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CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
KOLKATA

OA No. 695/2012

Date of Order: 22.09.2015

**PRESENT:**

THE HON'BLE MR. JUSTICE G. RAJASURIA, JUDICIAL MEMBER  
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

Shri Pratap Majumdar, son of Shri H.D.Majumdar, aged about 33 years by profession Contractual service residing at C/o. Shri H.D.Majumder, Manna Pukur Second Lane, Haridra Danga, Po. Chandannagar, Dist. Hooghly, West Bengal, Pin-712 136.

..... Applicant

For the Applicant : Mr.T.K.Biswal, Counsel.

1. Union of India service through the Secretary, Govt. Of India, Ministry of Labour & Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi-110001.
2. The Chairman, Central Board of Workers Education, 7/10, Room No. 21 and 22, Jamnagar House, Man Singh Road, New Delhi-110011.
3. The Director, Central Board of Workers Education, Near VRCE Gate, North Ambazari Road, Nagpur-440010.

..... Respondents

For the Respondents: Mr.L.K.Chatterjee & Mr.U.P.Bhattacharyya, Counsel

ORDER

**JUSTICE G.RAJASURIA, JM:**

Heard both.

2. This OA has been filed seeking the following reliefs:

"(i) An order directing the respondents to fix the interview date and before that issue an interview letter in favour of the applicant and complete the selection process of 22<sup>nd</sup> batch and if the applicant is suitable for this post then issue the appointment letter in favour of the applicant for the post of Education Officer.



(ii) And to pass such further or other order or orders as to this Hon'ble Tribunal may deem fit and proper."

3. This case is having a chequered career of its own. The applicant in response to the notification dated 23.07.2005 of the Central Board for Workers Education (A Central Autonomous Body under the Ministry of Labour, Government of India), applied for the post of Education Officer. He took up the written test on 25.2.2007. However, results were not published; whereupon, OA No. 601 of 2009 was filed wherein this Tribunal passed the order; the relevant portion of it would run thus:

"5. It is accordingly directed that the results of the written test be published within two months from the date of issue of this order. No steps should be taken by the respondents in respect of their notification dated 13.9.2011 till publication of the result of the earlier selection of 2007."

4. Thereafter, as per Annexure-A/3, results were published and the applicant's name figured at Sl.No.28. The grievance of the applicant is that till date nothing is heard about his appointment.

5. The learned counsel for the applicant placing reliance on various correspondence which emerged between him and the authorities would develop his argument that the respondent authority decided not to fill up the post arbitrarily without any valid reason. In this connection he cited the decision of the Hon'ble Apex Court in East Coast Railway & Another Vs. Mohadev Appa Rao & Ors, (2010) 7 SCC 678. An excerpt from it would run thus:

14. It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent Writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter.



15. To the same effect is the decision of this Court in *Union Territory of Chandigarh v. Dilbagh Singh and Ors.* (1993) 1 SCC 154, where again this Court reiterated that while a candidate who finds a place in the select list may have no vested right to be appointed to any post, in the absence of any specific rules entitling him to the same, he may still be aggrieved of his non-appointment if the authority concerned acts arbitrarily or in a malafide manner. That was also a case where selection process had been cancelled by the Chandigarh Administration upon receipt of complaints about the unfair and injudicious manner in which the select list of candidates for appointment as conductors in CTU was prepared by the Selection Board. An inquiry got conducted into the said complaint proved the allegations made in the complaint to be true. It was in that backdrop that action taken by the Chandigarh Administration was held to be neither discriminatory nor unjustified as the same was duly supported by valid reasons for cancelling what was described by this Court to be as a "dubious selection".

16. Applying these principles to the case at hand there is no gainsaying that while the candidates who appeared in the typewriting test had no indefeasible or absolute right to seek an appointment, yet the same did not give a licence to the competent authority to cancel the examination and the result thereof in an arbitrary manner. The least which the candidates who were otherwise eligible for appointment and who had appeared in the examination that constituted a step in aid of a possible appointment in their favour, were entitled to is to ensure that the selection process was not allowed to be scuttled for malafide reasons or in an arbitrary manner.

