant field. It has been further submitted by the applicant that consent was signed by the respondent No.5 in the year 2006 and just after that the synopsis submitted by the respondent No.4 on 18.08.2006, was again bearing signature and consent of respondent No.5. So, there was a familiar relationship between respondents Nos.4 and 5 prior to the selection process initiated by the Railways.

14. The respondent No.4 has filed the additional submissions. It has been submitted by her that both the applicant and respondent No.4 were students of college right from the Graduation level up to post graduation where respondent No.5 had been functioning as Assistant Professor. The respondents No.5 was one of the teachers of both the applicant and respondent No.4 for two years in the post graduation. Further, it has been submitted by the respondent No.4 that RBE No.132/89 (Annexure R/4-4) *inter alia* states that if

blood relations of the Member Secretary/Chairman/Member of Selection Board, are appearing in the selection/interview, these officials should not be on the Interview Board. The selections done by an expert committee is beyond the scope of judicial scrutiny unless a malafide is made out. Moreover, the case of the applicant is hit by the doctrine of estoppel, waiver and acquiescence. The applicant is a fence sitter, who participated in the selection process without any demur and waited till the declaration of the results. If the result was in her favor, she would have kept mum for ever.

15. We have heard the learned counsel for the parties and gone through the pleadings and documents available on record.

16. It is an admitted fact that the notification dated 24.09.2008 (Annexure A-2) for recruitment of two posts Clerk-cum-Typist in the pay scale of Rs.3050-4590 under Cultural quota was issued and the applicant as well as private respondent No.4 had participated in the selection process. The applicant had secured 30.5 marks out of 50 in the written examination conducted on 17.01.2019, whereas the private respondent No.4 was awarded 26.5 marks out of 50. Both the applicant as well as private respondent No.4 were called for interview and assessment of practical demonstration and testimonial on 26.02.2009.

17. The main ground of challenging the selection process by the applicant is that the respondent department have given undue favour to respondent No.4 despite the fact that the applicant had secured more marks in the written examination. Similarly, the other allegation of the applicant is that under the head of 'Testimonial', six marks have been awarded to respondent No.4, whereas the applicant has been given two marks only. The third allegation is that the Expert Member, respondent No.5 has favoured the respondent No.4 because they were having the close relationship.

18. On the other side, the respondent department have specifically submitted in their reply that the Committee found the respondent No.4 eligible and suitable on the basis of examination result and certificate produced by her. It has also been specifically stated that the respondent No.4 had secured more marks in second spell of selection and total in aggregate out of five candidates. She was having the National level certificate, whereas no National level certificate was enclosed by the applicant. Therefore, the marks for written test, personal performance test and for certificate/testimonial prizes etc., were determined as per the Railway Board's circular on the subject and the same has been duly adopted by the selection committee. The decision was collective

one taken by the Committee and not alone by respondent No.5. The respondents have further specifically submitted that the respondent No.5, Assistant Professor, was the third Member of the Committee and was from a field of Music and was having good moral reputation in the field and her integrity was beyond the doubt. So, there is no relationship between the respondents Nos.4 and 5 particularly on 25.09.2009, i.e. the date of practical performance test.

19. The respondent No.4 has also denied the close relationship with the respondent No.5. It has been specifically submitted that the application for registration of Ph.D was made on 18.01.2006. The interview for the concerned post was held on 25.02.2009 and respondent No.4 was enrolled for Ph.D only on 02.07.2009. So, there is no question of having close relationship with the respondent No.5 at the relevant point of time. It has also been specifically submitted that after appearing in the selection process, when the applicant did not find her place in the select list, she had raised the objection regarding the constitution of selection committee and, therefore, she has waved her right to challenge the constitution of selection committee.

20. The respondent No.5 has also specifically submitted that as a part of Selection Committee as a subject expert and keeping in view the prescribed requirement, the respondent No.4 was found to be the most meritorious candidate. Regarding the degree of relationship with respondent No.4, the respondent No.5 has specifically submitted that both the applicant as well as respondent No.4 were her student while pursuing their Post Graduation degree in the college. Further, the consent to supervise the research work of respondent No.4 was given by her on 06.01.2006, whereas the interview was held on 25.02.2009. So, there is no question of any favour given to respondent No.4.

21. In the facts and circumstances of the case, we find that the applicant has failed to show any biasness done to her and also having close relationship between respondents Nos.4 and 5. Merely getting higher marks than the respondent No.4 in the written test would not entitle the applicant for her selection to the aforesaid post particularly when there are certain other criteria, such as; personal performance test, marks for certificate/testimonial prizes etc., are there to determine the suitability of a candidate. The applicant has challenged the constitution of the selection board and the adoption of process for selection only when the final selection

has been done. It is a settled principle of law that approbation and reprobation cannot be pleaded at the same time. Moreover, the applicant has not made out and proved the malafide against the respondent No.5.

22. In view of the aforesaid, we are of the considered view that the selection has been done by the selection committee as per RBE circular No.117/2000 purely on the basis of merit and the marks for written test, personal performance test and the certificate/testimonial have been awarded correctly. Therefore, the selection determined by the Selection Board is as per the Railway Board's circulars, which have been duly adopted by the selection committee and the decision to select the respondent No.4 was a collective one by the committee and not alone by respondent No.5.

23. In the result, we find that there is no illegality in the action of the respondent department. Hence, the O.A is dismissed. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-