

**CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA**

No. O.A. 350/01705/2016

Date of order: 28.11.2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Kausik Kumar Pal,  
Son of Late Sukumar Pal,  
Working as SSE (NC)/Inspector,  
ANCO Office, Kolkata,  
Posted at Howrah,  
Resident of Q-396 Monsa Row,  
Kolkata - 700 024.

... Applicant

Versus

1. The Union of India,  
Through the General Secretary,  
Indian Railway Conference Association,  
DRM's Office Complex,  
State Entry Road,  
New Delhi - 110 055.
2. General Manager,  
Northern Railway,  
Baroda House,  
New Delhi - 110 005.

... Respondents.

For the Applicant : Mr. A.B. Chakraborty, Counsel

For the Respondents : Mr. A.K. Guha, Counsel

**ORDER (Oral)**

**Per Dr. Nandita Chatterjee, Administrative Member:**

Heard both Ld. Counsel, examined pleadings and documents on record.

2. The applicant's submissions, as advanced through his Ld. Counsel, is that the applicant had joined service as an Apprentice on 30.4.1979, regularised as S.E. on 17.8.1980 and further promoted to the post of SSE (NC)/Inspector on

26.2.2007. Thereafter, the applicant participated in a written test for promotion to the post of Assistant Neutral Control Officer, IRCA which was held on 1.2.2016. Although the applicant had performed very well, the respondent authorities deprived him by not awarding him correct marks and hence, he missed his opportunity to get promoted as Neutral Control Officer, IRCA and, being aggrieved has approached this Tribunal seeking the following relief:-

- (i) Promotion to the post of Assistant Neutral Control Officer, IRCA by giving and/or awarding proper 10 marks in the written examination for the promotional post of Assistant Neutral Control Officer, IRCA held on 1.8.2016;
- (ii) Consequential all benefits including financial and administrative status arising out of aforesaid promotional post;
- (iii) And order of injunction restraining the respondents authorities to give any promotion to the said post till disposal of this application and without giving promotion to the applicant after considering his case.
- (iv) Costs;"

The grounds on which the applicant seeks to support his application are, inter alia, as follows:-

- (a) That, the respondent authority intentionally, maliciously and, in a discriminatory and malafide manner, deprived the applicant of his promotion;
- (b) That, the applicant had correctly answered question No. 7 but the respondent authorities did not award any marks to the answer and so the applicant lost his opportunity for promotion;
- (c) That, the respondent authorities had wrongly assessed the answer scripts particularly with reference to the impugned question wherein the applicant was awarded zero instead of full marks;
- (d) The action of the respondent authorities in not granting him full marks for that impugned question is contrary to the extant rules or scheme as framed thereon.

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(d) The action of the respondent authorities in not granting him full marks for that impugned question is contrary to the extant rules or scheme as framed thereon.

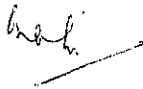
3. The respondents, in their counter affidavit as well as in their oral submissions, have argued that the applicant was initially appointed as a Neutral Train Examiner on 30.4.1979 and was subsequently promoted as Senior Section Engineer (NCI) on 26.2.2007.

That, the letter bearing No. EG/2807/A/II dated 6.6.2016 was circulated to obtain willingness of all eligible candidates to fill up the vacancies of Assistant Neutral Control Officer and the applicant, with others, had submitted his willingness to appear in the selection process.

That, the written test was held on 1.8.2016 and all the eligible candidates appeared for the written examination. While distributing the question paper it was noticed that the phrase "Rajbhasa Adhinyam 176" was wrongly printed in question No. 7 of Part II of question paper of the said written examination. As the proper narration of the question was 'Rajbhasa Abhinyam 1976' instead of "Rajbhasa Adhinyam 176", the same was corrected by the competent authority and all candidates present appearing in the written examination were informed accordingly. The respondents further pointed out that not a single candidate had objected to the said error in the question during the duration of the written test.

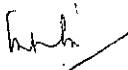
The respondents, during hearing, have also furnished a decision of the selection committee for the post of Assistant Neutral Control Officer which found that nobody had obtained the minimum qualification marks of 60% in the written examination and no candidate was found as qualified in the written test.