17. It is trite that Article 14 of the Constitution strikes at arbitrariness which is an anti thesis of the guarantee contained in Articles 14 and 16 of the Constitution. Whether or not the cancellation of the typing test was arbitrary is a question which the Court shall have to examine once a challenge is mounted to any such action, no matter the candidates do not have an indefeasible right to claim an appointment against the advertised posts."

As such, the Learned Counsel for the Applicant would submit that the Government Authority cannot arbitrarily drop the endeavour to fill up the post without assigning any valid reason whatsoever. Accordingly, he would pray for a positive direction in this regard as against the respondent authorities.

Per contra, the Learned Counsel for the Respondents placing reliance on the reply and annexures appended thereto, would develop his argument to the effect that Annexure-R/1, the Office Memorandum dated 23<sup>rd</sup> December, 2005 and the Annexures R/5, R/6 and R/7 are self explanatory. In fact, the record would reveal that after 01.04.2009, there was no permission to fill up the post of Education Officer. The vacancies declared during the year 2005, 2011 and



2012 were cancelled. The cumulative effect of the annexures filed along with reply would show that the association of the Education Workers along with others moved the CADT for a positive direction concerning their pay scale and the service conditions and for up grading their status as Gr. A Officer and order was passed by the CAT in OA No. 566 of 2007 on 27.09.2007. The relevant portion of it would run thus:

"15. In view of the observation made above and submission of the Ld. Counsel for the respondents, we find sufficient merit in this OA. The Respondents are directed to consider the implementation of Dasgupta Commission Report in implementing the pay scales keeping in view our observations mentioned in this order. While considering so they are also to consider implementation of the direction of Mumbai Bench, restoration of status of Education Officers equivalent to Group A (Class-1) Officers notionally from 1.1.1996 and also to consider the appropriate fitment of Education Officer (Selection Grade), Regional Director, Training Officer, Research Officer & Dy. Directors/Zonal Directors and Additional Director as per recommendation of the aforesaid committee. The entire exercise of consideration and passing of necessary orders be completed within 3 months from the date of communication of this order. The OA is thus allowed with the aforesaid direction. No order as to costs."

6. Challenging and impugning the said order, the Department preferred

WPCT No. 85 of 2010 before the Hon'ble High Court of Calcutta and according to the Learned Counsel for the Respondents, the said writ petition is pending. It is because of the pendency of the litigation before the Hon'ble High Court of Calcutta, the Ministry of Finance, Department of Expenditure, Govt. Of India, New Delhi could not pass order regarding revival of the post of Education Officer. Whereas, the Learned Counsel for the Applicant would submit that that case was filed by the Education Officer concerning their status etc and wherefore because of the pendency of the said case the new entrant cannot be made to suffer.

7. The point for consideration is as to whether the CAT in the facts and circumstances of the case could give any positive direction for considering the employment of the applicant on the ground that he passed the written test.

8. Absolutely, there is no quarrel over the factual position extracted supra. On the other hand, the applicant would insist that without sound reason his



candidature is kept in abeyance or virtually deemed to have been cancelled which cannot be countenanced as correct in the eye of law.

9. The core question arises whether pendency of such case instituted by the association of Education Officer who are in service could be fitted as against the claim of the applicant. No doubt, from the view point of the Ministry of Finance Department of Expenditure the outcome of that case would be the governing factor for filling up of the post of Education Officer because in case that case is dismissed by the Hon'ble High Court of Calcutta there shall be additional financial burden on them. As such, all of a sudden, the CAT cannot direct the Respondents for filling up the post during the pendency of the Writ Petition. However, in the meantime a balance has to be struck between the claims of both sides. The words used in the communication would demonstrate and exemplify that depending upon the outcome of the case, a decision would be taken regarding the revival of the post which have not been filled up. In such a case we would like to observe and direct that after finalization of the case, the applicant's case shall be considered on merits as the applicant apprehends that if he has to apply afresh there would be lot of difficulties in securing employment due to age bar, etc. As such we would like to direct that the respondent authorities concerned to consider the candidature of the applicant after disposal of the Writ Petition.

10. This OA is accordingly disposed of. No costs.

(Jaya Das Gupta)  
Admn. Member

(Justice G.Rajasuria)  
Judicial Member