4. The point of determination in the instant matter is whether the applicant was deprived of 10 marks (as claimed by him) in violation of the rules or guidelines in connection with the selection of the post of Assistant Neutral Control Officer.



5. Neither the applicant nor the respondents have furnished before any rules or guidelines which had specified that in case any question/question No. 7 was incorrectly printed, all candidates would be given an extra 10 marks if they attempted to answer the same. It is the contention of the respondent authorities that the competent authority, upon noticing the incorrect printing of 1976 as 176 had informed all candidates present in the examination hall that "Rajbhasa Adhinyam 176" had to be corrected to "Rajbhasa Adhinyam 1976" and that none of the candidates had raised any objection to this during the written examination. To prove their case, the respondents have furnished certain other answer sheets in front of us during hearing in which we find that the other candidate has written "Rajbhasa Adhinyam 1976" against question No. 7. Hence, it is difficult to conclude that the candidates were not apprised of the correction prior to /during the written examination. The applicant had obtained his answer sheet through RTI wherefrom it appears that, in reply to the question on objectives of "Rajbhasa Adhinyam 176", the applicant had stated that, in his opinion, no "Rajbhasa Adhinyam 176" have been prepared till date. It is not understood how the applicant, who was appearing in the said examination, failed to correct '176' to '1976' and answer the question appropriately. Upon a further screening of his answer scripts as annexed in the Original Application it is seen that the applicant's answers to the objective type questions were largely incorrect and that he had obtained only 27 marks in the same, as compared to the another candidate whose answer scripts was produced before us and who had obtained 34 marks against the same. Overall, the applicant obtained only 50 marks out of 100 marks whereas the other candidate whose answer script was produced before us, had obtained 57 marks out of 100.

Accordingly, we are not convinced that the candidate was the sole eligible candidate to have been selected to be promoted as the Assistant Neutral Control Officer as because his performance in answering other questions was also not satisfactory.



6. The candidate has alleged that the respondents have behaved in a discriminatory fashion against him with malafide intention. As no candidate has been selected, discrimination is not proved and in ***National Institute Mental Health & Neuro Science v. K. Kalyana Raman 1992 Supp (2) SCC 481*** it has been held that, the courts should be slow to interfere with the opinion of the selection committee particularly when such a committee consisted of experts. It has further been reiterated therein that the Courts will not assess the relative merits of the candidates interviewed by the selection committee. In ***B.R. Bapuji (Dr.) v. Dr. N. Sivaramamurthy, Registrar, Telegu University (1994) II LLJ 650 (AP)*** Hon'ble Apex Court has ruled that courts should not interfere with such decisions if no mala fide is attributed to the expert body. In ***Sadhan Kumar Basu (Sri) v. Anirudha Mukherjee & Co., 1993 (4) SLR 473*** a Division Bench of Calcutta High Court has held that recommendations of expert bodies cannot be interfered with by Courts unless it is established that the power of selection was not exercised bonafide. In this case, although alleged, the applicant has not been able to establish malafide or non-exercise of bonafide powers in the evaluation of the written examination. Accordingly, this ground is not tenable. In ***Dalpat Aba sahib Solunke v. B.S. Mahajan (1990) 1 SCC 305, Ratnagiri Gas and Power Pvt. Ltd. V. RDS Project Ltd. & ors. (2013) 1 SCC 524 and Ashok Kumar & ors. v. State of Bihar & ors. (2017) 4 SCC 357***, the judgments clearly enunciate the ratio that mere assertion or a vague or bold statement is not sufficient to prove malafide. It is on the petitioner to demonstrate lucidly that the action taken was not done in good faith or is the result of bias or ulterior motive. Ambiguous reasons unsupported by hard facts cannot lead to a conclusion of malafide or arbitrariness.

The applicant has also claimed the extra marks stating that he had been given less marks in contravention to guidelines of the examination rule or scheme. The applicant, however, has not furnished in support of his case any

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such examination rules, scheme or guidelines which states that in case of a printing error a candidate has to be given full marks, particularly when the correction was announced in the examination hall.

7. Accordingly, both on points of fact and law, we do not find any reason to intervene with the decision of the respondent authorities and accordingly dismiss this matter on merit.

There will be no orders on costs.

(Dr. Nandita Chatterjee)  
Administrative Member

(Bidisha Banerjee)  
Judicial Member

SP.

